H. R. 11

To amend title 17, United States Code, to establish a small claims system within the Copyright Office, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Ms. CHU of California (for herself and Mr. SMITH of Texas) introduced the following bill; which was referred to the Committee on

A BILL

To amend title 17, United States Code, to establish a small claims system within the Copyright Office, and for other purposes.

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

3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the “Fairness for American
5 Small Creators Act”.

6 SEC. 2. ESTABLISHMENT OF COPYRIGHT CLAIMS BOARD.

7 (a) AMENDMENT.—Title 17, United States Code, is
8 amended by adding at the end the following new chapter:
“CHAPTER 14—COPYRIGHT CLAIMS BOARD

“Sec.
“1401. Copyright Claims Board.
“1402. Duties of officers and staff.
“1404. Registration certificate required.
“1406. Effect of proceeding.
“1407. Confirmation or review by district court.
“1408. Referral of cases by district courts.
“1409. Definitions.

“§ 1401. Copyright Claims Board

“(a) ESTABLISHMENT.—There is established within
the Copyright Office of the Library of Congress a Copy-
right Claims Board (hereinafter the ‘Board’), which shall
serve as an alternative forum in which parties may choose
to resolve certain copyright claims as provided in this
chapter.

“(b) OFFICERS AND STAFF.—

“(1) COPYRIGHT CLAIMS OFFICERS.—

“(A) APPOINTMENT.—The Librarian of
Congress shall appoint 3 full-time copyright
claims officers to serve on the Board who are
recommended as qualified by the Register of
Copyrights.

“(B) QUALIFICATIONS.—Each copyright
claims officer shall be an attorney with not 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 experience in the field of alternative dispute resolution.

“(C) TERM.—A copyright claims officer shall serve for a term of 6 years, which may be renewed by the Librarian of Congress upon the recommendation of Register of Copyrights. The term for the first three copyright claims officers appointed pursuant to subparagraph (A) shall be 4, 5, and 6 years, respectively.

“(D) VACANCIES.—If a vacancy occurs in the position of a copyright claims officer, the Librarian of Congress shall act expeditiously to appoint a copyright claims officer for that position who is recommended as qualified by the Register of Copyrights. A copyright claims officer appointed to fill a vacancy that occurs before the expiration of the term for which the officer’s predecessor was appointed shall be appointed to serve a full term of 6 years.
“(E) INCAPACITY.—If a copyright claims officer is temporarily unable to perform the duties of the officer, the Librarian of Congress shall act expeditiously to appoint an interim copyright claims officer, who is recommended as qualified by the Register of Copyrights, to perform the duties during the period of incapacity.

“(F) COMPENSATION.—The Librarian of Congress shall set the annual rate of pay for any copyright claims officer appointed under this paragraph. Any annual rate of pay established under this subparagraph shall be not less than the minimum rate of pay, and not greater than the maximum rate of pay, applicable to a Senior-level (SL) position established under section 5108 of title 5, United States Code.

“(2) COPYRIGHT CLAIMS ATTORNEYS.—

“(A) APPOINTMENT.—The Register of Copyrights shall appoint not fewer than 2 full-time copyright claims attorneys to assist in the administration of the Board.

“(B) QUALIFICATIONS.—Each copyright claims attorney shall be an attorney with not less than 3 years of substantial experience in the field of copyright law.
“(C) Compensation.—The Register of Copyrights shall set the annual rate of pay for any copyright claims attorney appointed under this paragraph. Any annual rate of pay established under this subparagraph shall be not greater than the annual rate of pay for a position classified at step 10 of GS–15 of the General Schedule.

“(3) Supervision and Removal.—Subject to section 1402(c), each copyright claims officer and each copyright claims attorney shall be supervised and removable by the Librarian of Congress.

“(4) Administrative Support.—The Register of Copyrights shall provide each copyright claims officer and each copyright claims attorney with necessary administrative support, including technological facilities, to carry out the duties of such officer and attorney under this chapter.

“(5) Location in Copyright Office.—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) COPYRIGHT CLAIMS OFFICER.—Subject to this chapter and regulations issued by the Register of Copyrights, the duties of a copyright claims officer are as follows:

(1) To issue determinations on any civil copyright claim, counterclaim, and defense as may be brought before the Board under this chapter, and to certify the determinations for confirmation by the United States District Court for the District of Columbia.

(2) To ensure that a claim, defense, and counterclaim is properly filed and otherwise appropriate for resolution by the Board.

(3) To manage the proceedings of the Board and render rulings relating to the consideration of a claim, defense, and counterclaim, including scheduling, discovery, evidentiary, and other matters.

(4) To request the production of information and documents relevant to the resolution of a claim, defense, or counterclaim from a party in a proceeding and from others.

