

1 Title: To amend title 17, United States Code, to update copyright law to address contemporary
2 business practices and technologies and to support the growth of digital technologies without
3 undermining incentives for creators, and for other purposes.
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6 Be it enacted by the Senate and House of Representatives of the United States of America in
7 Congress assembled,

8 SECTION 1. SHORT TITLE.

9 This Act may be cited as the “Digital Copyright Act of 2021”.

10 SEC. 2. LIMITATIONS ON LIABILITY RELATING TO 11 MATERIAL ONLINE.

12 Section 512 of title 17, United States Code, is amended—

13 (1) by striking subsections (a) through (d) and inserting the following:

14 “(a) Transitory Digital Network Communications.—

15 “(1) IN GENERAL.—A service provider shall not be liable for monetary relief, or, except
16 as provided in subsection (j), for injunctive or other equitable relief, for infringement of
17 copyright by reason of:

18 “(A) the provider’s transmitting, routing, or providing connections for, material
19 through a system or network controlled or operated by or for the service provider, or by
20 reason of the intermediate and transient storage of that material in the course of such
21 transmitting, routing, or providing connections, if —

22 “(i) the transmission of the material was initiated by or at the direction of a
23 person other than the service provider;

24 “(ii) the transmission, routing, provision of connections, or storage is carried
25 out through an automatic technical process without selection of the material by
26 the service provider;

27 “(iii) the service provider does not select the recipients of the material except as
28 an automatic response to the request of another person;

29 “(iv) no copy of the material made by the service provider in the course of such
30 intermediate or transient storage is maintained on the system or network in a
31 manner ordinarily accessible to anyone other than anticipated recipients, and no
32 such copy is maintained on the system or network in a manner ordinarily
33 accessible to such anticipated recipients for a longer period than is reasonably
34 necessary for the transmission, routing, or provision of connections; and

35 “(v) the material is transmitted through the system or network without
36 modification of its content.

37 “(B) the intermediate and temporary storage of material on a system or network
38 controlled or operated by or for the service provider in a case in which—

1 “(i) the material is made available online by a person other than the service
2 provider;

3 “(ii) the material is transmitted from the person described in subparagraph (i)
4 through the system or network to a person other than the person described in
5 subparagraph (i) at the direction of that other person; and

6 “(iii) the storage is carried out through an automatic technical process for the
7 purpose of making the material available to users of the system or network who,
8 after the material is transmitted as described in subparagraph (ii), request access
9 to the material from the person described in subparagraph (iii).

10 “(C) storage at the direction of a user of material that resides on a system or network
11 controlled or operated by or for the service provider[, or activities related to such
12 storage].

13 “(D) provider referring or linking users to an online location containing infringing
14 material or infringing activity, by using information location tools, including a directory,
15 index, reference, pointer, or hypertext link.

16 “(2) A service provider, as described in subsection (1) of this paragraph, will be eligible
17 for the limitation on liability if the service provider—

18 “(A) does not have actual knowledge that the material or an activity so using the
19 material is infringing;

20 “(B) in the absence of actual knowledge described in subparagraph (A)—

21 “(i) is not aware of facts or circumstances from which infringing activity is
22 likely;

23 “(ii) is not willfully blind with respect to the infringement, or does not induce
24 the infringement; and

25 “(iii) for service providers eligible under subparagraphs (C) or (D), does not
26 receive a financial benefit directly attributable to the infringing activity, if the
27 service provider has the right and ability to control that activity;

28 “(C) upon receiving a notification under subsection (b)—

29 “(i) acts expeditiously to—

30 “(I) remove, or disable access to, the material that is claimed to be
31 infringing or the subject of infringing activity; and

32 “(II) notify the user in accordance with standards established under rules
33 issued by the Copyright Office under subsection (g) of—

34 “(aa) the removal or disabling, as applicable; and

35 “(bb) the right of the user to file a counter notification under
36 subsection (g); and

37 “(ii) takes certain steps to ensure that, absent a sworn statement from the user
38 (without regard to whether the user is the copyright owner) that, subject to
39 subsection (f), the user has a [subjective] good faith belief that the use is licensed

1 or otherwise authorized by law, including that the use is permitted under section
2 107, the allegedly infringing materials stays down when:

3 “(aa) a complete or near complete copy of a copyrighted work
4 already identified in a notification of claimed infringement or list of
5 unauthorized works as provided in [XX], or

6 “(bb) any portion of a copyrighted work already identified in a
7 notification of claimed infringement or list of unauthorized works as
8 provided in [XX], if the service provider derives its commercial value
9 predominantly from short-form media; and

10 “(D) if, for service providers eligible under subparagraph (B), the service providers
11 meets these conditions:

12 “(i)—(iv) [incorporates the current language of subsection (b)(2)]

13 “(E) follow reasonableness best practices established by the Register of Copyrights,
14 which the Register, in consultation with the NTIA, shall update once every 5 years
15 [beginning one year after date of enactment of this statute], that account for factors
16 including the type and size of the service provider and the scale of infringement that
17 occurs the service. Such best practices may include standards such as requiring a user
18 that uploads or publicly performs or displays content on or across the service to affirm
19 that the user holds the copyright to that content, has permission to upload or publicly
20 perform that content, or is otherwise authorized by law.

