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(Original Signature of Member)

114TH CONGRESS  
2D SESSION

**H. R.**

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

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IN THE HOUSE OF REPRESENTATIVES

Mr. JEFFRIES (for himself and [see ATTACHED LIST of cosponsors]) introduced the following bill; which was referred to the Committee on

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**A BILL**

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 2016” or “CASE Act  
6 of 2016”.

1 **SEC. 2. COPYRIGHT SMALL CLAIMS.**

2 (a) IN GENERAL.—Title 17, United States Code, is  
3 amended by adding at the end the following new chapter:

4 **“CHAPTER 14—COPYRIGHT SMALL**  
5 **CLAIMS**

“Sec.

“1401. Copyright Claims Board.

“1402. Authority and responsibilities of the Copyright Claims Board.

“1403. Nature of proceedings.

“1404. Registration requirement.

“1405. Conduct of proceedings.

“1406. Effect of proceeding.

“1407. Review and confirmation by district court.

“1408. Relationship to other district court actions.

“1409. Implementation by Copyright Office.

“1410. Funding.

“1411. Definitions.

6 **“§ 1401. Copyright Claims Board**

7 “(a) IN GENERAL.— There is hereby established in  
8 the U.S. Copyright Office a copyright small claims pro-  
9 gram (hereinafter referred to as the ‘Copyright Claims  
10 Board’), which shall serve as an alternative forum in  
11 which parties may voluntarily seek to resolve certain copy-  
12 right claims, regarding any category of copyrighted work,  
13 as further provided in this chapter.

14 “(b) OFFICERS AND STAFF.—

15 “(1) COPYRIGHT CLAIMS OFFICERS.—Upon rec-  
16 ommendation of the Register of Copyrights, who  
17 shall identify qualified candidates, the Librarian of  
18 Congress shall appoint 3 full-time Copyright Claims  
19 Officers to serve on the Copyright Claims Board.

1           “(2) COPYRIGHT CLAIMS ATTORNEYS.—The  
2 Register of Copyrights shall hire no fewer than 2  
3 full-time Copyright Claims Attorneys to assist in the  
4 administration of the Copyright Claims Board.

5           “(3) QUALIFICATIONS.—

6           “(A) COPYRIGHT CLAIMS OFFICERS.—  
7 Each Copyright Claims Officer shall be an at-  
8 torney with no less than 7 years of legal experi-  
9 ence. Two of the Copyright Claims Officers  
10 shall have substantial experience in the evalua-  
11 tion, litigation, or adjudication of copyright in-  
12 fringement claims and, between them, shall  
13 have represented or presided over a diversity of  
14 copyright interests, including those of both own-  
15 ers and users of copyrighted works. The third  
16 Copyright Claims Officer shall have substantial  
17 familiarity with copyright law and experience in  
18 the field of alternative dispute resolution, in-  
19 cluding the resolution of litigation matters  
20 through such means.

21           “(B) COPYRIGHT CLAIMS ATTORNEYS.—  
22 Each Copyright Claims Attorney shall be an at-  
23 torney with no less than 3 years of substantial  
24 experience in copyright law.

1           “(4) COMPENSATION.—Each Copyright Claims  
2           Officer shall be compensated at not less than the  
3           minimum and not more than the maximum rate of  
4           pay for SL employees (or the equivalent) of the Fed-  
5           eral Government, including locality pay, as applica-  
6           ble. Each Copyright Claims Attorney shall be com-  
7           pensated at not more than the maximum permissible  
8           pay for level 10 of GS–15 of the General Schedule  
9           (or the equivalent), including locality pay, as appli-  
10          cable.

11           “(5) TERM.—Copyright Claims Officers shall  
12          serve for 6-year terms that are renewable by the Li-  
13          brarian of Congress upon recommendation of the  
14          Register of Copyrights: *Provided, however,* That the  
15          terms for the initial Copyright Claims Officers ap-  
16          pointed hereunder shall be as follows: one Copyright  
17          Claims Officer shall be appointed for 4 years, the  
18          second shall be appointed for 5 years; and the third  
19          shall be appointed for 6 years.

20           “(6) VACANCIES AND INCAPACITY.—

21           “(A) VACANCY.—If a vacancy shall occur  
22          in the position of Copyright Claims Officer, the  
23          Librarian of Congress shall, upon recommenda-  
24          tion of the Register of Copyrights, who shall  
25          identify qualified candidates, act expeditiously

1 to appoint a Copyright Claims Officer for that  
2 position. An individual appointed to fill a va-  
3 cancy occurring before the expiration of the  
4 term for which his or her predecessor was ap-  
5 pointed shall be appointed to serve for a 6-year  
6 term.

7 “(B) INCAPACITY.—If a Copyright Claims  
8 Officer is temporarily unable to perform his or  
9 her duties, the Librarian of Congress shall,  
10 upon recommendation of the Register of Copy-  
11 rights, who shall identify qualified candidates,  
12 act expeditiously to appoint an interim Copy-  
13 right Claims Officer to perform such duties  
14 during the period of such incapacity.

15 “(7) SUPERVISION AND REMOVAL.—Subject to  
16 section 1402(b), the Copyright Claims Officers shall  
17 be supervised and removable by the Librarian of  
18 Congress.

19 “(8) ADMINISTRATIVE SUPPORT.—The Register  
20 of Copyrights shall provide the Copyright Claims Of-  
21 ficers and Copyright Claims Attorneys with nec-  
22 essary administrative support, including techno-  
23 logical facilities, to carry out their duties under this  
24 chapter.

1           “(9) LOCATION OF COPYRIGHT CLAIMS  
2 BOARD.—The offices and facilities of the Copyright  
3 Claims Officers and Copyright Claims Attorneys  
4 shall be located at the Copyright Office.

5 **“§ 1402. Authority and responsibilities of the Copy-**  
6 **right Claims Board**

7           “(a) FUNCTIONS.—

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

12           “(A) To render determinations on such  
13 civil copyright claims, counterclaims, and de-  
14 fenses as are permitted to be brought before  
15 them under this chapter.

16           “(B) To ensure that claims, counterclaims,  
17 and defenses are properly asserted and other-  
18 wise appropriate for resolution by the Copyright  
19 Claims Board.

20           “(C) To manage the proceedings before  
21 them and render rulings pertaining to the con-  
22 sideration of claims, counterclaims, and de-  
23 fenses, including scheduling, discovery, evi-  
24 dentiary, and other matters.

1           “(D) To request the production of infor-  
2 mation and documents relevant to the resolu-  
3 tion of a claim, counterclaim, or defense from  
4 participants in a proceeding and from non-  
5 participants.