(5) To conduct hearings and conferences.

(6) To facilitate the settlement of any claim or counterclaim of parties.
“(7) To include in any determination of the Board a requirement for cessation or mitigation of infringing activity, including takedown or destruction of infringing materials, where the party to undertake such measures has so agreed.

“(8) To provide information to the public concerning the procedures and requirements of the Board, including any form and instructional material.

“(9) To maintain a record of each proceeding of the Board and make public any determination in an individual proceeding.

“(10) To carry out any other duties prescribed in this chapter.

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

“(b) COPYRIGHT CLAIMS ATTORNEY.—Subject to this chapter and regulations issued by the Register of Copyrights, the duties of a copyright claims attorney are as follows:

“(1) To provide assistance to the copyright claims officers in the administration of the duties of the officers under this chapter.
“(2) To provide assistance to members of the
public with respect to the procedures and require-
ments of the Board.

“(3) When not engaged in performing the du-
ties prescribed in this chapter, to perform such other
duties as may be assigned by the Register of Copy-
rights.

“(c) INDEPENDENCE IN DETERMINATION.—

“(1) IN GENERAL.—The copyright claims offi-
cers shall render determinations in individual pro-
ceedings independently on the basis of the records in
the proceedings of the Board and in accordance with
the provisions of this title, judicial precedent, and
applicable regulations of the Register of Copyrights.

“(2) CONSULTATION WITH 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(y), not with respect to the
facts of any particular matter pending before them
or the application of law thereto.

“(3) PERFORMANCE REVIEW.—Notwithstanding
any other provision of law or any regulation or pol-
icy of the Library of Congress or Register of Copy-
rights, no performance appraisal of a copyright
claims officer or copyright claims attorney shall consider the substantive result of any individual determination reached by the Board as a basis for appraisal except insofar as it may relate to an actual or alleged violation of an ethical standard of conduct.

“(d) DIRECTION BY REGISTER.—Subject to subsection (b), the Register of Copyrights shall direct each copyright claims officer and each copyright claims attorney in the administration of their respective duties under this chapter.

“(e) INCONSISTENT DUTIES BARRED.—A copyright claims officer or copyright claims attorney may not undertake any duty or responsibility that conflicts with any duty under this chapter.

“(f) RECUSAL.—A copyright claims officer or copyright claims attorney shall recuse themself from participation in any proceeding with respect to which the copyright claims officer has reason to believe there is a conflict of interest.

“(g) EX PARTE COMMUNICATIONS.—Except as otherwise provided by law, any party proceeding before the Board shall refrain from ex parte communications with a copyright claims officer concerning the substance of any proceeding before the Board, except that a copyright
claims attorney may provide information and assistance to parties concerning the procedures and requirements of the Board.

“(h) **JUDICIAL REVIEW.**—Actions of the copyright claims officers and the Register of Copyrights under this chapter in connection with the rendering of individual determinations are subject to judicial review as provided under section 1407(b) and not under chapter 7 of title 5.

**§ 1403. Nature of Proceedings**

“(a) **VOLUNTARY PARTICIPATION.**—Participation in a Board proceeding is 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, including a jury trial, is preserved.

“(b) **STATUTE OF LIMITATIONS.**—

“(1) **IN GENERAL.**—No proceeding shall be maintained before the Board unless it is commenced before the Board within 3 years after the claim that is the basis for the proceeding accrued.

“(2) **TOLLING.**—Subject to section 1406(a), a proceeding commenced before the Board shall toll the time permitted under section 507(b) for commencement of an action on the same claim in a Fed-
eral district court during the time it remains pend-
ing.

“(c) PERMISSIBLE CLAIMS, COUNTERCLAIMS, AND
DEFENSES.—The copyright claims officers may render de-
terminations with respect to the following claims, counter-
claims, and defenses, subject to such further limitations
and requirements, including with respect to particular
classes of works, as may be set forth in regulations issued
by the Register of Copyrights:

“(1) INFRINGEMENT.—A claim for infringe-
ment or a declaration of infringement of an exclusive
right of copyright provided under section 106 as-
serted by the legal or beneficial owner of such exclu-
sive right at the time of infringement in which the
claimant seeks damages, if any, subject to the limi-
tations described in subsection (e)(1).

“(2) DECLARATION OF NONINFRINGEMENT.—A
claim for a declaration of noninfringement of an ex-
clusive right of copyright provided under section 106
in which the claimant seeks damages, if any, subject
to the limitations described in subsection (e)(1) and
in which an actual controversy exists as evidenced by
a documented threat of legal action against the
claimant.
“(3) MISREPRESENTATION; REMOVAL OF COPYRIGHT MANAGEMENT INFORMATION.—Notwithstanding any other provision of law, a claim under section 512(f), except that any remedy in a proceeding before the Board is limited to those available under this chapter.

