

114TH CONGRESS
2D SESSION

H. R. 5757

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

IN THE HOUSE OF REPRESENTATIVES

JULY 13, 2016

Mr. JEFFRIES (for himself and Mr. MARINO) introduced the following bill;
which was referred to the Committee on the Judiciary

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 the “CASE
6 Act of 2016”.

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 new chapter:

1 **“CHAPTER 14—COPYRIGHT SMALL**
2 **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.

3 **“§ 1401. Copyright Claims Board**

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

11 “(b) OFFICERS AND STAFF.—

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

17 “(2) COPYRIGHT CLAIMS ATTORNEYS.—The
18 Register of Copyrights shall hire no fewer than 2

1 full-time Copyright Claims Attorneys to assist in the
2 administration of the Copyright Claims Board.

3 “(3) QUALIFICATIONS.—

4 “(A) COPYRIGHT CLAIMS OFFICERS.—

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

19 “(B) COPYRIGHT CLAIMS ATTORNEYS.—

20 Each Copyright Claims Attorney shall be an at-
21 torney with no less than 3 years of substantial
22 experience in copyright law.

23 “(4) COMPENSATION.—Each Copyright Claims
24 Officer shall be compensated at not less than the
25 minimum and not more than the maximum rate of

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

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

17 “(6) VACANCIES AND INCAPACITY.—

18 “(A) VACANCY.—If a vacancy shall occur
19 in the position of Copyright Claims Officer, the
20 Librarian of Congress shall, upon recommenda-
21 tion of the Register of Copyrights, who shall
22 identify qualified candidates, act expeditiously
23 to appoint a Copyright Claims Officer for that
24 position. An individual appointed to fill a va-
25 cancy occurring before the expiration of the

1 term for which his or her predecessor was ap-
2 pointed shall be appointed to serve for a 6-year
3 term.

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

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

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

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

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

3 "(a) FUNCTIONS.—

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

8 “(A) To render determinations on such
9 civil copyright claims, counterclaims, and de-
10 fenses as are permitted to be brought before
11 them under this chapter.

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

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

21 “(D) To request the production of infor-
22 mation and documents relevant to the resolu-
23 tion of a claim, counterclaim, or defense from
24 participants in a proceeding and from non-
25 participants.

26 “(E) To conduct hearings and conferences.

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

3 “(G) To award monetary relief and also to
4 include in its determinations a requirement of
5 cessation or mitigation of infringing activity, in-
6 cluding takedown or destruction of infringing
7 materials, where the party to undertake such
8 measures has so agreed.

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

12 “(I) To maintain records of the pro-
13 ceedings before them, certify official records of
14 such proceedings as needed, and make the
15 records in such proceedings available to the
16 public in accordance with law.

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

19 “(K) When not engaged in performing
20 their duties as prescribed in this chapter, to
21 perform such other duties as may be assigned
22 by the Register of Copyrights.

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

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

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

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

9 “(C) When not engaged in performing
10 their duties as prescribed in this chapter, to
11 perform such other duties as may be assigned
12 by the Register of Copyrights.

13 “(b) INDEPENDENCE IN DETERMINATIONS.—The
14 Copyright Claims Officers shall render their determina-
15 tions in individual proceedings independently on the basis
16 of the records in the proceedings before them and in ac-
17 cordance with the provisions of this title, judicial prece-
18 dent, and applicable regulations of the Register of Copy-
19 rights. The Copyright Claims Officers and Copyright
20 Claims Attorneys may consult with the Register of Copy-
21 rights on general issues of law, but, subject to section
22 1405(w), not with respect to the facts of any particular
23 matter pending before them or the application of law
24 thereto. Notwithstanding any other provision of law or any
25 regulation or policy of the Library of Congress or Register

1 of Copyrights, no performance appraisal of a Copyright
2 Claims Officer or Copyright Claims Attorney shall con-
3 sider the substantive result of any individual determina-
4 tion reached by the Copyright Claims Board as a basis
5 for appraisal except insofar as it may relate to any actual
6 or alleged violation of an ethical standard of conduct.