6           “(E) To conduct hearings and conferences.

7           “(F) To facilitate parties’ settlement of  
8 claims and counterclaims.

9           “(G) To award monetary relief and also to  
10 include in its determinations a requirement of  
11 cessation or mitigation of infringing activity, in-  
12 cluding takedown or destruction of infringing  
13 materials, where the party to undertake such  
14 measures has so agreed.

15           “(H) To provide information to the public  
16 concerning the procedures and requirements of  
17 the Copyright Claims Board.

18           “(I) To maintain records of the pro-  
19 ceedings before them, certify official records of  
20 such proceedings as needed, and make the  
21 records in such proceedings available to the  
22 public in accordance with law.

23           “(J) To carry out such other duties as are  
24 prescribed in this chapter.

1           “(K) When not engaged in performing  
2           their duties as prescribed in this chapter, to  
3           perform such other duties as may be assigned  
4           by the Register of Copyrights.

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

9           “(A) To provide assistance to the Copy-  
10          right Claims Officers in the administration of  
11          their duties under this chapter.

12          “(B) To provide assistance to members of  
13          the public with respect to the procedures and  
14          requirements of the Copyright Claims Board.

15          “(C) When not engaged in performing  
16          their duties as prescribed in this chapter, to  
17          perform such other duties as may be assigned  
18          by the Register of Copyrights.

19          “(b) INDEPENDENCE IN DETERMINATIONS.—The  
20          Copyright Claims Officers shall render their determina-  
21          tions in individual proceedings independently on the basis  
22          of the records in the proceedings before them and in ac-  
23          cordance with the provisions of this title, judicial prece-  
24          dent, and applicable regulations of the Register of Copy-  
25          rights. The Copyright Claims Officers and Copyright



1 Claims Attorneys may consult with the Register of Copy-  
2 rights on general issues of law, but, subject to section  
3 1405(w), not with respect to the facts of any particular  
4 matter pending before them or the application of law  
5 thereto. Notwithstanding any other provision of law or any  
6 regulation or policy of the Library of Congress or Register  
7 of Copyrights, no performance appraisal of a Copyright  
8 Claims Officer or Copyright Claims Attorney shall con-  
9 sider the substantive result of any individual determina-  
10 tion reached by the Copyright Claims Board as a basis  
11 for appraisal except insofar as it may relate to any actual  
12 or alleged violation of an ethical standard of conduct.

13 “(c) DIRECTION BY REGISTER.—Subject to sub-  
14 section (b), the Copyright Claims Officers and Copyright  
15 Claims Attorneys shall be generally directed in the admin-  
16 istration of their duties by the Register of Copyrights.

17 “(d) INCONSISTENT DUTIES BARRED.—No Copy-  
18 right Claims Officer or Copyright Claims Attorney may  
19 undertake duties that conflict with his or her duties or  
20 responsibilities in connection with the Copyright Claims  
21 Board.

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

1 has reason to believe that he or she has a conflict of inter-  
2 est.

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 concerning the substance of any pro-  
8 ceeding before the Copyright Claims Board.

9 “(g) JUDICIAL REVIEW.—Actions of the Copyright  
10 Claims Officers and Register of Copyrights under this  
11 chapter in connection with the rendering of individual de-  
12 terminations are subject to judicial review as provided  
13 under section 1407(c), and not under chapter 7 of title  
14 5, United States Code.

15 **“§ 1403. 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 United States district court or any other  
21 court, and to seek a jury trial, shall be preserved.

22 “(b) STATUTE OF LIMITATIONS.—

23 “(1) IN GENERAL.—No proceeding shall be  
24 maintained before the Copyright Claims Board un-  
25 less it is commenced in accordance with section

1 1405(e) before the Copyright Claims Board within  
2 three years after the claim that is the basis for the  
3 proceeding accrued.

4 “(2) TOLLING.—Subject to section 1406(a), a  
5 proceeding commenced before the Copyright Claims  
6 Board shall toll the time permitted under section  
7 507(b) of this title for commencement of an action  
8 on the same claim in a United States district court  
9 during the time it remains pending.

10 “(c) PERMISSIBLE CLAIMS, COUNTERCLAIMS AND  
11 DEFENSES.—The Copyright Claims Officers may render  
12 determinations with respect to the following claims, coun-  
13 terclaims and defenses, subject to such further limitations  
14 and requirements, including with respect to particular  
15 classes of works, as may be set forth in regulations estab-  
16 lished by the Register of Copyrights:

17 “(1) A claim for infringement of an exclusive  
18 right of copyright provided under section 106 of this  
19 title, asserted by the legal or beneficial owner of  
20 such exclusive right at the time of infringement pur-  
21 suant to which the claimant seeks damages, if any,  
22 within the limitations set forth in subsection (e)(1).

23 “(2) A claim for a declaration of noninfringe-  
24 ment of an exclusive right of copyright provided  
25 under section 106 of this title, where an actual con-

1       troversty exists as evidenced by a written communica-  
2       tion indicating that legal action against the claimant  
3       is imminent due to specifically alleged infringing  
4       conduct.

5           “(3) Notwithstanding any other provision of  
6       law, a claim pursuant to section 512(f) of this title  
7       for misrepresentation in connection with a notifica-  
8       tion of claimed infringement or a counter notifica-  
9       tion seeking to replace removed or disabled material:  
10      *Provided, however,* That any remedies in such a pro-  
11      ceeding before the Copyright Claims Board shall be  
12      limited to those available under this chapter.

13           “(4) A counterclaim asserted solely against the  
14      claimant or claimants in a proceeding pursuant to  
15      which the counterclaimant or counterclaimants seek  
16      damages, if any, within the limitations set forth in  
17      subsection (e)(1), and that—

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

1           “(B) arises under an agreement pertaining  
2           to the same transaction or occurrence that is  
3           the subject of a claim of infringement brought  
4           under paragraph (1) and could affect the relief  
5           awarded to the claimant.

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

10           “(6) A single claim or multiple claims permitted  
11           under paragraphs (1), (2), or (3) by one or more  
12           claimants against one or more respondents: *Pro-*  
13           *vided, however,* That all claims asserted in any one  
14           proceeding arise out of the same allegedly infringing  
15           activity or continuous course of infringing activities  
16           and do not in the aggregate result in a claim for  
17           damages in excess of the limitation provided in sub-  
18           section (e)(1)(D).

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 already pending before a court of  
2       competent jurisdiction, unless such court has issued  
3       a stay to permit such claim or counterclaim to pro-  
4       ceed before the Copyright Claims Board.