“(4) COUNTERCLAIM.—A counterclaim asserted solely against any claimant in a proceeding in which any counterclaimant seeks damages, if any, within the limitations set forth in subsection (e)(1), and that—

“(A) arises under section 106 or 512(f), and out of the same transaction or occurrence that is the subject of a claim of infringement brought under paragraph (1), a claim of non-infringement under paragraph (2), or a claim of misrepresentation or a claim of removal of copyright management information, under paragraph (3); or

“(B) arises under an agreement relating 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) Defense.—A legal or equitable defense under this title or otherwise available under law in response to a claim or counterclaim asserted under this subsection.

“(6) Multiple Claims.—A single claim or multiple claims permitted under paragraph (1), (2), or (3) by one or more claimants against one or more respondents, but only if all claims asserted in any one proceeding arise out of the same allegedly infringing activity or a continuous course of alleged infringement 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 Board:

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

“(2) A claim or counterclaim already pending before, or finally adjudicated by, a court of competent jurisdiction, unless in the case of a pending claim or counterclaim, the court issues a stay to permit such claim or counterclaim to proceed before the 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 Board pursuant to section 1405(f)(3).

“(e) PERMISSIBLE REMEDIES.—

“(1) DAMAGES FOR INFRINGEMENT.—

“(A) ACTUAL AND STATUTORY DAMAGES.—Subject to the limitation on total damages set forth in subparagraph (D), with respect to a claim or counterclaim for infringement of copyright, the Board may award—

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

“(ii) limited statutory damages, which shall be determined in accordance with sec-
tion 504(c), subject to the following conditions:

“(I) With respect to a work timely registered as described under section 412 and eligible for an award of statutory damages under that section, statutory damages may not exceed $15,000 per work infringed.

“(II) With respect to a work not timely registered as described under section 412 but eligible for an award of statutory damages under section 1404(b), statutory damages may not exceed $7,500 per work infringed, or a total of $15,000 in any one proceeding.

“(III) In making an award of statutory damages, the Board may not make any finding or consider whether the infringement was committed willfully.

“(IV) The Board may consider, as an additional factor in awarding statutory damages, whether the infringer has agreed to cease or miti-
gate the infringing activity under 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 adopted by the Board pursuant to section 1405(k), elect to pursue either actual damages and profits or statutory damages under subparagraph (A).

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

“(D) LIMITATION ON TOTAL DAMAGES.—Notwithstanding any other provision of law, a party who pursues one or more claims or counterclaims in any single proceeding before the Board may not seek or recover in such proceeding damages totaling more than $30,000, not including any attorneys’ fees and costs that may be awarded under section 1405(z)(2).

“(2) AGREEMENT BY PARTY TO CEASE INFRINGING ACTIVITY.—In any proceeding in which a
party agrees to cease activity (including by removal
or disabling of access to, or destruction of, material
that is found to infringe and the agreement is in-
cluded in the record, the Board shall include in the
final determination a requirement that such party, if
found to have infringed, cease the infringing conduct
to the extent agreed.

“(3) Costs and Attorneys’ Fees.—Notwith-
standing any other provision of law and except as
provided under section 1405(z)(2), each party to a
proceeding before the Board shall bear the costs and
attorneys’ fees of that party.

“§ 1404. Registration requirement

“(a) Requirements to File Claim or Counter-
claim.—No claim or counterclaim alleging infringement
of an exclusive right of copyright may be asserted before
the Board unless the owner of the copyright has first deliv-
ered a completed application, deposit, and the required fee
for registration to the Copyright Office and either a reg-
istration certificate has been issued or has not been re-
fused.

“(b) Damages.—Notwithstanding any other provi-
sion of law, a claimant or counterclaimant in a proceeding
before the Board may not recover actual damages and
profits or limited statutory damages for infringement of
a work under this chapter unless the requirements of subsection (a) have been met and—

“(1) until the Copyright Offices issues a registration certificate;

“(2) until the registration certificate is submitted to the Board and made available to the other parties to the proceeding and the other parties have been provided an opportunity to address the issuance of the registration certificate;

“(3) the proceeding is not being held in abeyance as described in subsection (c); and

“(4) the proceeding has not be dismissed without prejudice, in the case of a proceeding in which the Board receives notice that registration has been refused by the Copyright Office.

“(c) ABYANCE.—In the case of a proceeding that cannot proceed due to an outstanding registration certificate, the proceeding shall be held in abeyance pending submission of the certificate for the work to the Board, and if held in abeyance for more than one year, the Board may, upon providing written notice to the parties and 30 days to respond, dismiss the proceeding without prejudice.