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

11 “(d) INCONSISTENT DUTIES BARRED.—No Copy-
12 right Claims Officer or Copyright Claims Attorney may
13 undertake duties that conflict with his or her duties or
14 responsibilities in connection with the Copyright Claims
15 Board.

16 “(e) RECUSAL.—A Copyright Claims Officer or Copy-
17 right Claims Attorney shall recuse himself or herself from
18 participation in any proceeding with respect to which the
19 Copyright Claims Officer or Copyright Claims Attorney
20 has reason to believe that he or she has a conflict of inter-
21 est.

22 “(f) EX PARTE COMMUNICATIONS.—Except as may
23 otherwise be permitted by applicable law, any party to a
24 proceeding before the Copyright Claims Board shall re-
25 frain from ex parte communications with the Copyright

1 Claims Officers concerning the substance of any pro-
2 ceeding before the Copyright Claims Board.

3 “(g) JUDICIAL REVIEW.—Actions of the Copyright
4 Claims Officers and Register of Copyrights under this
5 chapter in connection with the rendering of individual de-
6 terminations are subject to judicial review as provided
7 under section 1407(c), and not under chapter 7 of title
8 5, United States Code.

9 **“§ 1403. Nature of proceedings**

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

16 “(b) STATUTE OF LIMITATIONS.—

17 “(1) IN GENERAL.—No proceeding shall be
18 maintained before the Copyright Claims Board un-
19 less it is commenced in accordance with section
20 1405(e) before the Copyright Claims Board within
21 three years after the claim that is the basis for the
22 proceeding accrued.

23 “(2) TOLLING.—Subject to section 1406(a), a
24 proceeding commenced before the Copyright Claims
25 Board shall toll the time permitted under section

1 507(b) of this title for commencement of an action
2 on the same claim in a United States district court
3 during the time it remains pending.

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

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

17 “(2) A claim for a declaration of noninfringe-
18 ment of an exclusive right of copyright provided
19 under section 106 of this title, where an actual con-
20 troversy exists as evidenced by a written communica-
21 tion indicating that legal action against the claimant
22 is imminent due to specifically alleged infringing
23 conduct.

24 “(3) Notwithstanding any other provision of
25 law, a claim pursuant to section 512(f) of this title

1 for misrepresentation in connection with a notification
2 of claimed infringement or a counter notification seeking to replace removed or disabled material:
3 *Provided, however,* That any remedies in such a proceeding before the Copyright Claims Board shall be limited to those available under this chapter.

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

12 “(A) arises under section 106 or section 512(f) of this title, and out of the same transaction or occurrence that is the subject of a claim of infringement brought under paragraph (1), a claim of noninfringement brought under paragraph (2), or a claim of misrepresentation brought under paragraph (3); or

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

24 “(5) A legal or equitable defense, pursuant to this title or otherwise available under law, in re-

1 sponse to a claim or counterclaim asserted under
2 this subsection.

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

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

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

17 “(2) A claim or counterclaim that has been fi-
18 nally adjudicated by a court of competent jurisdic-
19 tion or that is already pending before a court of
20 competent jurisdiction, unless such court has issued
21 a stay to permit such claim or counterclaim to pro-
22 ceed before the Copyright Claims Board.

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

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

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

7 “(e) PERMISSIBLE REMEDIES.—

8 “(1) MONETARY RECOVERY.—

9 “(A) ACTUAL DAMAGES, PROFITS, AND
10 LIMITED STATUTORY DAMAGES.—Subject to the
11 limitation on total monetary recovery set forth
12 in subparagraph (D), with respect to a claim or
13 counterclaim for infringement of copyright, the
14 Copyright Claims Board may award—

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

22 “(ii) limited statutory damages, which
23 shall be determined in accordance with sec-
24 tion 504(c) of this title, subject to the fol-
25 lowing conditions:

1 “(I) With respect to works timely
2 registered under section 412 of this
3 title, such that they are eligible for an
4 award of statutory damages under
5 that section, such limited statutory
6 damages shall not exceed \$15,000 per
7 work infringed.

