

H. R. _____

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

OCTOBER 4, 2017

Mr. JEFFRIES (for himself Mr. MARINO, MR. COLLINS, MR. SMITH, MS. CHU, AND MR. LIEU) 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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Copyright Alternative in Small-Claims Enforcement Act of 2017” or the “CASE Act of 2017”.

SEC. 2. COPYRIGHT SMALL CLAIMS.

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

“CHAPTER 14—COPYRIGHT SMALL 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.

“§ 1401. Copyright Claims Board

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

“(b) OFFICERS AND STAFF.—

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

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

“(3) QUALIFICATIONS.—

“(A) COPYRIGHT CLAIMS OFFICERS.—Each Copyright Claims Officer shall be an attorney with no less than 7 years of legal experience. Two of the Copyright Claims Officers shall have substantial experience in the evaluation, litigation, or adjudication of copyright infringement claims and, between them, shall have represented or presided over a diversity of copyright interests, including those of both owners and users of copyrighted works. The third Copyright Claims Officer shall have substantial familiarity with copyright law and experience in the field of alternative dispute resolution, including the resolution of litigation matters through such means.

“(B) COPYRIGHT CLAIMS ATTORNEYS.—Each Copyright Claims Attorney shall be an attorney with no less than 3 years of substantial experience in copyright law.

“(4) COMPENSATION.—Each Copyright Claims Officer shall be compensated at not less than the minimum and not more than the maximum rate of pay for SL employees (or the equivalent) of the Federal Government, including locality pay, as applicable. Each Copyright Claims Attorney shall be compensated at not more than the maximum permissible pay for level 10 of GS–15 of the General Schedule (or the equivalent), including locality pay, as applicable.

“(5) TERM.—Copyright Claims Officers shall serve for 6-year terms that are renewable by the Librarian of Congress upon recommendation of the Register of Copyrights: *Provided, however,* That the terms for the initial Copyright Claims Officers appointed hereunder shall be as follows: one Copyright Claims Officer shall be appointed for 4 years, the second shall be appointed for 5 years, and the third shall be appointed for 6 years.

“(6) VACANCIES AND INCAPACITY.—

“(A) VACANCY.—If a vacancy shall occur in the position of Copyright Claims Officer, the Librarian of Congress shall, upon recommendation of the Register of Copyrights, who shall identify qualified candidates, act expeditiously to appoint a Copyright Claims Officer for that position. An individual appointed to fill a vacancy occurring before the expiration of the term for which his or her predecessor was appointed shall be appointed to serve for a 6-year term.

“(B) INCAPACITY.—If a Copyright Claims Officer is temporarily unable to perform his or her duties, the Librarian of Congress shall, upon recommendation of the Register of Copyrights, who shall identify qualified candidates, act expeditiously to appoint an interim Copyright Claims Officer to perform such duties during the period of such incapacity.

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

“(8) ADMINISTRATIVE SUPPORT.—The Register of Copyrights shall provide the Copyright Claims Officers and Copyright Claims Attorneys with necessary administrative support, including technological facilities, to carry out their duties under this chapter.

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

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

“(a) FUNCTIONS.—

“(1) COPYRIGHT CLAIMS OFFICERS.—Subject to the provisions of this chapter and applicable regulations, the functions of the Copyright Claims Officers shall be as follows:

“(A) To render determinations on such civil copyright claims, counterclaims, and defenses as are permitted to be brought before them under this chapter.

“(B) To ensure that claims, counterclaims, and defenses are properly asserted and otherwise appropriate for resolution by the Copyright Claims Board.

“(C) To manage the proceedings before them and render rulings pertaining to the consideration of claims, counterclaims, and defenses, including scheduling, discovery, evidentiary, and other matters.

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

“(E) To conduct hearings and conferences.

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

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

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

“(I) To maintain records of the proceedings before them, certify official records of such proceedings as needed, and make the records in such proceedings available to the public in accordance with law.

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

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

“(2) COPYRIGHT CLAIMS ATTORNEYS.—Subject to the provisions of this chapter and applicable regulations, the functions of the Copyright Claims Attorneys shall be as follows:

“(A) To provide assistance to the Copyright Claims Officers in the administration of their duties under this chapter.