“(d) PRESUMPTION.—In the case of a certificate of registration for a work that was registered before or within five years after the first publication of the work, the
presumption described in section 410(c) shall apply in a proceeding before the Board.

“§ 1405. Proceedings

“(a) IN GENERAL.—Proceedings of the Board shall be conducted in accordance with this chapter and regulations issued by the Register of Copyrights.

“(b) RECORD.—The Board shall maintain records documenting the proceedings of the Board.

“(c) CENTRALIZED PROCESS.—The Board may conduct proceedings by means of Internet-based applications and other telecommunications facilities, except that in any case involving physical or other nontestimonial evidence, the Board may make alternative arrangements for the submission of evidence if the arrangements do not prejudice another party to the proceeding.

“(d) REPRESENTATION.—A party to a proceeding before the Board may be represented by an attorney or a law student who is qualified under applicable law to represent a party on a pro bono basis.

“(e) COMMENCEMENT OF PROCEEDING.—A claimant may, subject to such additional requirements as may be prescribed in regulations issued by the Register of Copyrights, commence a proceeding under this section by filing a claim with the Board, that—
“(1) includes a statement of material facts in support of the claim;

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

“(3) is accompanied by the appropriate filing fee prescribed in such regulations which—

“(A) may not exceed the cost of filing an action in a United States district court; and

“(B) shall be established to further goals of the Board.

“(f) REVIEW OF CLAIMS AND COUNTERCLAIMS.—

“(1) CLAIMS.—A copyright claims attorney shall review each claim filed with the Board for compliance with the provisions of this chapter and applicable regulations and take action as follows:

“(A) COMPLIANT CLAIM.—If the copyright claims attorney finds that a claim complies under this section the attorney shall notify the claimant that the claimant may serve notice under subsection (h).

“(B) NONCOMPLIANT CLAIM.—If the copyright claims attorney finds that a claim does not comply under this section, the attorney shall notify the claimant that the claim is deficient and that the claimant may file an amend-
ed claim not later than 30 days after the date of such notice without paying an additional filing fee.

“(C) COMPLIANT AMENDED CLAIM.—If the claimant files a compliant amended claim within the period of time described under subparagraph (B), the copyright claims attorney shall notify the claimant that the claimant may proceed under subparagraph (A).

“(D) NONCOMPLIANT AMENDED CLAIM.—If the claimant files a noncompliant amended claim within the period of time described under subparagraph (B), the copyright claims attorney shall notify the claimant under subparagraph (B).

“(E) COMPLIANT SECOND AMENDED CLAIM.—If the claimant files a compliant second amended claim within the period of time described under subparagraph (B), the copyright claims attorney shall notify the claimant that the claimant may proceed under subparagraph (A).

“(F) NONCOMPLIANT SECOND AMENDED CLAIM.—If the claimant files a noncompliant second amended claim within the period of time
described under subparagraph (B), the Board shall dismiss the proceeding without prejudice.

“(G) Claim not timely filed.—The Board shall dismiss without prejudice any proceeding in which a compliant claim is not timely filed.

“(H) Claim against an online service provider.—For purposes of this paragraph, the Board shall—

“(i) consider a claim against an online service provider for infringement by reason of the storage, at the direction of a user, of material residing on a system or network controlled or operated by the service provider that may be subject to section 512(c), or by reason of the service provider referring or linking users to an online location containing infringing material that may be subject to the provisions of section 512(d), noncompliant unless the claimant affirms in the statement required under subsection (e)(1) that the claimant has previously notified the service provider of the claimed infringement in accordance with section 512(e)(3) and the service pro-
vider failed to remove or disable access to
the material within 5 business days after
the date of such notice; and

“(ii) if a claim is found to be non-
compliant under clause (i), provide the
claimant with information concerning the
service of a notice pursuant to section
512(c)(3).

“(2) COUNTERCLAIM.—A counterclaim shall be
treated in the same manner as a claim under para-
graph (1) except that each notice shall be served on
the all other parties.

“(3) DISMISSAL FOR GOOD CAUSE.—If, upon
reviewing a claim or counterclaim in a particular
proceeding, the Board determines that the claim or
counterclaim is unsuitable for determination by the
Board due to a failure to join a necessary party, the
lack of an essential witness, evidence, expert testi-
mony, or for other good cause, the Board shall dis-
miss the proceeding without prejudice.

“(g) PROOF OF SERVICE.—To proceed with a claim
against a respondent, a claimant must file with the Board
proof of service of the notice described in subsection (h)
on the respondent not later than 90 days after the date
on which the claimant receives notice to proceed under subsection (f)(1)(A).