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

16 “(III) The Copyright Claims
17 Board shall not make any finding or
18 consider whether the infringement was
19 committed willfully in making an
20 award of limited statutory damages.

21 “(IV) The Copyright Claims
22 Board may consider as an additional
23 factor in awarding limited statutory
24 damages whether the infringer has
25 agreed to cease or mitigate the in-

“(B) ELECTION OF DAMAGES.—With respect to a claim or counterclaim of infringement, the claimant or counterclaimant shall after the close of discovery and in accordance with the schedule established by the Copyright Claims Board pursuant to section 1405(j) elect to pursue either actual damages and profits or limited statutory damages as provided in subparagraph (A).

12 “(C) OTHER DAMAGES.—Damages for
13 claims and counterclaims other than infringement
14 claims shall be awarded in accordance
15 with applicable law and shall be subject to the
16 limitation set forth in subparagraph (D).

17 “(D) LIMITATION ON TOTAL MONETARY
18 RECOVERY.—Notwithstanding any other provi-
19 sion of law, a party who pursues any one or
20 more claims or counterclaims in any single pro-
21 ceeding before the Copyright Claims Board may
22 not seek or recover in such proceeding a total
23 monetary recovery that exceeds the sum of
24 \$30,000, exclusive of any attorneys’ fees and

1 costs that may be awarded under section
2 1405(x)(2).

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

11 “(3) ATTORNEYS’ FEES AND COSTS.—Notwith-
12 standing any other provision of law, except in the
13 case of bad faith conduct as provided in section
14 1405(x)(2), the parties to proceedings before the
15 Copyright Claims Board shall bear their own attor-
16 neys’ fees and costs.

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

22 **“§ 1404. Registration requirement**

23 “(a) APPLICATION OR CERTIFICATE.—No claim or
24 counterclaim alleging infringement of an exclusive right
25 of copyright may be asserted before the Copyright Claims

1 Board unless the owner of the copyright has first delivered
2 a completed application, deposit and the required fee for
3 registration to the Copyright Office and either a registra-
4 tion certificate has been issued or has not been refused.

5 “(b) CERTIFICATE OF REGISTRATION.—Notwith-
6 standing any other provision of law, a claimant or counter-
7 claimant in a proceeding before the Copyright Claims
8 Board shall be eligible to recover actual damages and prof-
9 its or limited statutory damages for infringement of a
10 work under this chapter if the requirements of subsection
11 (a) have been met: *Provided, however,* That—

12 “(1) the Copyright Claims Board shall not
13 render a determination in the proceeding until a reg-
14 istration certificate has been issued by the Copyright
15 Office, submitted to the Copyright Claims Board
16 and made available to the other parties to the pro-
17 ceeding, and the other parties have been provided an
18 opportunity to address it;

19 “(2) if a proceeding cannot proceed further due
20 to an outstanding registration certificate for the
21 work, it shall be held in abeyance pending submis-
22 sion of the certificate to the Copyright Claims
23 Board; but if held in abeyance for more than one
24 year, the Copyright Claims Board may, upon pro-
25 viding written notice to the parties and 30 days to

1 respond, dismiss the proceeding without prejudice;
2 and

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

7 “(c) PRESUMPTION.—Where a certificate shows that
8 registration of a work was made before or within 5 years
9 of its first publication, the presumption set forth in section
10 410(c) of this title shall apply in a proceeding before the
11 Copyright Claims Board, in addition to relevant principles
12 of law under this title.