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

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

“(b) INDEPENDENCE IN DETERMINATIONS.—The Copyright Claims Officers shall render their determinations in individual proceedings independently on the basis of the records in the proceedings before them and in accordance with the provisions of this title, judicial precedent, and applicable regulations of the Register of Copyrights. The Copyright Claims Officers and Copyright Claims Attorneys may consult with the Register of Copyrights on general issues of law, but, subject to section 1405(w), not with respect to the facts of any particular matter pending before them or the application of law thereto. Notwithstanding any other provision of law or any regulation or policy of the Library of Congress or Register of Copyrights, no performance appraisal of a Copyright Claims Officer or Copyright Claims Attorney shall consider the substantive result of any individual determination reached by the Copyright Claims Board as a basis for appraisal except insofar as it may relate to any actual or alleged violation of an ethical standard of conduct.

“(c) DIRECTION BY REGISTER.—Subject to subsection (b), the Copyright Claims Officers and Copyright Claims Attorneys shall be generally directed in the administration of their duties by the Register of Copyrights.

“(d) INCONSISTENT DUTIES BARRED.—No Copyright Claims Officer or Copyright Claims Attorney may undertake duties that conflict with his or her duties or responsibilities in connection with the Copyright Claims Board.

“(e) RECUSAL.—A Copyright Claims Officer or Copyright Claims Attorney shall recuse himself or herself from participation in any proceeding with respect to which the Copyright Claims Officer or Copyright Claims Attorney has reason to believe that he or she has a conflict of interest.

“(f) EX PARTE COMMUNICATIONS.—Except as may otherwise be permitted by applicable law, any party to a proceeding before the Copyright Claims Board shall refrain from ex parte communications with the Copyright Claims Officers concerning the substance of any proceeding before the Copyright Claims Board.

“(g) JUDICIAL REVIEW.—Actions of the Copyright Claims Officers and Register of Copyrights under this chapter in connection with the rendering of individual determinations are subject to judicial review as provided under section 1407(c), and not under [chapter 7](#) of title 5, United States Code.

“§ 1403. Nature of proceedings

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

“(b) STATUTE OF LIMITATIONS.—

“(1) IN GENERAL.—No proceeding shall be maintained before the Copyright Claims Board unless it is commenced in accordance with section 1405(e) before the Copyright Claims Board within three years after the claim that is the basis for the proceeding accrued.

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

“(c) PERMISSIBLE CLAIMS, COUNTERCLAIMS AND DEFENSES.—The Copyright Claims Officers may render determinations with respect to the following claims, counterclaims and defenses, subject to such further limitations and requirements, including with respect to particular classes of works, as may be set forth in regulations established by the Register of Copyrights:

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

“(2) A claim for a declaration of noninfringement of an exclusive right of copyright provided under section 106 of this title, where an actual controversy exists as evidenced by a written communication indicating that legal action against the claimant is imminent due to specifically alleged infringing conduct.

“(3) Notwithstanding any other provision of law, a claim pursuant to section 512(f) of this title for misrepresentation in connection with a notification of claimed infringement or a counter notification seeking to replace removed or disabled material: *Provided, however,* That any remedies in such a proceeding before the Copyright Claims Board shall be limited to those available under this chapter.

“(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—

“(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

“(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.

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

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

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

“(1) A claim or counterclaim that is not a permissible claim or counterclaim under subsection (c).

“(2) A claim or counterclaim that has been finally adjudicated by a court of competent jurisdiction or that is already pending before a court of competent jurisdiction, unless such court has issued a stay to permit such claim or counterclaim to proceed before the Copyright Claims Board.

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

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

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

“(e) PERMISSIBLE REMEDIES.—

“(1) MONETARY RECOVERY.—

“(A) ACTUAL DAMAGES, PROFITS, AND LIMITED STATUTORY DAMAGES.—Subject to the limitation on total monetary recovery set forth in

subparagraph (D), with respect to a claim or counterclaim for infringement of copyright, the Copyright Claims Board may award—

“(i) actual damages and profits determined in accordance with section 504(b) of this title, which determination shall include in appropriate cases consideration of whether the infringing party has agreed to cease or mitigate the infringing activity as provided in paragraph (2); or

“(ii) limited statutory damages, which shall be determined in accordance with section 504(c) of this title, subject to the following conditions:

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

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

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

“(IV) The Copyright Claims Board may consider as an additional factor in awarding limited statutory damages whether the infringer has agreed to cease or mitigate the infringing activity as provided in paragraph (2).

“(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).