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

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

10              “(5) A claim or counterclaim dismissed by the  
11       Copyright Claims Board pursuant to section  
12       1405(f)(3).

13       “(e) PERMISSIBLE REMEDIES.—

14              “(1) MONETARY RECOVERY.—

15                      “(A) ACTUAL DAMAGES, PROFITS, AND  
16       LIMITED STATUTORY DAMAGES.—Subject to the  
17       limitation on total monetary recovery set forth  
18       in subparagraph (D), with respect to a claim or  
19       counterclaim for infringement of copyright, the  
20       Copyright Claims Board may award—

21                              “(i) actual damages and profits deter-  
22       mined in accordance with section 504(b) of  
23       this title, which determination shall include  
24       in appropriate cases consideration of  
25       whether the infringing party has agreed to

1                   cease or mitigate the infringing activity as  
2                   provided in paragraph (2); or

3                   “(ii) limited statutory damages, which  
4                   shall be determined in accordance with sec-  
5                   tion 504(c) of this title, subject to the fol-  
6                   lowing conditions:

7                   “(I) With respect to works timely  
8                   registered under section 412 of this  
9                   title, such that they are eligible for an  
10                  award of statutory damages under  
11                  that section, such limited statutory  
12                  damages shall not exceed \$15,000 per  
13                  work infringed.

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

22                  “(III) The Copyright Claims  
23                  Board shall not make any finding or  
24                  consider whether the infringement was

1 committed willfully in making an  
2 award of limited statutory damages.

3 “(IV) The Copyright Claims  
4 Board may consider as an additional  
5 factor in awarding limited statutory  
6 damages whether the infringer has  
7 agreed to cease or mitigate the in-  
8 fringing activity as provided in para-  
9 graph (2).

10 “(B) ELECTION OF DAMAGES.—With re-  
11 spect to a claim or counterclaim of infringe-  
12 ment, the claimant or counterclaimant shall  
13 after the close of discovery and in accordance  
14 with the schedule established by the Copyright  
15 Claims Board pursuant to section 1405(j) elect  
16 to pursue either actual damages and profits or  
17 limited statutory damages as provided in sub-  
18 paragraph (A).

19 “(C) OTHER DAMAGES.—Damages for  
20 claims and counterclaims other than infringe-  
21 ment claims shall be awarded in accordance  
22 with applicable law and shall be subject to the  
23 limitation set forth in subparagraph (D).

24 “(D) LIMITATION ON TOTAL MONETARY  
25 RECOVERY.—Notwithstanding any other provi-



1           sion of law, a party who pursues any one or  
2           more claims or counterclaims in any single pro-  
3           ceeding before the Copyright Claims Board may  
4           not seek or recover in such proceeding a total  
5           monetary recovery that exceeds the sum of  
6           \$30,000, exclusive of any attorneys' fees and  
7           costs that may be awarded under section  
8           1405(x)(2).

9           “(2) AGREEMENT TO CEASE INFRINGING ACTIV-  
10          ITY.—In any proceeding where a party agrees to  
11          cease activity that is found to be infringing, includ-  
12          ing removal or disabling of access to, or destruction  
13          of, infringing materials, and such agreement is re-  
14          flected in the record, the Copyright Claims Board  
15          shall include in its determination a requirement that  
16          such party cease his or her infringing conduct.

17          “(3) ATTORNEYS' FEES AND COSTS.—Notwith-  
18          standing any other provision of law, except in the  
19          case of bad faith conduct as provided in section  
20          1405(x)(2), the parties to proceedings before the  
21          Copyright Claims Board shall bear their own attor-  
22          neys' fees and costs.

23          “(f) JOINT AND SEVERAL LIABILITY.—Parties to a  
24          proceeding before the Copyright Claims Board may be  
25          found jointly and severally liable if all such parties and

1 relevant claims or counterclaims arise from the same ac-  
2 tivity or activities.

3 **“§ 1404. Registration requirement**

4       “(a) APPLICATION OR CERTIFICATE.—No claim or  
5 counterclaim alleging infringement of an exclusive right  
6 of copyright may be asserted before the Copyright Claims  
7 Board unless the owner of the copyright has first delivered  
8 a completed application, deposit and the required fee for  
9 registration to the Copyright Office and either a registra-  
10 tion certificate has been issued or has not been refused.

11       “(b) CERTIFICATE OF REGISTRATION.—Notwith-  
12 standing any other provision of law, a claimant or  
13 counterclaimant in a proceeding before the Copyright  
14 Claims Board shall be eligible to recover actual damages  
15 and profits or limited statutory damages for infringement  
16 of a work under this chapter if the requirements of sub-  
17 section (a) have been met: *Provided, however,* That—

18               “(1) the Copyright Claims Board shall not  
19 render a determination in the proceeding until a reg-  
20 istration certificate has been issued by the Copyright  
21 Office, submitted to the Copyright Claims Board  
22 and made available to the other parties to the pro-  
23 ceeding, and the other parties have been provided an  
24 opportunity to address it;

1           “(2) if a proceeding cannot proceed further due  
2           to an outstanding registration certificate for the  
3           work, it shall be held in abeyance pending submis-  
4           sion of the certificate to the Copyright Claims  
5           Board; but if held in abeyance for more than one  
6           year, the Copyright Claims Board may, upon pro-  
7           viding written notice to the parties and 30 days to  
8           respond, dismiss the proceeding without prejudice;  
9           and

10           “(3) if the Copyright Claims Board receives no-  
11           tice that registration has been refused by the Copy-  
12           right Office, the proceeding shall be dismissed with-  
13           out prejudice.

14           “(c) PRESUMPTION.—Where a certificate shows that  
15           registration of a work was made before or within 5 years  
16           of its first publication, the presumption set forth in section  
17           410(c) of this title shall apply in a proceeding before the  
18           Copyright Claims Board, in addition to relevant principles  
19           of law under this title.

20           **“§ 1405. Conduct of proceedings**

21           “(a) IN GENERAL.—Proceedings of the Copyright  
22           Claims Board shall be conducted in accordance with this  
23           chapter and regulations as implemented by the Register  
24           of Copyrights, in addition to relevant principles of law  
25           under this title. To the extent it appears there may be

1 conflicting judicial precedent on an issue of substantive  
2 copyright law that cannot be reconciled, the Copyright  
3 Claims Board shall follow the law of the federal jurisdic-  
4 tion where the action could have been brought if filed in  
5 federal district court, or, if it could have been brought in  
6 more than one jurisdiction, the jurisdiction that the Copy-  
7 right Claims Board determines has the most significant  
8 ties to the parties and conduct at issue.”