21 “(b) Notification.—

22 “(1) IN GENERAL.—To be effective under this subsection, a notification of claimed
23 infringement submitted to a service provider, whether submitted by an individual or
24 automated process, shall be a written communication provided to the designated agent of
25 the service provider, as described in subsection (c), that includes substantially the following:

26 “(A) A physical or electronic signature of a person authorized to act on behalf of the
27 owner of an exclusive right that is allegedly infringed.

28 “(B) Identification of the copyrighted work claimed to have been infringed, or, if
29 multiple copyrighted works at a single online site are covered by a single notification,
30 a non-exhaustive representative list of those allegedly infringed works at that website.

31 “(C)(i) Identification of the material that is claimed to be infringing or to be the
32 subject of infringing activity and that is to be removed or access to which is to be
33 disabled, and information reasonably sufficient to permit the service provider to locate
34 the material.

35 “(ii) If the same copyrighted work is claimed to be infringed by multiple items of
36 material or at multiple locations on a single website, the identification shall be
37 sufficient for the purposes of clause (i) if the notification identifies not less than 1 such
38 item of material and not less than 1 such location, rather than specific web addresses
39 for each location.

40 “(D) Information reasonably sufficient to permit the service provider to contact the
41 complaining party, such as an address, telephone number, or electronic mail address at

1 which the complaining party may be contacted.

2 “(E) A statement that the complaining party has a [subjective] good faith belief that
3 the use of the material in the manner complained of is not authorized by the copyright
4 owner, its agent, or the law.

5 “(F) A statement that the information in the notification is accurate, and under
6 penalty of perjury, that the complaining party is authorized to act on behalf of the
7 owner of an exclusive right that is allegedly infringed.

8 “(2) SUBSTANTIAL COMPLIANCE.—

9 “(A) IN GENERAL.—Subject to subparagraph (B), a notification from a copyright
10 owner or from a person authorized to act on behalf of the copyright owner that fails to
11 comply substantially with the provisions of paragraph (1) shall not be considered under
12 subsection (a) in determining whether a service provider has actual knowledge or is
13 aware of facts or circumstances from which infringing activity is apparent.

14 “(B) PARTIAL COMPLIANCE.—In a case in which a notification under paragraph (1)
15 that is provided to a service provider’s designated agent fails to comply substantially
16 with all of the requirements of paragraph (1) but substantially complies with
17 subparagraphs (B), (C), and (D) of that paragraph, subparagraph (A) of this paragraph
18 applies only if the service provider promptly attempts to contact the person submitting
19 the notification or takes other reasonable actions to assist in the receipt of a notification
20 that substantially complies with all the provisions of subparagraph (A).

21 “(C) PENALTY.—

22 “(i) IN GENERAL.—A person that submits a notification under this paragraph
23 without a [subjective] good faith belief that the use that is the subject of the
24 notification is unauthorized shall be subject to damages under subsection (f).

25 “(ii) RULE OF CONSTRUCTION.—Nothing in clause (i) may be construed to
26 subject a person that submits a notification containing a mistake to a penalty
27 under subsection (f) if the notification is sent in good faith and is at least
28 minimally compliant with the requirements under subparagraph (A).

29 “(3) WEB FORMS.—

30 “(A) IN GENERAL.—Each service provider with a public-facing website shall, based
31 on criteria established under rules issued by the Register of Copyrights under
32 subparagraph (B), make available—

33 “(i) a web form for submitting to the service provider a notice under paragraph
34 (1);

35 “(ii) a physical and electronic mail address for the submission of either a
36 physical or electronic notice sent under paragraph (1); and

37 “(iii) a process by which, as a supplement to the materials made available under
38 clauses (i) and (ii), a service provider may enter into a voluntary agreement with a
39 copyright owner for an alternative noticing process under this subsection.

40 “(B) RULES.—

1 “(i) IN GENERAL.—Not later than [X] after the date of enactment of the Digital
2 Copyright Act of 2021, the Register of Copyrights shall issue rules that, taking
3 into consideration the different types of service providers, establishes the format
4 for a form described in subparagraph (A).

5 “(ii) UPDATES.—The Register of Copyrights shall update the rules issued under
6 subparagraph (B) once every 5 years.