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

“(D) LIMITATION ON TOTAL MONETARY RECOVERY.—Notwithstanding any other provision of law, a party who pursues any one or more claims or counterclaims in any single proceeding before the Copyright Claims Board may not seek or recover in such proceeding a total monetary recovery that exceeds the sum of

\$30,000, exclusive of any attorneys' fees and costs that may be awarded under section 1405(x)(2).

“(2) AGREEMENT TO CEASE INFRINGING ACTIVITY.—In any proceeding where a party agrees to cease activity that is found to be infringing, including removal or disabling of access to, or destruction of, infringing materials, and such agreement is reflected in the record, the Copyright Claims Board shall include in its determination a requirement that such party cease his or her infringing conduct.

“(3) ATTORNEYS' FEES AND COSTS.—Notwithstanding any other provision of law, except in the case of bad faith conduct as provided in section 1405(x)(2), the parties to proceedings before the Copyright Claims Board shall bear their own attorneys' fees and costs.

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

“§ 1404. Registration requirement

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

“(b) CERTIFICATE OF REGISTRATION.—Notwithstanding any other provision of law, a claimant or counterclaimant in a proceeding before the Copyright Claims Board shall be eligible to recover actual damages and profits or limited statutory damages for infringement of a work under this chapter if the requirements of subsection (a) have been met: *Provided, however, That—*

“(1) the Copyright Claims Board shall not render a determination in the proceeding until a registration certificate has been issued by the Copyright Office, submitted to the Copyright Claims Board and made available to the other parties to the proceeding, and the other parties have been provided an opportunity to address it;

“(2) if a proceeding cannot proceed further due to an outstanding registration certificate for the work, it shall be held in abeyance pending submission of the certificate to the Copyright Claims Board; but if held in abeyance for more than one year, the Copyright Claims Board may, upon providing written notice to the parties and 30 days to respond, dismiss the proceeding without prejudice; and

“(3) if the Copyright Claims Board receives notice that registration has been refused by the Copyright Office, the proceeding shall be dismissed without prejudice.

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

“(d) To ensure that actions before the Board proceed in a timely manner, the Register of Copyrights shall promulgate regulations providing the Copyright Office with the authority to issue a certificate of registration on an expedited basis. Such regulations shall treat applications for registration certificates pertaining to a proceeding before the Board on an expedited basis and separately from all other applications for certificates of registration, except those applications subject to special handling under 37 CFR §201.15.”

“§ 1405. Conduct of proceedings

“(a) IN GENERAL.—Proceedings of the Copyright Claims Board shall be conducted in accordance with this chapter and regulations as implemented by the Register of Copyrights, in addition to relevant principles of law under this title. To the extent it appears there may be conflicting judicial precedent on an issue of substantive copyright law that cannot be reconciled, the Copyright Claims Board shall follow the law of the Federal jurisdiction where the action could have been brought if filed in Federal district court, or, if it could have been brought in more than one jurisdiction, the jurisdiction that the Copyright Claims Board determines has the most significant ties to the parties and conduct at issue.

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

“(c) CENTRALIZED PROCESS.—Proceedings before the Copyright Claims Board shall be conducted at the offices of the Copyright Claims Board without the requirement of in-person appearances by parties or others, and shall take place by means of written submissions and hearings and conferences accomplished via Internet-based applications and other telecommunications facilities: *Provided, however,* That in cases where physical or other nontestimonial evidence material to a proceeding cannot be furnished to the Copyright Claims Board through available telecommunications facilities, the Copyright Claims Board shall have the discretion to make alternative arrangements for the submission of such evidence that do not prejudice another party to the proceeding.

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

“(1) an attorney; or

“(2) a law student who is qualified under applicable law governing law students’ representation of parties in legal proceedings and who provides such representation on a pro bono basis.

“(e) COMMENCEMENT OF PROCEEDING.—To commence a proceeding, a claimant shall, subject to such additional requirements as may be prescribed in regulations established by the Register of Copyrights, file a claim with the Copyright Claims Board, that—

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

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

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

“(f) REVIEW OF CLAIMS AND COUNTERCLAIMS.—

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

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

“(B) If the claim is found not to comply, the claimant shall be notified that the claim is deficient and permitted to file an amended claim within 30 days of the date of such notice without the requirement of an additional filing fee. If the claimant files a compliant claim within that period, he or she shall be so notified and instructed to proceed with service of the claim. If the claim is refiled within the 30-day period but still fails to comply, the claimant will again be notified that the claim is deficient and provided a second opportunity to amend it within 30 days without the requirement of an additional filing fee. If the claim is refiled again within the second 30-day period and is compliant, the claimant shall be so notified and instructed to proceed with service, but if the claim still fails to comply, upon confirmation of its noncompliance by a Copyright Claims Officer, the proceeding shall be dismissed without prejudice. The Copyright Claims Board shall also dismiss without prejudice any proceeding in which a compliant claim is not filed within the applicable 30-day time period.