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

11 “(c) CENTRALIZED PROCESS.—Proceedings before  
12 the Copyright Claims Board shall be conducted at the of-  
13 fices of the Copyright Claims Board without the require-  
14 ment of in-person appearances by parties or others, and  
15 shall take place by means of written submissions and hear-  
16 ings and conferences accomplished via internet-based ap-  
17 plications and other telecommunications facilities: *Pro-*  
18 *vided, however,* That in cases where physical or other non-  
19 testimonial evidence material to a proceeding cannot be  
20 furnished to the Copyright Claims Board through avail-  
21 able telecommunications facilities, the Copyright Claims  
22 Board shall have the discretion to make alternative ar-  
23 rangements for the submission of such evidence that do  
24 not prejudice another party to the proceeding.

1           “(d) REPRESENTATION.—A party to a proceeding be-  
2 fore the Copyright Claims Board may, but is not required  
3 to be represented by—

4                   “(1) an attorney; or

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

9           “(e) COMMENCEMENT OF PROCEEDING.—To com-  
10 mence a proceeding, a claimant shall, subject to such addi-  
11 tional requirements as may be prescribed in regulations  
12 established by the Register of Copyrights, file a claim with  
13 the Copyright Claims Board, that—

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

16                   “(2) is certified in accordance with subsection  
17 (x)(1);

18                   “(3) is accompanied by a filing fee in such  
19 amount as may be prescribed in regulations estab-  
20 lished by the Register of Copyrights, which amount  
21 shall be at least \$100, shall not exceed the cost of  
22 filing an action in a United States district court,  
23 and shall be established to further the goals of the  
24 Copyright Claims Board.

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

1           “(1) CLAIMS.—Upon filing, a claim shall be re-  
2           viewed by a Copyright Claims Attorney to ensure  
3           that it complies with applicable regulations and this  
4           chapter, including the following:

5                   “(A) If the claim is found to comply, the  
6                   claimant shall be so notified and instructed to  
7                   proceed with service of the claim as provided in  
8                   subsection (g).

9                   “(B) If the claim is found not to comply,  
10                  the claimant shall be notified that the claim is  
11                  deficient and permitted to file an amended  
12                  claim within 30 days of the date of such notice  
13                  without the requirement of an additional filing  
14                  fee. If the claimant files a compliant claim with-  
15                  in that period, he or she shall be so notified and  
16                  instructed to proceed with service of the claim.  
17                  If the claim is refiled within the 30-day period  
18                  but still fails to comply, the claimant will again  
19                  be notified that the claim is deficient and pro-  
20                  vided a second opportunity to amend it within  
21                  30 days without the requirement of an addi-  
22                  tional filing fee. If the claim is refiled again  
23                  within the second 30-day period and is compli-  
24                  ant, the claimant shall be so notified and in-  
25                  structed to proceed with service, but if the

1 claim still fails to comply, upon confirmation of  
2 its noncompliance by a Copyright Claims Offi-  
3 cer, the proceeding shall be dismissed without  
4 prejudice. The Copyright Claims Board shall  
5 also dismiss without prejudice any proceeding  
6 in which a compliant claim is not filed within  
7 the applicable 30-day time period.

8 “(C) For purposes of this paragraph, a  
9 claim against an online service provider for in-  
10 fringement by reason of storage of or referral  
11 or linking to infringing material that may be  
12 subject to the limitations on liability set forth  
13 in section 512(b), section 512(e) or section  
14 512(d) of this title, shall be considered non-  
15 compliant unless the claimant affirms in the  
16 statement required under subsection (e)(1) of  
17 this section that he or she has previously noti-  
18 fied the service provider of the claimed infringe-  
19 ment in accordance with section 512(b)(2)(E),  
20 section 512(c)(3) or section 512(d)(3) of this  
21 title, as applicable, and the service provider  
22 failed to remove or disable access to the mate-  
23 rial expeditiously upon the provision of such no-  
24 tice: *Provided, however,* That if a claim is found  
25 to be noncompliant under this subparagraph,

1           the Copyright Claims Board shall provide the  
2           claimant with information concerning the serv-  
3           ice of such a notice pursuant to the relevant  
4           provision of this title.

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



1 confirmation of its noncompliance by a Copyright  
2 Claims Officer, the counterclaim, but not the pro-  
3 ceeding, shall be dismissed without prejudice.

4 “(3) DISMISSAL FOR GOOD CAUSE.—The Copy-  
5 right Claims Board shall dismiss a proceeding with-  
6 out prejudice if, upon reviewing a claim or counter-  
7 claim, or at any other time in a proceeding, the  
8 Copyright Claims Board concludes that it is unsuit-  
9 able for determination by the Copyright Claims  
10 Board, including due to the following:

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

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

14 “(C) Determination of a relevant issue of  
15 law or fact that could exceed the competence of  
16 the Copyright Claims Board.

17 “(g) SERVICE OF NOTICE AND CLAIMS.—To proceed  
18 with a claim against a respondent, a claimant must within  
19 90 days of receiving notification to proceed with service  
20 file proof of service on the respondent with the Copyright  
21 Claims Board. To effectuate service on a respondent, the  
22 claimant must cause notice of the proceeding and a copy  
23 of the claim to be served on the respondent, either by per-  
24 sonal service or pursuant to a waiver of personal service,  
25 as prescribed in regulations established by the Register of

1 Copyrights. Such regulations shall include the following  
2 requirements and conditions:

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 respondent’s right to opt out, and the consequences  
7 of opting out and not opting out, including a promi-  
8 nent statement that, by not opting out within the  
9 30-day period, the respondent—

10                   “(A) will forgo the opportunity to have the  
11 dispute decided by a court created under article  
12 III of the Constitution of the United States;  
13 and

14                   “(B) will be waiving the right to a jury  
15 trial regarding the dispute.

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

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

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

24                   “(A) following State law for serving a sum-  
25 mons in an action brought in courts of general

1 jurisdiction in the State where service is made;

2 or

3 “(B) doing any of the following:

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

6 “(ii) Leaving a copy of each at the in-  
7 dividual’s dwelling or usual place of abode  
8 with someone of suitable age and discre-  
9 tion who resides there.

10 “(iii) Delivering a copy of each to an  
11 agent authorized by appointment or by law  
12 to receive service of process.