“(h) SERVICE OF NOTICE AND CLAIMS.—Service on a respondent by a claimant is valid only if the claimant causes 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 issued by the Register of Copyrights. Each such notice shall be in accordance with the following:

“(1) The notice shall adhere to a prescribed form that describes the Board under section 1401 and a proceeding under section 1403, the respondent’s right to opt out under subsection (i), and the consequences of opting out and not opting out.

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

“(3) Personal service of a notice and claim may only be made by an individual who is not a party to the proceeding and is at least 18 years of age.

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

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

“(B) any of the following:

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

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

“(iii) Delivering the notice and a copy of the claim 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) a procedure under 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 the notice and a copy of the claim to an officer, a managing or general agent, or any other agency authorized by appointment or by law to receive service of proc-
ess in an action brought in courts of general ju-
risdiction and, if the agent is authorized by
State statute and the statute so requires, by
also mailing a copy of the notice and a copy of
the claim to the respondent.
“(6) In order to request a waiver of personal
service, a claimant may notify a respondent by first-
class mail or other reliable means that a proceeding
has been commenced, as follows:
“(A) Any such request shall—
“(i) be in writing and addressed to
the individual respondent;
“(ii) include the notice and a copy of
the claim as filed;
“(iii) include 2 copies of a prescribed
form for waiver of personal service; and
“(iv) include a prepaid or costless
means of returning the form.
“(B) The request shall state the date on
which the request was sent and provide the re-
Spondent 30 days after such date to return 1
copy of the signed waiver, which shall constitute
proof of service for purposes of filing under
subsection (g) and 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 under subsection (i).

“(8) A respondent who waives personal service and does not opt out under subsection (i) shall be permitted an additional 30 days beyond the amount of time normally permitted under the applicable procedures of the Board to submit a substantive response to the claim, including any defense or counterclaim.

“(9) A minor or an incompetent individual may only be served by a procedure under applicable State law for serving a summons or other process on such an individual in an action brought in the courts of general jurisdiction of the State in which service is made.

“(10) Service or waiver of personal service under this subsection may only be made within the United States.

“(i) OPT-OUT PROCEDURE.—A respondent may opt out of a proceeding under this section not later than 60 days after the date of service under subsection (h) by transmitting written notice thereof to the Board, in ac-
cordance with regulations issued by the Register of Copyrights. If the respondent—

“(1) does not opt out, the proceeding shall continue and the respondent shall be bound by the determination under section 1406(a) or subsection (u); or

“(2) opts out, the proceeding shall be dismissed without prejudice.

“(j) Service of Other Documents.—Documents submitted or relied upon in the proceeding shall be served in accordance with regulations issued by the Register of Copyrights.

“(k) Scheduling.—The Board shall issue a schedule, which may be amended by the Board for good cause, for each proceeding under this chapter.

“(l) No Formal Motion Practice.—There shall be no formal motion practice in a Board proceeding.

“(m) Conferences.—At the request of a party or at the discretion of a copyright claims officer, 1 or more copyright claims officers may hold a conference with the parties on the record to address matters in a proceeding including case management and discovery issues, but not issues of fact or law.
“(n) PARTY SUBMISSIONS.—The Board may request
or permit the parties to make submissions regarding rel-
evant questions of fact or law.

“(o) DISCOVERY.—

“(1) IN GENERAL.—Discovery shall be limited,
pursuant to regulations issued by the Register of
Copyrights, to the following:

“(A) Production of relevant information
and documents.

“(B) Written interrogatories.

“(C) Written requests for admissions.

“(2) SPECIAL REQUESTS.—The Board may—

“(A) request specific information and doc-
uments from parties to the proceeding or oth-
ers; or

“(B) upon request of a party and for good
cause shown, approve additional limited dis-
covery.

“(3) ADVERSE INFERENCE.—After providing
notice and an opportunity to respond, and upon
good cause shown, the Board may apply an adverse
inference regarding disputed facts against a party
who has failed to timely provide discovery materials
in response to a proper request for relevant mate-
rials.
“(p) EVIDENCE.—The Board may consider the following types of evidence in a proceeding, which may be admitted without application of formal rules of evidence:

“(1) NONTESTIMONIAL EVIDENCE.—Documentary and other nontestimonial evidence that is relevant to any claim, counterclaim, or defense in a proceeding.

“(2) TESTIMONIAL EVIDENCE.—Testimonial evidence that is—

“(A) submitted under penalty of perjury and in accordance with subsection (q);

“(B) limited to written statements of the parties and witnesses; and

“(C) relevant to any claim, counterclaim, and defense in a proceeding.

“(3) SPECIAL EVIDENCE.—In exceptional cases and for good cause shown, expert witness or other forms of testimony.