“(C) For purposes of this paragraph, a claim against an online service provider for infringement by reason of storage of or referral or linking to infringing material that may be subject to the limitations on liability set forth in section 512(b), section 512(c) or section 512(d) of this title, shall be considered noncompliant unless the claimant

affirms in the statement required under subsection (e)(1) of this section that he or she has previously notified the service provider of the claimed infringement in accordance with section 512(b)(2)(E), section 512(c)(3) or section 512(d)(3) of this title, as applicable, and the service provider failed to remove or disable access to the material expeditiously upon the provision of such notice: *Provided, however,* That if a claim is found to be noncompliant under this subparagraph, the Copyright Claims Board shall provide the claimant with information concerning the service of such a notice pursuant to the relevant provision of this title.

“(2) COUNTERCLAIMS.—Upon filing and service of a counterclaim, the counterclaim shall be reviewed by a Copyright Claims Attorney to ensure that it complies with the provisions of this chapter and applicable regulations. If the counterclaim is found not to comply, the counterclaimant and other parties shall be notified that it is deficient and the counterclaimant permitted to file and serve an amended counterclaim within 30 days of the date of such notice. If the counterclaimant files and serves a compliant counterclaim within that period, the counterclaimant and other parties shall be so notified. If the counterclaim is refiled and served within the 30-day period but still fails to comply, the counterclaimant and other parties will again be notified that it is deficient and the counterclaimant provided a second opportunity to amend it within 30 days. If the counterclaim is refiled and served again within the second 30-day period and is compliant, the counterclaimant and parties shall be so notified, but if the counterclaim still fails to comply, upon confirmation of its noncompliance by a Copyright Claims Officer, the counterclaim, but not the proceeding, shall be dismissed without prejudice.

“(3) DISMISSAL FOR GOOD CAUSE.—The Copyright Claims Board shall dismiss a proceeding without prejudice if, upon reviewing a claim or counterclaim, or at any other time in a proceeding, the Copyright Claims Board concludes that it is unsuitable for determination by the Copyright Claims Board, including due to the following:

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

“(B) The lack of an essential witness, evidence, or expert testimony.

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

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

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

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

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

“(2) The copy of the claim served on the respondent shall be as it was filed with the Copyright Claims Board.

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

“(4) An individual, other than a minor or incompetent individual, may be served by—

“(A) following State law for serving a summons in an action brought in courts of general jurisdiction in the State where service is made; or

“(B) doing any of the following:

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

“(ii) Leaving a copy of each at the individual’s dwelling or usual place of abode with someone of suitable age and discretion who resides there.

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

“(5) A corporation, partnership or unincorporated association that is subject to suit in courts of general jurisdiction under a common name may be served by—

“(A) following State law for serving a summons in an action brought in courts of general jurisdiction in the State where service is made; or

“(B) delivering a copy of the notice and claim to an officer, a managing or general agent or any other agent authorized by appointment or by law to receive service of process in an action brought in courts of general jurisdiction and, if the agent is one authorized by statute and the statute so requires, by also mailing a copy of each to the respondent.

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

“(A) Any such request shall be in writing and addressed to the respondent, and be accompanied by a prescribed notice of the proceeding and copy of the claim as filed with the Copyright Claims Board, as well as a prescribed form for waiver of personal service, and a prepaid or costless means of returning the form.

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

“(7) A respondent’s waiver of personal service shall not constitute a waiver of the respondent’s right to opt out of the proceeding: *Provided, however,* That a respondent who timely waives personal service and does not opt out shall be allowed an additional 30 days beyond the amount of time normally permitted under the applicable procedures of the Copyright Claims Board to submit a substantive response to the claim, including any defenses and counterclaims.

