

116TH CONGRESS
2D SESSION

S. _____

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

IN THE SENATE OF THE UNITED STATES

Mr. GRAHAM introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

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

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

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

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

Sec. 1. Short title; table of contents.

TITLE I—COPYRIGHT SMALL CLAIMS

Sec. 101. Copyright small claims.

Sec. 102. Implementation.

Sec. 103. Study.

Sec. 104. Severability.

TITLE II—GOOD SAMARITAN BLOCKING

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

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

5 **SEC. 101. COPYRIGHT SMALL CLAIMS.**

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

8 **“CHAPTER 15—COPYRIGHT SMALL**
 9 **CLAIMS**

“1501. Definitions.

“1502. Copyright Claims Board.

“1503. Authority and duties of the Copyright Claims Board.

“1504. Nature of proceedings.

“1505. Registration requirement.

“1506. Conduct of proceedings.

“1507. Effect of proceeding.

“1508. Review and confirmation by district court.

“1509. Relationship to other district court actions.

“1510. Implementation by Copyright Office.

“1511. Funding.

10 **“§ 1501. Definitions**

11 “In this chapter—

12 “(1) the term ‘party’—

13 “(A) means a party; and

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

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

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

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

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

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

1 **“§ 1502. Copyright Claims Board**

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

7 “(b) OFFICERS AND STAFF.—

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

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

19 “(3) QUALIFICATIONS.—

20 “(A) COPYRIGHT CLAIMS OFFICERS.—

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

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

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

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

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

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

21 “(4) COMPENSATION.—

22 “(A) COPYRIGHT CLAIMS OFFICERS.—

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

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

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

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

18 “(5) TERMS.—

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

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

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

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

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

10 “(6) VACANCIES AND INCAPACITY.—

11 “(A) VACANCY.—

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

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

1 “(B) INCAPACITY.—If a Copyright Claims
2 Officer is temporarily unable to perform the du-
3 ties of the Officer, the Librarian of Congress
4 shall, upon recommendation of, and in consulta-
5 tion with, the Register of Copyrights, act expe-
6 ditiously to appoint an interim Copyright
7 Claims Officer to perform such duties during
8 the period of such incapacity.

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

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

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

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

24 “(a) FUNCTIONS.—

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

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

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

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

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

22 “(E) To conduct hearings and conferences.

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

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

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

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

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

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

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

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

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

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

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

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

17 “(b) INDEPENDENCE IN DETERMINATIONS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

1 **“§ 1504. Nature of proceedings**

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

8 “(b) STATUTE OF LIMITATIONS.—

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

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

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

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

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

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

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

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

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

25 “(B) that—

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

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

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

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

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

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

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

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

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

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

22 “(e) PERMISSIBLE REMEDIES.—

23 “(1) MONETARY RECOVERY.—

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

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

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

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

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

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

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

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

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

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

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

4 “(ii) not to pursue damages.

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

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

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

25 “(A) a party agrees—

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

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

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

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

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

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

7 **“§ 1505. Registration requirement**

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

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

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

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

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

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

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

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

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

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

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

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

16 “(a) IN GENERAL.—

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

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

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

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

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

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

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

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

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

6 “(1) an attorney; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 “(q) VOLUNTARY DISMISSAL.—

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

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

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

10 “(r) SETTLEMENT.—

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

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

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

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

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

4 “(t) DETERMINATIONS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 **“§ 1507. Effect of proceeding**

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

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

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

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

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

18 “(b) CLASS ACTIONS NOT AFFECTED.—

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

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

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

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

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

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

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

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

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

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

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

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

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

1 “(b) FILING PROCEDURES.—

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

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

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

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

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

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

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

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

7 “(c) CHALLENGES TO THE DETERMINATION.—

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

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

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

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

5 “(2) PROCEDURE TO CHALLENGE.—

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

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

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

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

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

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

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

11 “(a) REGULATIONS.—

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

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

7 “(2) LIMITS ON MONETARY RELIEF.—

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

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

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

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

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

11 **“§ 1511. Funding**

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

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

“15. Copyright Small Claims 1501”.

21 **SEC. 102. IMPLEMENTATION.**

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

1 **SEC. 103. STUDY.**

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

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

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

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

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

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

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

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

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

8 **SEC. 104. SEVERABILITY.**

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

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

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

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

23 (1) in subsection (c)—

24 (A) in paragraph (1)—

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

3 “(A) IN GENERAL.—No provider”; and

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

6 “(B) APPLICABILITY.—

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

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

20 (B) in paragraph (2)—

21 (i) in subparagraph (A)—

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

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

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

8 (2) in subsection (f)(3)—

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

11 “(A) IN GENERAL.—The term”; and

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

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

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

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