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

17 “(A) following State law for serving a sum-  
18 mons in an action brought in courts of general  
19 jurisdiction in the State where service is made;

20 or

21 “(B) delivering a copy of the notice and  
22 claim to an officer, a managing or general  
23 agent or any other agent authorized by appoint-  
24 ment or by law to receive service of process in  
25 an action brought in courts of general jurisdic-

1           tion and, if the agent is one authorized by stat-  
2           ute and the statute so requires, by also mailing  
3           a copy of each to the respondent.

4           “(6) To request a waiver of personal service,  
5           the claimant may notify a respondent by first class  
6           mail or other reasonable means that a proceeding  
7           has been commenced in accordance with regulations  
8           established by the Register of Copyrights, which  
9           shall include the following:

10                   “(A) Any such request shall be in writing  
11                   and addressed to the respondent, and be accom-  
12                   panied by a prescribed notice of the proceeding  
13                   and copy of the claim as filed with the Copy-  
14                   right Claims Board, as well as a prescribed  
15                   form for waiver of personal service, and a pre-  
16                   paid or costless means of returning the form.

17                   “(B) The request shall state the date it  
18                   was sent and provide the respondent 30 days to  
19                   return the signed waiver form, which signed  
20                   waiver shall constitute acceptance and proof of  
21                   service as of the date it is signed for purposes  
22                   of this subsection.

23                   “(7) A respondent’s waiver of personal service  
24                   shall not constitute a waiver of the respondent’s  
25                   right to opt out of the proceeding: *Provided, however,*

1       That a respondent who timely waives personal serv-  
2       ice and does not opt out shall be allowed an addi-  
3       tional 30 days beyond the amount of time normally  
4       permitted under the applicable procedures of the  
5       Copyright Claims Board to submit a substantive re-  
6       sponse to the claim, including any defenses and  
7       counterclaims.

8               “(8) A minor or an incompetent individual may  
9       only be served by following State law for serving a  
10      summons or like process on such an individual in an  
11      action brought in the courts of general jurisdiction  
12      of the State where service is made.

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

16              “(h) OPT-OUT PROCEDURE.—Upon being properly  
17      served with a notice and claim, a respondent who chooses  
18      to opt out of the proceeding shall have 30 days from the  
19      date of service in which to provide written notice of such  
20      choice to the Copyright Claims Board, in accordance with  
21      regulations established by the Register of Copyrights. If  
22      proof of service has been filed by the claimant and the  
23      respondent does not submit an opt-out notice to the Copy-  
24      right Claims Board within 30 days of service, the pro-  
25      ceeding shall be deemed an active proceeding and the re-

1 spondent shall be bound by the result to the extent pro-  
2 vided under section 1406(a). If the respondent opts out  
3 during that period, the proceeding shall be dismissed with-  
4 out prejudice: *Provided, however,* That in exceptional cir-  
5 cumstances and upon written notice to the claimant, the  
6 Copyright Claims Board may extend such 30-day period  
7 in the interests of justice.

8 “(i) SERVICE OF OTHER DOCUMENTS.—Other docu-  
9 ments submitted or relied upon in the proceeding shall be  
10 served as provided in regulations established by the Reg-  
11 ister of Copyrights.

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

18 “(k) CONFERENCES.—One or more Copyright Claims  
19 Officers may hold a conference to address case manage-  
20 ment or discovery issues in a proceeding: *Provided, how-*  
21 *ever,* That such conference shall not be addressed to ulti-  
22 mate issues of fact or law. Any such conference shall be  
23 noted upon the record of the proceeding and may be re-  
24 corded or transcribed.

1           “(l) PARTY SUBMISSIONS.—There shall be no formal  
2 motion practice in a Copyright Claims Board proceeding:  
3 *Provided, however, That*, subject to applicable regulations  
4 and the procedures of the Copyright Claims Board—

5           “(1) the parties to a proceeding shall be per-  
6 mitted to make requests to the Copyright Claims  
7 Board to address case management and discovery  
8 matters, and submit responses thereto; and

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

14           “(m) DISCOVERY.—Discovery shall be limited to the  
15 production of relevant information and documents, written  
16 interrogatories, and written requests for admission, as fur-  
17 ther provided in regulations established by the Register  
18 of Copyrights: *Provided, however, That*—

19           “(1) upon request of a party, and for good  
20 cause shown, the Copyright Claims Board shall have  
21 the discretion to approve additional limited discovery  
22 in particular matters, and may request specific in-  
23 formation and documents from participants in the  
24 proceeding and voluntary submissions from non-  
25 participants;

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

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

13          “(n) EVIDENCE.—The Copyright Claims Board may  
14          consider the following types of evidence, which may be ad-  
15          mitted without application of formal rules of evidence:

16                 “(1) Documentary and other nontestimonial  
17                 evidence that is relevant to the claims, counterclaims  
18                 or defenses in a proceeding.

19                 “(2) Testimonial evidence, submitted under  
20                 penalty of perjury in written form or in accordance  
21                 with subsection (o), limited to statements of the par-  
22                 ties and nonexpert witnesses, that is relevant to the  
23                 claims, counterclaims and defenses in a proceeding:  
24                 *Provided, however,* That in exceptional cases expert  
25                 witness testimony or other types of testimony may



1 be permitted by the Copyright Claims Board for  
2 good cause shown.

3 “(o) HEARINGS.—The Copyright Claims Board may  
4 conduct a hearing to receive oral presentations on issues  
5 of fact or law from parties and witnesses to a proceeding,  
6 including oral testimony: *Provided, however, That—*

7 “(1) any such hearing shall be attended by at  
8 least two of the Copyright Claims Officers;

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

13 “(3) a recording or transcript of the hearing  
14 shall be made available to a Copyright Claims Offi-  
15 cer who is not in attendance.

16 “(p) VOLUNTARY DISMISSAL.—

17 “(1) BY CLAIMANT.—Upon written request of a  
18 claimant received prior to a respondent’s filing of a  
19 response to a claim, the Copyright Board shall dis-  
20 miss the proceeding, or a claim or respondent, as re-  
21 quested, such dismissal to be without prejudice.

22 “(2) BY COUNTERCLAIMANT.—Upon written re-  
23 quest of a counterclaimant received prior to a claim-  
24 ant’s filing of a response to a counterclaim, the

1 Copyright Claims Board shall dismiss the counter-  
2 claim, such dismissal to be without prejudice.

3 “(q) SETTLEMENT.—At any time in an active pro-  
4 ceeding some or all of the parties may—

5 “(1) jointly request a conference with a Copy-  
6 right Claims Officer for the purpose of facilitating  
7 settlement discussions; or

8 “(2) submit to the Copyright Claims Board an  
9 agreement providing for settlement and dismissal of  
10 some or all of the claims and counterclaims in the  
11 proceeding, which submission may also include a re-  
12 quest that the Copyright Claims Board adopt some  
13 or all of the terms of the parties’ settlement in a  
14 final determination.