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

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

“(h) OPT-OUT PROCEDURE.—Upon being properly served with a notice and claim, a respondent who chooses to opt out of the proceeding shall have 30 days from the date of service in which to provide written notice of such choice to the Copyright Claims Board, in accordance with regulations established by the Register of Copyrights. If proof of service has been filed by the claimant and the respondent does not submit an opt-out notice to the Copyright Claims Board within 30 days of service, the proceeding shall be deemed an active proceeding and the respondent shall be bound by the result to the extent provided under section 1406(a). If the respondent opts out during that period, the proceeding shall be dismissed without prejudice: *Provided, however,* That in exceptional circumstances and upon written notice to the claimant, the Copyright Claims Board may extend such 30-day period in the interests of justice.

“(i) SERVICE OF OTHER DOCUMENTS.—Other documents submitted or relied upon in the proceeding shall be served as provided in regulations established by the Register of Copyrights.

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

“(k) CONFERENCES.—One or more Copyright Claims Officers may hold a conference to address case management or discovery issues in a proceeding: *Provided, however,* That such conference shall not be addressed to ultimate issues of fact or law. Any such conference shall be noted upon the record of the proceeding and may be recorded or transcribed.

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

“(1) the parties to a proceeding shall be permitted to make requests to the Copyright Claims Board to address case management and discovery matters, and submit responses thereto; and

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

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

“(1) upon request of a party, and for good cause shown, the Copyright Claims Board shall have the discretion to approve additional limited discovery in particular matters, and may request specific information and documents from participants in the proceeding and voluntary submissions from nonparticipants;

“(2) upon request of a party, and for good cause shown, the Copyright Claims Board may issue a protective order to limit the disclosure of documents or testimony that contain confidential information; and

“(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 be relevant to such facts.

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

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

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

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

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

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

“(3) a recording or transcript of the hearing shall be made available to a Copyright Claims Officer who is not in attendance.

“(p) VOLUNTARY DISMISSAL.—

“(1) BY CLAIMANT.—Upon written request of a claimant received prior to a respondent’s filing of a response to a claim, the Copyright Board shall dismiss the proceeding, or a claim or respondent, as requested, such dismissal to be without prejudice.

“(2) BY COUNTERCLAIMANT.—Upon written request of a counterclaimant received prior to a claimant’s filing of a response to a counterclaim, the Copyright Claims Board shall dismiss the counterclaim, such dismissal to be without prejudice.

“(q) SETTLEMENT.—At any time in an active proceeding some or all of the parties may—

“(1) jointly request a conference with a Copyright Claims Officer for the purpose of facilitating settlement discussions; or

“(2) submit to the Copyright Claims Board an agreement providing for settlement and dismissal of some or all of the claims and counterclaims in the proceeding, which submission may also include a request that the Copyright Claims Board adopt some or all of the terms of the parties’ settlement in a final determination.

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

“(s) DETERMINATIONS.—

“(1) NATURE AND CONTENTS.—A determination rendered by the Copyright Claims Board in a proceeding shall—

“(A) be reached by a majority of the Copyright Claims Board;

“(B) be in writing, and include an explanation of the factual and legal basis of the decision therein;

“(C) pursuant to section 1403(e)(2), set forth any terms by which a respondent or counterclaim respondent has agreed to cease infringing activity;

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

“(E) include a clear statement of all damages and other relief awarded, including pursuant to subparagraphs (C) and (D).

“(2) DISSENT.—A Copyright Claims Officer who dissents from a decision contained in a determination may append a statement setting forth the grounds for his or her dissent.

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

“(t) RESPONDENT’S DEFAULT.—Where a proceeding has been deemed an active proceeding but the respondent has failed to appear or has ceased participating in the proceeding, as demonstrated by his or her failure to meet one or more deadlines or requirements set forth in the schedule adopted by the Copyright Claims Board pursuant to subsection (j) without justifiable cause, the Copyright Claims Board may enter a default determination, including the dismissal of any counterclaim asserted by a respondent, as follows and in accordance with such other requirements as the Register of Copyrights may prescribe by regulation:

“(1) The Copyright Claims Board shall require the claimant to submit relevant evidence and other information in support of his or her claim and any asserted damages and, upon review of such evidence and any other requested submissions from the claimant, shall determine whether the materials so submitted are sufficient to support a finding in favor of

the claimant under applicable law and, if so, the appropriate relief and damages, if any, to be awarded.