13 **“§ 1405. Conduct of proceedings**

14 “(a) IN GENERAL.—Proceedings of the Copyright
15 Claims Board shall be conducted in accordance with this
16 chapter and regulations as implemented by the Register
17 of Copyrights, in addition to relevant principles of law
18 under this title. To the extent it appears there may be
19 conflicting judicial precedent on an issue of substantive
20 copyright law that cannot be reconciled, the Copyright
21 Claims Board shall follow the law of the Federal jurisdic-
22 tion where the action could have been brought if filed in
23 Federal district court, or, if it could have been brought
24 in more than one jurisdiction, the jurisdiction that the

1 Copyright Claims Board determines has the most signifi-
2 cant ties to the parties and conduct at issue.

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

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

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

22 “(1) an attorney; or

23 “(2) a law student who is qualified under appli-
24 cable law governing law students’ representation of

1 parties in legal proceedings and who provides such
2 representation on a pro bono basis.

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

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

10 “(2) is certified in accordance with subsection
11 (x)(1); and

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

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

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

24 “(A) If the claim is found to comply, the
25 claimant shall be so notified and instructed to

1 proceed with service of the claim as provided in
2 subsection (g).

3 “(B) If the claim is found not to comply,
4 the claimant shall be notified that the claim is
5 deficient and permitted to file an amended
6 claim within 30 days of the date of such notice
7 without the requirement of an additional filing
8 fee. If the claimant files a compliant claim with-
9 in that period, he or she shall be so notified and
10 instructed to proceed with service of the claim.
11 If the claim is refiled within the 30-day period
12 but still fails to comply, the claimant will again
13 be notified that the claim is deficient and pro-
14 vided a second opportunity to amend it within
15 30 days without the requirement of an addi-
16 tional filing fee. If the claim is refiled again
17 within the second 30-day period and is compli-
18 ant, the claimant shall be so notified and in-
19 structed to proceed with service, but if the
20 claim still fails to comply, upon confirmation of
21 its noncompliance by a Copyright Claims Offi-
22 cer, the proceeding shall be dismissed without
23 prejudice. The Copyright Claims Board shall
24 also dismiss without prejudice any proceeding

1 in which a compliant claim is not filed within
2 the applicable 30-day time period.

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

1 “(2) COUNTERCLAIMS.—Upon filing and service
2 of a counterclaim, the counterclaim shall be reviewed
3 by a Copyright Claims Attorney to ensure that it
4 complies with the provisions of this chapter and ap-
5 plicable regulations. If the counterclaim is found not
6 to comply, the counterclaimant and other parties
7 shall be notified that it is deficient and the counter-
8 claimant permitted to file and serve an amended
9 counterclaim within 30 days of the date of such no-
10 tice. If the counterclaimant files and serves a compli-
11 ant counterclaim within that period, the counter-
12 claimant and other parties shall be so notified. If the
13 counterclaim is refiled and served within the 30-day
14 period but still fails to comply, the counterclaimant
15 and other parties will again be notified that it is de-
16 ficient and the counterclaimant provided a second
17 opportunity to amend it within 30 days. If the coun-
18 terclaim is refiled and served again within the sec-
19 ond 30-day period and is compliant, the counter-
20 claimant and parties shall be so notified, but if the
21 counterclaim still fails to comply, upon confirmation
22 of its noncompliance by a Copyright Claims Officer,
23 the counterclaim, but not the proceeding, shall be
24 dismissed without prejudice.

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

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

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

11 “(C) Determination of a relevant issue of
12 law or fact that could exceed the competence of
13 the Copyright Claims Board.

14 “(g) SERVICE OF NOTICE AND CLAIMS.—To proceed
15 with a claim against a respondent, a claimant must within
16 90 days of receiving notification to proceed with service
17 file proof of service on the respondent with the Copyright
18 Claims Board. To effectuate service on a respondent, the
19 claimant must cause notice of the proceeding and a copy
20 of the claim to be served on the respondent, either by per-
21 sonal service or pursuant to a waiver of personal service,
22 as prescribed in regulations established by the Register of
23 Copyrights. Such regulations shall include the following
24 requirements and conditions:

1 “(1) The notice of the proceeding shall adhere
2 to a prescribed form and shall set forth the nature
3 of the Copyright Claims Board and proceeding, the
4 respondent’s right to opt out, and the consequences
5 of opting out and not opting out, including a promi-
6 nent statement that, by not opting out within the
7 30-day period, the respondent—

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

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

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

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

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

22 “(A) following State law for serving a sum-
23 mons in an action brought in courts of general
24 jurisdiction in the State where service is made;
25 or

1 “(B) doing any of the following:

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

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

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

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

1 ute and the statute so requires, by also mailing
2 a copy of each to the respondent.