15 “(r) FACTUAL FINDINGS.—Subject to subsection  
16 (m)(3), the Copyright Claims Board shall make factual  
17 findings based upon a preponderance of the evidence.

18 “(s) DETERMINATIONS.—

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

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

1           “(B) be in writing, and include an expla-  
2           nation of the factual and legal basis of the deci-  
3           sion therein;

4           “(C) pursuant to section 1403(e)(2), set  
5           forth any terms by which a respondent or coun-  
6           terclaim respondent has agreed to cease infring-  
7           ing activity;

8           “(D) pursuant to subsection (q)(2) and to  
9           the extent agreed by the parties, set forth the  
10          terms of any settlement to the extent requested  
11          by the parties; and

12          “(E) include a clear statement of all dam-  
13          ages and other relief awarded, including pursu-  
14          ant to subparagraphs (C) and (D).

15          “(2) DISSENT.—A Copyright Claims Officer  
16          who dissents from a decision contained in a deter-  
17          mination may append a statement setting forth the  
18          grounds for his or her dissent.

19          “(3) PUBLICATION.—Final determinations of  
20          the Copyright Claims Board shall be made available  
21          on a publicly accessible website with other records to  
22          be made available to the public in accordance with  
23          law: *Provided, however,* That such records may be  
24          redacted by the Copyright Claims Board to protect

1 confidential information that is the subject of a pro-  
2 tective order under subsection (m)(2).

3 “(t) RESPONDENT’S DEFAULT.—Where a proceeding  
4 has been deemed an active proceeding but the respondent  
5 has failed to appear or has ceased participating in the pro-  
6 ceeding, as demonstrated by his or her failure to meet one  
7 or more deadlines or requirements set forth in the sched-  
8 ule adopted by the Copyright Claims Board pursuant to  
9 subsection (j) without justifiable cause, the Copyright  
10 Claims Board may enter a default determination, includ-  
11 ing the dismissal of any counterclaim asserted by a re-  
12 spondent, as follows and in accordance with such other  
13 requirements as the Register of Copyrights may prescribe  
14 by regulation:

15 “(1) The Copyright Claims Board shall require  
16 the claimant to submit relevant evidence and other  
17 information in support of his or her claim and any  
18 asserted damages and, upon review of such evidence  
19 and any other requested submissions from the claim-  
20 ant, shall determine whether the materials so sub-  
21 mitted are sufficient to support a finding in favor of  
22 the claimant under applicable law and, if so, the ap-  
23 propriate relief and damages, if any, to be awarded.

24 “(2) If the claimant has met his or her burden  
25 under paragraph (1), the Copyright Claims Board

1 shall prepare a proposed default determination and  
2 provide written notice to the respondent at all ad-  
3 dresses, including email addresses, reflected in the  
4 records of the proceeding before the Copyright  
5 Claims Board, concerning the pendency of a default  
6 determination by the Copyright Claims Board and  
7 the legal significance of such determination. Such  
8 notice shall be accompanied by the proposed default  
9 determination and provide that the respondent has  
10 30 days from the date of the notice to submit any  
11 evidence or other information in opposition to the  
12 proposed default determination.

13 “(3) If the respondent responds to the notice  
14 provided under paragraph (2) within the 30-day pe-  
15 riod, the Copyright Claims Board shall consider re-  
16 spondent’s submissions and, after allowing the other  
17 parties to address such submissions, maintain or  
18 amend its proposed determination as appropriate,  
19 and the resulting determination shall not be a de-  
20 fault determination.

21 “(4) If the respondent fails to respond to the  
22 notice provided under paragraph (2), the Copyright  
23 Claims Board shall proceed to issue the default de-  
24 termination as a final determination. Thereafter, the  
25 respondent may only challenge such determination to

1 the extent permitted under section 1407(c): *Pro-*  
2 *vided, however,* That prior to the initiation of any  
3 additional proceedings under section 1407, the  
4 Copyright Claims Board shall have the discretion to  
5 vacate the default determination in the interests of  
6 justice.

7 “(u) CLAIMANT’S FAILURE TO PROCEED.—

8 “(1) FAILURE TO COMPLETE SERVICE.—If a  
9 claimant fails to complete service on a respondent  
10 within the 90-day period as prescribed in subsection  
11 (g), that respondent shall be dismissed from the pro-  
12 ceeding without prejudice; and if a claimant fails to  
13 complete service on all respondents within the 90-  
14 day period, the proceeding shall be dismissed by the  
15 Copyright Claims Board without prejudice.

16 “(2) FAILURE TO PROSECUTE.—If a claimant  
17 fails to proceed in an active proceeding, as dem-  
18 onstrated by his or her failure to meet one or more  
19 deadlines or requirements set forth in the schedule  
20 adopted by the Copyright Claims Board pursuant to  
21 subsection (j) without justifiable cause, the Copy-  
22 right Claims Board may, upon providing written no-  
23 tice to the claimant and 30 days to respond, issue  
24 a determination dismissing the claimants’ claims,  
25 which shall include an award of attorneys’ fees and

1 costs if appropriate under subsection (x)(2). There-  
2 after, the claimant may only challenge such deter-  
3 mination to the extent permitted under section  
4 1407(e): *Provided, however,* That prior to the initi-  
5 ation of any additional proceedings under section  
6 1407, the Copyright Claims Board shall have the  
7 discretion to vacate the determination of dismissal in  
8 the interests of justice.

9 “(v) RECONSIDERATION.—A party may, within 30  
10 days of the date of issuance of a final determination by  
11 the Copyright Claims Board, submit a written request for  
12 reconsideration of, or an amendment to, such determina-  
13 tion if the party identifies a clear error of law or fact ma-  
14 terial to the outcome, or a technical mistake. After pro-  
15 viding the other parties an opportunity to address such  
16 request, the Copyright Claims Board shall respond by de-  
17 nying the request or issuing an amended final determina-  
18 tion.

19 “(w) REVIEW BY REGISTER.—A party who has been  
20 denied reconsideration by the Copyright Claims Board  
21 may, within 30 days of the date of such denial, request  
22 review by the Register of Copyrights in accordance with  
23 regulations established by the Register of Copyrights,  
24 which regulations shall provide for a reasonable filing fee.  
25 The Register’s review shall be limited to consideration of

1 whether the Copyright Claims Board abused its discretion  
2 in denying reconsideration. After providing the other par-  
3 ties an opportunity to address the request, the Register  
4 shall respond by denying the request or remanding the  
5 proceeding to the Copyright Claims Board for reconsider-  
6 ation of identified issues and issuance of an amended final  
7 determination, which amended final determination shall  
8 not be subject to further consideration or review other  
9 than pursuant to section 1407(c).