“(2) If the claimant has met his or her burden under paragraph (1), the Copyright Claims Board shall prepare a proposed default determination and provide written notice to the respondent at all addresses, including email addresses, reflected in the records of the proceeding before the Copyright Claims Board, concerning the pendency of a default determination by the Copyright Claims Board and the legal significance of such determination. Such notice shall be accompanied by the proposed default determination and provide that the respondent has 30 days from the date of the notice to submit any evidence or other information in opposition to the proposed default determination.

“(3) If the respondent responds to the notice provided under paragraph (2) within the 30-day period, the Copyright Claims Board shall consider respondent’s submissions and, after allowing the other parties to address such submissions, maintain or amend its proposed determination as appropriate, and the resulting determination shall not be a default determination.

“(4) If the respondent fails to respond to the notice provided under paragraph (2), the Copyright Claims Board shall proceed to issue the default determination as a final determination. Thereafter, the respondent may only challenge such determination to the extent permitted under section 1407(c): *Provided, however,* That prior to the initiation of any additional proceedings under section 1407, the Copyright Claims Board shall have the discretion to vacate the default determination in the interests of justice.

“(u) CLAIMANT’S FAILURE TO PROCEED.—

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

“(2) FAILURE TO PROSECUTE.—If a claimant fails to proceed in an active proceeding, as demonstrated by his or her failure to meet one or more deadlines or requirements set forth in the schedule adopted by the Copyright Claims Board pursuant to subsection (j) without justifiable cause, the Copyright Claims Board may, upon providing written notice to the claimant and 30 days to respond, issue a determination dismissing the claimants’ claims, which shall include an award of attorneys’ fees and costs if appropriate under subsection (x)(2). Thereafter, the claimant may only challenge such determination to the extent permitted under section 1407(c): *Provided, however,* That prior to the initiation of any additional proceedings under section 1407, the Copyright Claims Board shall have the discretion to vacate the determination of dismissal in the interests of justice.

“(v) RECONSIDERATION.—A party may, within 30 days of the date of issuance of a final determination by the Copyright Claims Board, submit a written request for reconsideration of, or an amendment to, such determination if the party identifies a clear error of law or fact material to the outcome, or a technical mistake. After providing the other parties an opportunity to address such request, the Copyright Claims Board shall respond by denying the request or issuing an amended final determination.

“(w) REVIEW BY REGISTER.—A party who has been denied reconsideration by the Copyright Claims Board may, within 30 days of the date of such denial, request review by the Register of Copyrights in accordance with regulations established by the Register of Copyrights, which regulations shall provide for a reasonable filing fee. The Register’s review shall be limited to consideration of whether the Copyright Claims Board abused its discretion in denying reconsideration. After providing the other parties an opportunity to address the request, the Register shall respond by denying the request or remanding the proceeding to the Copyright Claims Board for reconsideration of identified issues and issuance of an amended final determination, which amended final determination shall not be subject to further consideration or review other than pursuant to section 1407(c).

“(x) CONDUCT OF PARTIES AND ATTORNEYS.—

“(1) CERTIFICATION.—The Register of Copyrights shall establish regulations concerning certification of the accuracy and truthfulness of statements made by participants in proceedings before the Copyright Claims Board.

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

“(A) it is established that a party pursued a claim, counterclaim or defense for a harassing or other improper purpose, or without reasonable basis in law or fact; or

“(B) the claimant’s claim is dismissed for failure to prosecute pursuant to subsection (u)(2), unless inconsistent with the interests of justice, the Copyright Claims Board shall in such determination award reasonable attorneys’ fees and costs to any adversely affected party or parties in a total amount not to exceed \$5,000: *Provided, however,* that if an adversely affected party appeared pro se in the proceeding, the award to that party shall be of costs only and no more than \$2,500.

(3) If it is established that on more than one occasion within a 12 month period a party pursued a claim, counterclaim or defense before the Board for a harassing or other improper purpose, or without reasonable basis in law or fact, such party shall be barred from initiating a claim before the Board for a period of 12 months.

“(y) Notwithstanding anything to the contrary in this chapter, the Register of Copyrights may promulgate regulations allowing for the disposition of any claim in which total

damages sought are \$5,000 or less (exclusive of attorneys' fees and costs). At a minimum, any such regulations shall provide (1) for one copyright claims officer to consider and issue a determination with regard to the claim; and "(2) for which a copyright claims attorney shall review the claim and determine whether the case shall be heard by one officer or the Board."