“(q) HEARINGS.—The Board may conduct a hearing to receive oral presentations on issues of fact or law from parties and witnesses to a proceeding in accordance with the following procedures:

“(1) Any hearing shall be noted on the record of the proceeding and may be recorded or transcribed.
“(2) A recording or transcript of a hearing shall be provided to any copyright claims officer who does not attend a hearing.

“(r) VOLUNTARY DISMISSAL.—

“(1) BY CLAIMANT.—Upon written request of a claimant that is received prior to a respondent’s filing of a response to a claim, the Board shall dismiss, without prejudice, a claim, a respondent, or the entire proceeding.

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

“(s) SETTLEMENT.—During the pendency of any proceeding under this chapter, 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 Board—

“(A) an agreement providing for settlement and dismissal of one or more of the claims and counterclaims in the proceeding; or
“(B) a request that the Board adopt some or all of the terms of the parties’ settlement under subparagraph (A) in a final determination.

“(t) FINDINGS; STANDARD OF PROOF.—Subject to subsection (o)(3), the Board shall make findings based upon a preponderance of the evidence.

“(u) FINAL DETERMINATIONS.—

“(1) NATURE AND CONTENTS.—A final determination issued by the Board in a proceeding shall—

“(A) require the consensus of a majority of the copyright claims officers presiding over the proceeding;

“(B) be in writing and include an explanation of the underlying factual and legal bases for the determination;

“(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) set forth the terms of any settlement to the extent requested by the parties under subsection (s); and
“(E) include a clear statement of all damages and other relief awarded.

“(2) DISSENT.—A copyright claims officer who dissents from a decision contained in a determination may append a statement setting forth the grounds for such dissent.

“(3) ONLINE PUBLICATION.—The Board shall publish all final determinations on a publicly accessible website maintained by the Board.

“(v) DEFAULT BY RESPONDENT.—If a respondent fails to appear or ceases to participate in a proceeding under this chapter, such as by failing to meet 1 or more deadlines or requirements set forth in the schedule adopted by the Board under subsection (k), without justifiable cause, the Board may issue a default determination, in accordance with regulations issued by the Register of Copyrights and the following:

“(1) REVIEW OF CLAIMANT’S EVIDENCE.—The Board shall review the relevant evidence and other information in support of the claim and any asserted damages and, upon review of such evidence and any other requested submissions from the claimant, issue a default determination under subsection (u).

“(2) DEFAULT DETERMINATION.—
“(A) PREPARATION AND NOTICE.—If the Board finds for the claimant under paragraph (1), the Board shall prepare a default determination and provide a copy and written notice thereof to the respondent at each address, including each email address, included in the records of the Board.

“(B) TIME TO CURE DEFAULT.—The notice under subparagraph (A) shall state that the respondent may submit evidence and other information in opposition to the proposed determination not later than the 30 days after the date on which the notice is sent.

“(3) CLAIMANT Responds to notice of default.—If the respondent responds to the notice under paragraph (2)(A) within the period of time described under paragraph (2)(B), the Board shall consider respondent’s submissions and, after allowing the other parties to address such submissions—

“(A) amend the default determination; or

“(B) enter a final determination subject to section 1407(b).

“(4) CLAIMANT fails to respond to notice of default.—If the respondent fails to respond to the notice provided under paragraph (2), the Board
shall issue the default determination as a final determination, subject to section 1407(b).

“(w) FAILURE TO PROCEED BY CLAIMANT OR COUNTERCLAIMANT.—

“(1) FAILURE TO COMPLETE SERVICE.—If a claimant or counterclaimant fails to complete service on a respondent within the time provided under subsection (h), the respondent shall be dismissed from the proceeding without prejudice. If a claimant fails to complete service on all respondents within such time, the proceeding shall be dismissed by the Board without prejudice.

“(2) FAILURE TO PROSECUTE.—If a claimant fails to proceed in a proceeding under this chapter, such as by any failure to meet 1 or more deadlines or requirements set forth in the schedule adopted by the Board pursuant to subsection (k), without justifiable cause, the Board shall issue a final determination under subsection (u) dismissing any relevant claim or counterclaim (and awarding of attorneys’ fees and costs if appropriate under subsection (z)) and provide a copy and written notice thereof to the claimant or counterclaimant at each address, including each email address, included in the records of the Board.
“(x) RECONSIDERATION.—

“(1) REQUEST FOR RECONSIDERATION.—A party may, not later than 14 days after the date on which the Board issues a final determination, submit a written request for reconsideration of, or amendment to, the determination on the basis of an alleged error. The request shall identify the alleged error of procedure, law, or fact material to the outcome.