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

11 “(1) CERTIFICATION.—The Register of Copy-  
12 rights shall establish regulations concerning certifi-  
13 cation of the accuracy and truthfulness of state-  
14 ments made by participants in proceedings before  
15 the Copyright Claims Board.

16 “(2) BAD FAITH CONDUCT.—Notwithstanding  
17 any other provision of law, in any proceeding in  
18 which a determination is rendered and—

19 “(A) it is established that a party pursued  
20 a claim, counterclaim or defense for a harassing  
21 or other improper purpose, or without reason-  
22 able basis in law or fact; or

23 “(B) the claimant’s claim is dismissed for  
24 failure to prosecute pursuant to subsection  
25 (u)(2),



1 unless inconsistent with the interests of justice, the  
2 Copyright Claims Board shall in such determination  
3 award reasonable attorneys' fees and costs to any  
4 adversely affected party or parties in a total amount  
5 not to exceed \$5,000: *Provided, however,* That if an  
6 adversely affected party appeared pro se in the pro-  
7 ceeding, the award to that party shall be of costs  
8 only and no more than \$2,500.

9 **“§ 1406. Effect of proceeding**

10 “(a) DETERMINATION.—Subject to the reconsider-  
11 ation and review processes afforded by section 1405(v)  
12 and 1405(w), respectively, and section 1407(c), the ren-  
13 dering of a final determination by the Copyright Claims  
14 Board in a proceeding, including a default determination  
15 or determination based on failure to prosecute, shall, solely  
16 with respect to the parties to such determination, preclude  
17 relitigation before any court or tribunal, or before the  
18 Copyright Claims Board, of the claims and counterclaims  
19 asserted and finally determined by such determination,  
20 and may be relied upon for such purpose in a future action  
21 or proceeding arising from the same specific activity or  
22 activities: *Provided, however,* That—

23 “(1) a determination of the Copyright Claims  
24 Board shall not preclude litigation or relitigation as  
25 between the same or different parties before any

1 court or tribunal, or the Copyright Claims Board, of  
2 the same or similar issues of fact or law in connec-  
3 tion with claims or counterclaims not asserted and  
4 finally determined by the determination of the Copy-  
5 right 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 shall not be relied  
9 upon, and shall have no preclusive effect, in any  
10 other action or proceeding before any other court or  
11 tribunal, including the Copyright Claims Board; and

12 “(3) except to the extent permitted in this sub-  
13 section and section 1407, no determination of the  
14 Copyright Claims Board shall be cited or relied upon  
15 as legal precedent in any other action or proceeding  
16 before any court or tribunal, including the Copyright  
17 Claims Board.

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

1 under this title before any court or tribunal, including the  
2 Copyright Claims Board.

3 “(c) WITH RESPECT TO SECTION 512(g).—Notwith-  
4 standing any other provision of law, the commencement  
5 of a proceeding by a claimant before the Copyright Claims  
6 Board against a subscriber of a service provider that seeks  
7 a declaration of infringement concerning material that has  
8 been removed or to which access has been disabled by the  
9 service provider in response to a notification of claimed  
10 infringement by the claimant pursuant to section  
11 512(e)(1)(C) of this title shall be a basis to preclude the  
12 replacement of such material by the service provider pur-  
13 suant to section 512(g) of this title if notice of the com-  
14 mencement of the Copyright Claims Board proceeding is  
15 provided by the claimant to the service provider’s des-  
16 ignated agent not less than 10 nor more than 14 business  
17 days following receipt of a counter notification by the serv-  
18 ice provider pursuant to section 512(g) of this title.

19 “(d) FAILURE TO ASSERT COUNTERCLAIM.—The  
20 failure or inability to assert a counterclaim in a proceeding  
21 before the Copyright Claims Board shall not preclude its  
22 assertion in a subsequent court action or proceeding be-  
23 fore the Copyright Claims Board.

24 “(e) OPT-OUT OR DISMISSAL OF PARTY.—If a party  
25 has timely opted out of a proceeding under section

1 1405(h) or is dismissed from a proceeding prior to the  
2 issuance of a final determination by the Copyright Claims  
3 Board, the determination shall not be binding upon and  
4 shall have no preclusive effect with respect to that party.

5 **“§ 1407. Review and confirmation by district court**

6 “(a) IN GENERAL.—In any proceeding in which a  
7 party has failed to pay monies as required or otherwise  
8 comply with the relief awarded in a final determination  
9 of the Copyright Claims Board, including a default deter-  
10 mination or a determination based on failure to prosecute,  
11 the aggrieved party may, within one year of the issuance  
12 of such final determination, resolution of any reconsider-  
13 ation by the Copyright Claims Board or review by the Reg-  
14 ister of Copyrights, or issuance of an amended final deter-  
15 mination, whichever occurs last, apply to the United  
16 States District Court for the District of Columbia for an  
17 order confirming the final relief awarded and reducing  
18 such award to judgment. The court shall grant such order  
19 and direct entry of judgment unless the determination is  
20 or has been vacated, modified or corrected as permitted  
21 under subsection (c).

22 “(b) FILING PROCEDURES.—

23 “(1) Notice of the application for confirmation  
24 of a determination of the Copyright Claims Board  
25 and entry of judgment shall be provided to all par-

1 ties to the proceeding before the Copyright Claims  
2 Board, in accordance with the procedures applicable  
3 to service of a motion in United States District  
4 Court for the District of Columbia.

5 “(2) The application shall include a certified  
6 copy of the final or amended final determination of  
7 the Copyright Claims Board, as reflected in the  
8 records of the Copyright Claims Board, following  
9 any process of reconsideration or review by the Reg-  
10 ister of Copyrights, to be confirmed and rendered to  
11 judgment, as well as a declaration by the applicant  
12 under penalty of perjury that it is a true and correct  
13 copy of such determination, the date it was issued,  
14 and whether the applicant is aware of any other pro-  
15 ceedings before the United States District Court  
16 concerning the same determination of the Copyright  
17 Claims Board.