- (z) A claimant may request the Board to issue a subpoena to a service provider for identification of an alleged infringer of claimant's copyrighted work. The Copyright Office shall promulgate regulations governing, at minimum, the issuance of the subpoena, the contents of the request, the contents of the subpoena, and the obligations of a service provider who is issued a subpoena. The regulations shall further require that the claimant seeking the subpoena must make a sworn declaration to the effect that the purpose for which the subpoena is sought is to obtain the identity of an alleged infringer and that such information will only be used for the purpose of protecting rights under this Act. Such subpoenas shall be enforceable by the United States District Court for the District of Columbia. **§ 1406. Effect of proceeding**

"(a) DETERMINATION.—Subject to the reconsideration and review processes afforded by section 1405(v) and 1405(w), respectively, and section 1407(c), the rendering of a final determination by the Copyright Claims Board in a proceeding, including a default determination or determination based on failure to prosecute, shall, solely with respect to the parties to such determination, preclude relitigation before any court or tribunal, or before the Copyright Claims Board, of the claims and counterclaims asserted and finally determined by such determination, and may be relied upon for such purpose in a future action or proceeding arising from the same specific activity or activities: *Provided, however,* That—

"(1) a determination of the Copyright Claims Board shall not preclude litigation or relitigation as between the same or different parties before any court or tribunal, or the Copyright Claims Board, of the same or similar issues of fact or law in connection with claims or counterclaims not asserted and finally determined by the determination of the Copyright Claims Board;

"(2) a determination of ownership of a copyrighted work for purposes of resolving a matter before the Copyright Claims Board shall not be relied upon, and shall have no preclusive effect, in any other action or proceeding before any other court or tribunal, including the Copyright Claims Board; and

"(3) except to the extent permitted in this subsection and section 1407, no determination of the Copyright Claims Board shall be cited or relied upon as legal precedent in any other action or proceeding before any court or tribunal, including the Copyright Claims Board.

"(b) OTHER MATERIALS IN PROCEEDING.—Except as permitted under this section and section 1407, a submission or statement of a party or witness made in connection with a

proceeding before the Copyright Claims Board, including a proceeding that is dismissed, shall not be cited or relied upon in, or serve as the basis of, any action or proceeding concerning rights or limitations on rights under this title before any court or tribunal, including the Copyright Claims Board.

“(c) WITH RESPECT TO SECTION 512(G).—Notwithstanding any other provision of law, the commencement of a proceeding by a claimant before the Copyright Claims Board against a subscriber of a service provider that seeks a declaration of infringement concerning material that has been removed or to which access has been disabled by the service provider in response to a notification of claimed infringement by the claimant pursuant to section 512(c)(1)(C) of this title shall be a basis to preclude the replacement of such material by the service provider pursuant to section 512(g) of this title if notice of the commencement of the Copyright Claims Board proceeding is provided by the claimant to the service provider’s designated agent not less than 10 nor more than 14 business days following receipt of a counter notification by the service provider pursuant to section 512(g) of this title.

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

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

“§ 1407. Review and confirmation by district court

“(a) IN GENERAL.—In any proceeding in which a party has failed to pay monies as required or otherwise comply with the relief awarded in a final determination of the Copyright Claims Board, including a default determination or a determination based on failure to prosecute, the aggrieved party may, within one year of the issuance of such final determination, resolution of any reconsideration by the Copyright Claims Board or review by the Register of Copyrights, or issuance of an amended final determination, whichever occurs last, apply to the United States District Court for the District of Columbia or any other federal district court of competent jurisdiction for an order confirming the final relief awarded and reducing such award to judgment. The court shall grant such order and direct entry of judgment unless the determination is or has been vacated, modified or corrected as permitted under subsection (c). If the United States District Court for the District of Columbia or any other federal district court of competent jurisdiction issues an order confirming the relief awarded by the Board, the Court must impose on the party who failed to pay damages or otherwise comply with the relief, the reasonable expenses required to secure such order, including attorney fees, incurred by the aggrieved party.

“(b) FILING PROCEDURES.—

“(1) Notice of the application for confirmation of a determination of the Copyright Claims Board and entry of judgment shall be provided to all parties to the proceeding before the Copyright Claims Board, in accordance with the procedures applicable to service of a motion in United States District Court for the District of Columbia.