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

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

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

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

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

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

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

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

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

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

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

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

24 “(l) PARTY SUBMISSIONS.—There shall be no formal
25 motion practice in a Copyright Claims Board proceeding:

1 *Provided, however;* That, subject to applicable regulations
2 and the procedures of the Copyright Claims Board—

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

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

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

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

24 “(2) upon request of a party, and for good
25 cause shown, the Copyright Claims Board may issue

1 a protective order to limit the disclosure of documents or testimony that contain confidential information; and

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

11 “(n) EVIDENCE.—The Copyright Claims Board may 12 consider the following types of evidence, which may be admitted without application of formal rules of evidence:

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

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

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

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

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

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

14 “(p) VOLUNTARY DISMISSAL.—

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

20 “(2) BY COUNTERCLAIMANT.—Upon written re-
21 quest of a counterclaimant received prior to a claim-
22 ant’s filing of a response to a counterclaim, the
23 Copyright Claims Board shall dismiss the counter-
24 claim, such dismissal to be without prejudice.

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

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

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

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

16 “(s) DETERMINATIONS.—

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

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

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

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

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

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

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

16 “(3) PUBLICATION.—Final determinations of
17 the Copyright Claims Board shall be made available
18 on a publicly accessible website with other records to
19 be made available to the public in accordance with
20 law: *Provided, however,* That such records may be
21 redacted by the Copyright Claims Board to protect
22 confidential information that is the subject of a pro-
23 tective order under subsection (m)(2).

24 “(t) RESPONDENT’S DEFAULT.—Where a proceeding
25 has been deemed an active proceeding but the respondent

1 has failed to appear or has ceased participating in the pro-
2 ceeding, as demonstrated by his or her failure to meet one
3 or more deadlines or requirements set forth in the sched-
4 ule adopted by the Copyright Claims Board pursuant to
5 subsection (j) without justifiable cause, the Copyright
6 Claims Board may enter a default determination, includ-
7 ing the dismissal of any counterclaim asserted by a re-
8 spondent, as follows and in accordance with such other
9 requirements as the Register of Copyrights may prescribe
10 by regulation:

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

20 “(2) If the claimant has met his or her burden
21 under paragraph (1), the Copyright Claims Board
22 shall prepare a proposed default determination and
23 provide written notice to the respondent at all ad-
24 dresses, including email addresses, reflected in the
25 records of the proceeding before the Copyright

1 Claims Board, concerning the pendency of a default
2 determination by the Copyright Claims Board and
3 the legal significance of such determination. Such
4 notice shall be accompanied by the proposed default
5 determination and provide that the respondent has
6 30 days from the date of the notice to submit any
7 evidence or other information in opposition to the
8 proposed default determination.

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

17 “(4) If the respondent fails to respond to the
18 notice provided under paragraph (2), the Copyright
19 Claims Board shall proceed to issue the default de-
20 termination as a final determination. Thereafter, the
21 respondent may only challenge such determination to
22 the extent permitted under section 1407(c): *Pro-*
23 *vided, however,* That prior to the initiation of any
24 additional proceedings under section 1407, the
25 Copyright Claims Board shall have the discretion to

1 vacate the default determination in the interests of
2 justice.