18 “(c) CHALLENGES TO THE DETERMINATION.—

19 “(1) BASES FOR CHALLENGE.—Upon applica-  
20 tion of a party to the Copyright Claims Board pro-  
21 ceeding within 90 days of the issuance of a final or  
22 amended final determination by the Copyright  
23 Claims Board following any process of reconsider-  
24 ation or review by the Register of Copyrights, the  
25 United States District Court for the District of Co-

1 lumbia may issue an order vacating, modifying or  
2 correcting a determination of the Copyright Claims  
3 Board in the following cases:

4 “(A) Where the determination was issued  
5 or as a result of fraud, corruption, misrepresen-  
6 tation, or other misconduct.

7 “(B) Where the Copyright Claims Board  
8 exceeded its authority or failed to render a final  
9 and definite determination concerning the sub-  
10 ject matter at issue.

11 “(C) In the case of a default determination  
12 or determination based on failure to prosecute,  
13 where it is established that the default or fail-  
14 ure was due to excusable neglect.

15 “(2) PROCEDURE TO CHALLENGE.—

16 “(A) Notice of the application to challenge  
17 a determination of the Copyright Claims Board  
18 shall be provided to all parties to the proceeding  
19 before the Copyright Claims Board, in accord-  
20 ance with the procedures applicable to service of  
21 a motion in United States District Court for  
22 the District of Columbia.

23 “(B) The application shall include a cer-  
24 tified copy of the final or amended final deter-  
25 mination, as reflected in the records of the

1 Copyright Claims Board following any process  
2 of reconsideration or review by the Register of  
3 Copyrights, that is the subject of the applica-  
4 tion, as well as a declaration by the applicant  
5 under penalty of perjury that it is a true and  
6 correct copy of such determination, the date it  
7 was issued, the basis for challenge under sub-  
8 section (e)(1), and whether the applicant is  
9 aware of any other proceedings before the  
10 United States District Court concerning the  
11 same determination of the Copyright Claims  
12 Board. For the purposes of the application, any  
13 judge who might make an order to stay the pro-  
14 ceedings in an action brought in the same  
15 court, may make an order, to be served with the  
16 notice of application, staying proceedings to en-  
17 force the award.

18 **“§ 1408. Relationship to other district court actions**

19 “(a) STAY OF DISTRICT COURT PROCEEDINGS.—A  
20 United States district court shall order a stay of pro-  
21 ceedings or such other relief as it deems appropriate with  
22 respect to any claim brought before it that is already the  
23 subject of a pending active proceeding before the Copy-  
24 right Claims Board.

1       “(b) DISTRICT COURT COST AND FEE AWARDS.—In  
2 any case before a United States district court in which  
3 the court is considering whether to award costs or attor-  
4 neys’ fees to a prevailing party pursuant to section 505  
5 of this title, the district court may in its discretion take  
6 into account, among other relevant factors, whether the  
7 nonprevailing party had the option and could have chosen  
8 to proceed before the Copyright Claims Board in lieu of  
9 the district court.

10       “(c) ALTERNATIVE DISPUTE RESOLUTION PROC-  
11 ESS.—The Copyright Claims Board shall qualify as an al-  
12 ternative dispute resolution process under section 651 of  
13 title 28.

14       **“§ 1409. Implementation by Copyright Office**

15       “(a) REGULATIONS.—

16               “(1) IMPLEMENTATION GENERALLY.—The Reg-  
17 ister of Copyrights shall establish regulations to im-  
18 plement the Copyright Claims Board as con-  
19 templated by this chapter, including the establish-  
20 ment of the fees prescribed by sections 1405(e)(3)  
21 and 1405(w), which authority shall not limit the  
22 Register’s more general authority to establish fees  
23 for services in accordance with section 708 of this  
24 title. All fees received by the Copyright Office in  
25 connection with the activities under this chapter



1 shall be deposited by the Register and credited to  
2 the appropriations for necessary expenses of the Of-  
3 fice in accordance with section 708(d) of this title.

4 “(2) LIMITS ON MONETARY RELIEF.—The Reg-  
5 ister may conduct a rulemaking to adjust the limits  
6 on monetary recovery or attorneys’ fees and costs  
7 that may be awarded under this chapter to further  
8 the goals of the Copyright Claims Board: *Provided,*  
9 *however,* That any resulting rule that makes such an  
10 adjustment shall become effective at the end of a pe-  
11 riod of 120 days after the rule is submitted to Con-  
12 gress and only if Congress does not enact a law  
13 within such 120-day period that provides in sub-  
14 stance that Congress does not approve of the new  
15 rule.

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

20 **“§ 1410. Funding**

21 “There are authorized to be appropriated such sums  
22 as may be necessary to pay the costs incurred by the Copy-  
23 right Office under this chapter that are not covered by  
24 fees collected for services rendered under this chapter, in-

1 cluding the costs of establishing and maintaining the  
2 Copyright Claims Board and its facilities.

3 **“§ 1411. Definitions**

4 “As used in this chapter—

5 “(1) the term ‘party’ refers to both a party and  
6 the party’s attorney, as applicable;

7 “(2) the term ‘person’ (including ‘his’ and  
8 ‘her’) refers to both an individual and an entity that  
9 is amenable to legal process under applicable law;  
10 and

11 “(3) the term ‘United States’ has the meaning  
12 given in section 101 of this title.”.

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 13 the following new  
16 item:

“14. Copyright Small Claims ..... 1401”.

17 **SEC. 3. IMPLEMENTATION.**

18 The Copyright Claims Board shall begin operation no  
19 later than one year after of the date of the enactment of  
20 this Act.

21 **SEC. 4. STUDY.**

22 Not later than 3 years after the issuance of the first  
23 determination by the Copyright Claims Board, the Reg-  
24 ister of Copyrights shall deliver a study to Congress that  
25 addresses—

1           (1) the use and efficacy of the Copyright  
2           Claims Board in resolving copyright claims;

3           (2) whether adjustments to the authority of the  
4           Copyright Claims Board, including eligible claims  
5           and works and applicable damages limitations, are  
6           necessary or advisable;

7           (3) whether greater allowance should be made  
8           to permit awards of attorneys' fees and costs to pre-  
9           vailing parties, including potential limitations on  
10          such awards;

11          (4) potential mechanisms to assist copyright  
12          owners with small claims in ascertaining the identity  
13          and location of unknown online infringers;

14          (5) whether the Copyright Claims Board should  
15          be expanded to offer mediation or other nonbinding  
16          alternative dispute resolution services to interested  
17          parties; and

18          (6) such other matters as the Register of Copy-  
19          rights believes may be pertinent concerning the  
20          Copyright Claims Board.

21 **SEC. 5. SEVERABILITY.**

22          If any provision of this Act is declared unconstitu-  
23          tional, the validity of the remainder of this Act shall not  
24          be affected.