“(2) The application shall include a certified copy of the final or amended final determination of the Copyright Claims Board, as reflected in the records of the Copyright Claims Board, following any process of reconsideration or review by the Register of Copyrights, to be confirmed and rendered to judgment, as well as a declaration by the applicant under penalty of perjury that it is a true and correct copy of such determination, the date it was issued, and whether the applicant is aware of any other proceedings before the United States District Court concerning the same determination of the Copyright Claims Board.

“(c) CHALLENGES TO THE DETERMINATION.—

“(1) BASES FOR CHALLENGE.—Upon application of a party to the Copyright Claims Board proceeding within 90 days of the issuance of a final or amended final determination by the Copyright Claims Board following any process of reconsideration or review by the Register of Copyrights, the United States District Court for the District of Columbia may issue an order vacating, modifying or correcting a determination of the Copyright Claims Board in the following cases:

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

“(B) Where the Copyright Claims Board exceeded its authority or failed to render a final and definite determination concerning the subject matter at issue.

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

“(2) PROCEDURE TO CHALLENGE.—

“(A) Notice of the application to challenge a determination of the Copyright Claims Board shall be provided to all parties to the proceeding before the Copyright Claims Board, in accordance with the procedures applicable to service of a motion in United States District Court for the District of Columbia.

“(B) The application shall include a certified copy of the final or amended final determination, as reflected in the records of the Copyright Claims Board following any process of reconsideration or review by the Register of Copyrights, that is the subject of the application, as well as a declaration by the applicant under penalty of perjury

that it is a true and correct copy of such determination, the date it was issued, the basis for challenge under subsection (c)(1), and whether the applicant is aware of any other proceedings before the United States District Court concerning the same determination of the Copyright Claims Board. For the purposes of the application, any judge who might make an order to stay the proceedings in an action brought in the same court, may make an order, to be served with the notice of application, staying proceedings to enforce the award.

“§ 1408. Relationship to other district court actions

“(a) STAY OF DISTRICT COURT PROCEEDINGS.—A United States district court shall order a stay of proceedings or such other relief as it deems appropriate with respect to any claim brought before it that is already the subject of a pending active proceeding before the Copyright Claims Board.

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

“(c) ALTERNATIVE DISPUTE RESOLUTION PROCESS.—The Copyright Claims Board shall qualify as an alternative dispute resolution process under section 651 of title 28 for purposes of referral of eligible cases by United States district courts upon consent of the parties.

“§ 1409. Implementation by Copyright Office

“(a) REGULATIONS.—

“(1) IMPLEMENTATION GENERALLY.—The Register of Copyrights shall establish regulations to implement the Copyright Claims Board as contemplated by this chapter, including the establishment of the fees prescribed by sections 1405(e)(3) and 1405(w), which authority shall not limit the Register’s more general authority to establish fees for services in accordance with section 708 of this title. All fees received by the Copyright Office in connection with the activities under this chapter shall be deposited by the Register and credited to the appropriations for necessary expenses of the Office in accordance with section 708(d) of this title.

“(2) LIMITS ON MONETARY RELIEF.—The Register may conduct a rulemaking to adjust the limits on monetary recovery or attorneys’ fees and costs that may be awarded under this chapter to further the goals of the Copyright Claims Board: *Provided, however,* That any resulting rule that makes such an adjustment shall become effective at the end of a period of 120 days after the rule is submitted to Congress and only if Congress

does not enact a law within such 120-day period that provides in substance that Congress does not approve of the new rule.

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

“§ 1410. Funding

“There are authorized to be appropriated such sums as may be necessary to pay the costs incurred by the Copyright Office under this chapter that are not covered by fees collected for services rendered under this chapter, including the costs of establishing and maintaining the Copyright Claims Board and its facilities.

“§ 1411. Definitions

“As used in this chapter—

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

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

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

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

SEC. 3. IMPLEMENTATION.

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

SEC. 4. STUDY.

Not later than 3 years after the issuance of the first determination by the Copyright Claims Board, the Register of Copyrights shall deliver a study to Congress that addresses—

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

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

(3) whether greater allowance should be made to permit awards of attorneys' fees and costs to prevailing parties, including potential limitations on such awards;

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

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

(6) such other matters as the Register of Copyrights believes may be pertinent concerning the Copyright Claims Board.

SEC. 5. SEVERABILITY.

If any provision of this Act is declared unconstitutional, the validity of the remainder of this Act shall not be affected.