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

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

12 “(2) FAILURE TO PROSECUTE.—If a claimant
13 fails to proceed in an active proceeding, as dem-
14 onstrated by his or her failure to meet one or more
15 deadlines or requirements set forth in the schedule
16 adopted by the Copyright Claims Board pursuant to
17 subsection (j) without justifiable cause, the Copy-
18 right Claims Board may, upon providing written no-
19 tice to the claimant and 30 days to respond, issue
20 a determination dismissing the claimants’ claims,
21 which shall include an award of attorneys’ fees and
22 costs if appropriate under subsection (x)(2). There-
23 after, the claimant may only challenge such deter-
24 mination to the extent permitted under section
25 1407(c): *Provided, however,* That prior to the initi-

1 ation of any additional proceedings under section
2 1407, the Copyright Claims Board shall have the
3 discretion to vacate the determination of dismissal in
4 the interests of justice.

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

15 “(w) REVIEW BY REGISTER.—A party who has been
16 denied reconsideration by the Copyright Claims Board
17 may, within 30 days of the date of such denial, request
18 review by the Register of Copyrights in accordance with
19 regulations established by the Register of Copyrights,
20 which regulations shall provide for a reasonable filing fee.
21 The Register’s review shall be limited to consideration of
22 whether the Copyright Claims Board abused its discretion
23 in denying reconsideration. After providing the other par-
24 ties an opportunity to address the request, the Register
25 shall respond by denying the request or remanding the

1 proceeding to the Copyright Claims Board for reconsider-
2 ation of identified issues and issuance of an amended final
3 determination, which amended final determination shall
4 not be subject to further consideration or review other
5 than pursuant to section 1407(c).

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

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

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

15 “(A) it is established that a party pursued
16 a claim, counterclaim or defense for a harassing
17 or other improper purpose, or without reason-
18 able basis in law or fact; or

19 “(B) the claimant’s claim is dismissed for
20 failure to prosecute pursuant to subsection
21 (u)(2),

22 unless inconsistent with the interests of justice, the
23 Copyright Claims Board shall in such determination
24 award reasonable attorneys’ fees and costs to any
25 adversely affected party or parties in a total amount

1 not to exceed \$5,000: *Provided, however,* That if an
2 adversely affected party appeared pro se in the pro-
3 ceeding, the award to that party shall be of costs
4 only and no more than \$2,500.

5 **“§ 1406. Effect of proceeding**

6 “(a) DETERMINATION.—Subject to the reconsider-
7 ation and review processes afforded by section 1405(v)
8 and 1405(w), respectively, and section 1407(e), the ren-
9 dering of a final determination by the Copyright Claims
10 Board in a proceeding, including a default determination
11 or determination based on 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 such determination,
16 and may be relied upon for such purpose in a future action
17 or proceeding arising from the same specific activity or
18 activities: *Provided, however,* That—

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 and

1 finally determined by the determination of the Copy-
2 right Claims Board;

3 “(2) a determination of ownership of a copy-
4 righted work for purposes of resolving a matter be-
5 fore the Copyright Claims Board shall not be relied
6 upon, and shall have no preclusive effect, in any
7 other action or proceeding before any other court or
8 tribunal, including the Copyright Claims Board; and

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

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

24 “(c) WITH RESPECT TO SECTION 512(g).—Notwith-
25 standing any other provision of law, the commencement

1 of a proceeding by a claimant before the Copyright Claims
2 Board against a subscriber of a service provider that seeks
3 a declaration of infringement concerning material that has
4 been removed or to which access has been disabled by the
5 service provider in response to a notification of claimed
6 infringement by the claimant pursuant to section
7 512(c)(1)(C) of this title shall be a basis to preclude the
8 replacement of such material by the service provider pur-
9 suant to section 512(g) of this title if notice of the com-
10 mencement of the Copyright Claims Board proceeding is
11 provided by the claimant to the service provider's des-
12 ignated agent not less than 10 nor more than 14 business
13 days following receipt of a counter notification by the serv-
14 ice provider pursuant to section 512(g) of this title.

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

20 “(e) OPT-OUT OR DISMISSAL OF PARTY.—If a party
21 has timely opted out of a proceeding under section
22 1405(h) or is dismissed from a proceeding prior to the
23 issuance of a final determination by the Copyright Claims
24 Board, the determination shall not be binding upon and
25 shall have no preclusive effect with respect to that party.