“(2) DETERMINATION.—After providing the other parties an opportunity to address a request under paragraph (1), the Board shall respond by either denying the request or issuing an amended final determination.

“(y) REVIEW BY REGISTER OF COPYRIGHTS.—

“(1) REQUEST FOR REVIEW.—A party who has been denied reconsideration of a final determination by the Board may request review of the denial by the Register of Copyrights not later than 14 days after the date of the denial in accordance with regulations issued by the Register of Copyrights, which shall provide for a reasonable filing fee.

“(2) STANDARD OF REVIEW.—A review under paragraph (1) shall be limited to consideration of whether the Board abused its discretion in denying reconsideration.
“(3) DECISION.—After providing the other parties with an opportunity to address the request under paragraph (1), the Register shall respond by denying the request or remanding the proceeding to the Board for reconsideration of issues identified in the remand and the issuance of an amended final determination. The amended final determination shall not be subject to further consideration or review other than pursuant to section 1407.

“(z) CONDUCT OF PARTIES AND ATTORNEYS.—

“(1) CERTIFICATION.—Each participant in a proceeding under this chapter shall certify the accuracy and truthfulness of any statement made before the Board under regulations issued by the Register of Copyrights.

“(2) BAD FAITH.—In any final determination issued under subsection (u), the Board may award, to each adversely affected party, reasonable costs and attorneys’ fees not to exceed a total of $5,000 ($2,500 in the case of a party that proceeds pro se) if—

“(A) the Board finds that a party to the proceeding pursued a claim, counterclaim, or defense for an improper purpose or without reasonable basis in law or fact; or
“(B) a claim or counterclaim in the proceeding is dismissed for failure to prosecute under subsection (w)(2).

“(aa) SPECIAL RULE FOR CLAIMS OF $5,000 OR LESS.—Notwithstanding anything to the contrary in this chapter, the Register of Copyrights may issue regulations to provide for the disposition of any claim in which the total damages is $5,000 or less (exclusive of attorneys’ fees and costs)—

“(1) that provide 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.

§ 1406. Effect of proceeding

“(a) ESTOPPEL.—Subject to subsections (x) and (y) of section 1405 and section 1407(b), a party to a proceeding under this chapter in which the Board has issued a final determination may not assert, in any proceeding, before any court or tribunal, any claim or counterclaim asserted and resolved by the final determination. The final determination may be cited or relied upon in a future proceeding except that—
“(1) a final determination of the Board may not preclude litigation or relitigation between the same or different parties before any court or tribunal of the same or similar issues of fact or law in connection with a different claim or counterclaim not asserted and finally determined by the determination of the Board;

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

“(3) a final determination may not be cited or relied upon as legal precedent in any other action or proceeding before any court or tribunal, including the Board, other than as permitted under this subsection and section 1407.

“(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 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 under this title before any court or tribunal, including the Board.
“(c) SECTION 512(g).—Notwithstanding any other provision of law, the commencement of a proceeding by a claimant that is brought before the Board against a subscriber of a service provider in which the claimant 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) shall be a basis to preclude the replacement of such material by the service provider pursuant to section 512(g) if notice of the commencement of the Board proceeding is provided by the claimant to the service provider’s designated agent not less than 10 and not more than 14 business days following receipt of a counter-notification by the service provider pursuant to section 512(g).

“(d) STAY OF DISTRICT COURT PROCEEDINGS.—A district court shall order a stay of proceedings or such other relief as the court determines to be appropriate with respect to any claim brought before the court that is the subject of a pending proceeding before the Board.

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

“(f) Opt-Out or Dismissal of Party.—If a party has timely opted out of a proceeding under section 1405(i) or is dismissed from a proceeding before the Board issues a final determination in the proceeding, the final determination shall not be binding upon and shall have no preclusive effect with respect to that party.

“§ 1407. Confirmation or review by district court

“(a) Confirmation by District Court.—

“(1) In general.—In any proceeding in which a party fails to pay damages or otherwise comply with the relief awarded in a final determination of the Board, the aggrieved party may petition the United States District Court for the District of Columbia, or any other Federal district court of competent jurisdiction, for an order confirming the relief awarded not later than 1 year after the latest of—

“(A) the date on which the Board issued the final determination under section 1405(u);

“(B) the date on which the Board denies reconsideration under section 1405(x);

“(C) the date on which the Register of Copyrights denies review under section 1405(y);

or
“(D) the date on which the Board issues an amended final determination under subsection (x) or subsection (y) of section 1405.

“(2) RELIEF.—The Court shall grant an order under subsection (a) and direct entry of judgment unless the determination is vacated, modified, or corrected as permitted under subsection (b). The judgment shall be docketed as if issued in an action in the United States District Court for the District of Columbia, or any other Federal court of competent jurisdiction, and shall be subject to all the provisions of law relating to, and of the same force and effect as if the judgment had been rendered in, an action in the jurisdiction.