1 **“§ 1407. Review and confirmation by district court**

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

18 “(b) FILING PROCEDURES.—

19 “(1) Notice of the application for confirmation
20 of a determination of the Copyright Claims Board
21 and entry of judgment shall be provided to all par-
22 ties to the proceeding before the Copyright Claims
23 Board, in accordance with the procedures applicable
24 to service of a motion in United States District
25 Court for the District of Columbia.

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

14 “(c) CHALLENGES TO THE DETERMINATION.—

15 “(1) BASES FOR CHALLENGE.—Upon applica-
16 tion of a party to the Copyright Claims Board pro-
17 ceeding within 90 days of the issuance of a final or
18 amended final determination by the Copyright
19 Claims Board following any process of reconsider-
20 ation or review by the Register of Copyrights, the
21 United States District Court for the District of Co-
22 lumbia may issue an order vacating, modifying or
23 correcting a determination of the Copyright Claims
24 Board in the following cases:

1 “(A) Where the determination was issued
2 or as a result of fraud, corruption, misrepresen-
3 tation, or other misconduct.

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

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

12 “(2) PROCEDURE TO CHALLENGE.—

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

20 “(B) The application shall include a cer-
21 tified copy of the final or amended final deter-
22 mination, as reflected in the records of the
23 Copyright Claims Board following any process
24 of reconsideration or review by the Register of
25 Copyrights, that is the subject of the applica-

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

15 **“§ 1408. Relationship to other district court actions”**

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

22 “(b) DISTRICT COURT COST AND FEE AWARDS.—In
23 any case before a United States district court in which
24 the court is considering whether to award costs or attor-
25 neys’ fees to a prevailing party pursuant to section 505

1 of this title, the district court may in its discretion take
2 into account, among other relevant factors, whether the
3 nonprevailing party had the option and could have chosen
4 to proceed before the Copyright Claims Board in lieu of
5 the district court.

6 “(c) ALTERNATIVE DISPUTE RESOLUTION PROC-
7 ESS.—The Copyright Claims Board shall qualify as an al-
8 ternative dispute resolution process under section 651 of
9 title 28.

10 **“§ 1409. Implementation by Copyright Office**

11 “(a) REGULATIONS.—

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

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

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

17 **“§ 1410. Funding**

18 “There are authorized to be appropriated such sums
19 as may be necessary to pay the costs incurred by the Copy-
20 right Office under this chapter that are not covered by
21 fees collected for services rendered under this chapter, in-
22 cluding the costs of establishing and maintaining the
23 Copyright Claims Board and its facilities.

24 **“§ 1411. Definitions**

25 “As used in this chapter—

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

3 “(2) the term ‘person’ (including ‘his’ and
4 ‘her’) refers to both an individual and an entity that
5 is amenable to legal process under applicable law;
6 and

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

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

“14. Copyright Small Claims 1401”.

13 **SEC. 3. IMPLEMENTATION.**

14 The Copyright Claims Board shall begin operation no
15 later than one year after of the date of the enactment of
16 this Act.

17 **SEC. 4. STUDY.**

18 Not later than 3 years after the issuance of the first
19 determination by the Copyright Claims Board, the Reg-
20 ister of Copyrights shall deliver a study to Congress that
21 addresses—

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

24 (2) whether adjustments to the authority of the
25 Copyright Claims Board, including eligible claims

1 and works and applicable damages limitations, are
2 necessary or advisable;

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

7 (4) potential mechanisms to assist copyright
8 owners with small claims in ascertaining the identity
9 and location of unknown online infringers;

10 (5) whether the Copyright Claims Board should
11 be expanded to offer mediation or other nonbinding
12 alternative dispute resolution services to interested
13 parties; and

14 (6) such other matters as the Register of Copy-
15 rights believes may be pertinent concerning the
16 Copyright Claims Board.

17 **SEC. 5. SEVERABILITY.**

18 If any provision of this Act is declared unconstitu-
19 tional, the validity of the remainder of this Act shall not
20 be affected.