“(3) FILING PROCEDURES.—

“(A) NOTICE OF FILING.—Notice of the petition for confirmation of a determination of the Board and entry of judgment shall be provided to each party to the proceeding before the Board, in accordance with the procedures applicable to service of a motion in the United States District Court. If a party to be served is a nonresident, then notice of the petition shall be served by the marshal of any district within
which such party may be found in the same manner as other process of the court.

“(B) CONTENT OF FILING.—The petition shall include a certified and dated copy of the determination of the Board and a declaration by the petitioner, under penalty of perjury, that it is a true and correct copy of such determination and the date it was issued.

“(b) CHALLENGES TO A DETERMINATION.—

“(1) BASES FOR CHALLENGE.—Not later than 90 days after the date of issuance of a final determination by the Board, a party to the relevant proceeding may petition the United States Court for the District of Columbia for an order vacating, modifying, or correcting the final determination on the grounds that—

“(A) the final determination was issued as a result of fraud, corruption, or as a result of misconduct or undue means;

“(B) the Board exceeded the authority of the Board;

“(C) the Board so imperfectly executed the duties of the Board that the final determination was neither final nor definite regarding the matter of controversy; or
“(D) the Board issued a default determination or determination based on failure to prosecute and the default or failure was due to excusable neglect.

“(2) Procedure to Challenge.—

“(A) Notice of Filing.—Notice of the petition to challenge a determination of the Board shall be provided to each party to the proceeding before the Board, in accordance with the procedures applicable to service of a motion in the United States District Court for the District of Columbia. If a party to be served is a nonresident, then notice of the application shall be served by the marshal of any district within which such party may be found in the same manner as other process of the court.

“(B) Content of Filing.—The petition shall include a certified and dated copy of the determination of the Board and a declaration by the petitioner, under penalty of perjury, that it is a true and correct copy of such determination and the date it was issued, and the basis for challenge under paragraph (1). For the purposes of the application, any judge who has the authority to order a stay of the proceedings in
an action brought in the same court may make
an order, to be served with the notice of appli-
cation, staying proceedings to enforce the
award.

“§ 1408. Referral of Cases by District Courts

“(a) Costs and Attorneys’ Fees.—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 under section 505, the district court
may consider, among other relevant factors, whether the
nonprevailing party had the option and could have chosen
to proceed before the Board instead of the district court.

“(b) Alternative Dispute Resolution Process.—The Board shall qualify as an alternative dispute
resolution process under section 651 of title 28 for pur-
poses of referral of eligible cases upon consent of the par-
ties by United States district courts.

“§ 1409. Definitions

“In this chapter:

“(1) Party.—The term ‘party’ refers to both a
party and the party’s attorney, as applicable.

“(2) Person.—The term ‘person’ (including
‘his’ and ‘her’) refers to both an individual and an
entity that is amenable to legal process under appli-
cable law.
“(3) Service provider.—The term ‘service provider’ has the meaning given that term in section 512(k).

§1410. Funding

“(a) Deposit of fees.—Any fee received by the Copyright Office under this title shall be deposited by the Register and credited to the appropriations for necessary expenses of the Office in accordance with subsection (d) of section 708.

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

(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:

“14. Copyright Claims Board ................................................................. 1401”.

(c) Implementation by Copyright Office.—

(1) Regulations.—Not later than 90 days after the date of the enactment of this Act, the Register of Copyrights shall issue regulations necessary to carry out chapter 14 of title 17, United States Code, as added by subsection (a).
(2) NECESSARY FACILITIES.—The Register of Copyrights may enter into a contract with an appropriate entity to establish Internet-based teleconferencing or other facilities necessary to carry out the amendment made by subsection (a).

(3) REPORT.—Not later than 3 years after the date on which the Copyright Claims Board, issues the first determination under section 1405(u) of title 17 United States Code, as added by subsection (a), the Register of Copyrights shall submit to Congress a report on the following:

(A) The use and efficacy of the Copyright Claims Board in resolving copyright claims.

(B) Whether adjustments to the authority of the Copyright Claims Board, including eligible claims, works, and applicable damages limitations, are necessary or advisable.

(C) Whether greater allowance should be made to permit awards of attorneys’ fees and costs to prevailing parties, including potential limitations on such awards, in proceedings under this chapter.

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

    (E) Whether the Copyright Claims Board should be expanded to offer mediation or other nonbinding alternative dispute resolution services to interested parties.

    (F) Such other matters as the Register of Copyrights determines are pertinent to the Copyright Claims Board.