7 “(4) PROHIBITIONS.—With respect to a notification submitted under this subsection—

8 “(A) the person submitting the notification may not include in the notification
9 information with respect to licensing or any demand of payment; and

10 “(B) if the notification contains any item prohibited under subparagraph (A)—

11 “(i) the notification shall be considered to be void and without effect under
12 subsection (a); and

13 “(ii) the person submitting the notification shall be subject to damages under
14 subsection (f).

15 “(5) PERSONALLY IDENTIFIABLE INFORMATION.—Not later than [X] after the date of
16 enactment of the Digital Copyright Act of 2021, the Register of Copyrights shall issue rules
17 that provide which personally identifiable information [such as physical address] shall be
18 protected by a service provider under a fiduciary duty and redacted or withheld when a
19 service provider shares any information from a notification under this subsection.

20 “(c) Designated Agent.—

21 “(1) IN GENERAL.—The limitations on liability established under subsection (a) apply to a
22 service provider only if the service provider has designated an agent to receive notifications
23 submitted under subsection (b), by making available through its service, including on its
24 website in a conspicuous location that is accessible to the public, and by providing to the
25 Copyright Office, substantially the following information:

26 “(A) The name, address, phone number, and electronic mail address of the agent.

27 “(B) Other contact information which the Register of Copyrights may deem
28 appropriate.

29 “(2) DIRECTORY.—The Register of Copyrights shall maintain a current directory of
30 agents available to the public for inspection, including through the internet, and may require
31 payment of a fee by service providers to cover the costs of maintaining the directory.

32 “(d) A service provider that does not satisfy the requirements of this section shall not enjoy the
33 limitation on liability or, where noncompliance is under subsection (g), or damages under
34 subsection (f).

35 “(f) Remedies.—

36 “(1) MISREPRESENTATIONS AND BAD FAITH.—Any person who knowingly materially
37 represents under this section that material or activity is infringing, or that material or
38 activity was removed or disabled by mistake or misidentification, or otherwise acts in bad
39 faith, shall be liable for any damages, including costs and attorneys’ fees, incurred by the
40 alleged infringer, by any copyright owner or copyright owner’s authorized licensee, or by a

1 service provider, who is injured by such misrepresentation, as the result of the service
2 provider relying upon such misrepresentation in removing or disabling access to the
3 material or activity claimed to be infringing, or in replacing the removed material or ceasing
4 to disable access to it.

5 “(2) REPEATEDLY SENDING FALSE NOTIFICATIONS.—If a person repeatedly and falsely
6 submits notifications under subsection (b) or counter notifications under subsection (g)(3)—

7 “(A) that person shall be placed on a list maintained by the Register of Copyrights,
8 which the Register shall establish through rules that the Register shall update once
9 every 5 years; and

10 “(B) a service provider that receives a notification or counter notification sent by a
11 person that is on the list described in subparagraph (A) may elect not to respond to the
12 notification or counter notification without facing any adverse consequence under this
13 section.

14 “(3) RESPONDING TO A COUNTER NOTICE.—If a service provider disables access to, or
15 removes, material or activity under subsection (a) without satisfying the requirements under
16 subsection (g), the person against which the service provider takes that action may bring a
17 civil action against the service provider, for monetary damages, including attorneys’ fees
18 and costs, or injunctive relief, in an appropriate district court of the United States or under
19 paragraph (4).

20 “(4) COPYRIGHT CLAIMS BOARD.—

21 “(A) MISREPRESENTATION OR BAD FAITH.—Any claim for misrepresentation or bad
22 faith under this subsection may be brought, upon voluntary agreement of both parties,
23 before the [Copyright Claims Board] on an expedited basis pursuant to rules issued by
24 the Register of Copyrights, which the Register shall update once every 5 years.

25 (3) in subsection (g)—

26 (A) in paragraph (1), by inserting “if the service provider retains the allegedly
27 infringing content for 30 days and replaces the removed material or ceases disabling
28 access to it in accordance with the requirements of this subsection” after “determined
29 to be infringing”;

30 (B) in paragraph (2)—

31 (i) in the matter preceding subparagraph (A), by striking “subsection (c)(1)(C)”
32 and inserting “subsection (b)”;

33 (ii) in subparagraph (A), by inserting “and provides, as established by the
34 Register of Copyright, by rule, counter notice forms to the subscriber, which shall
35 include information regarding the fair use doctrine” after “to the material”;

36 (iii) in subparagraph (B)—

37 (I) by striking “subsection (c)(1)(C)” and inserting “subsection (b)”;

38 (II) by striking “in 10 business days” and inserting “in 5 business days,
39 unless the designated agent of the service provider first receives notice from
40 the person that submitted the notification under subsection (b) that the

1 alleged infringement exceeds the statutory maximum 1501 of this title
2 [[copyright small claims]] and that such person is, in good faith, considering
3 filing an action seeking a court order to restrain the subscriber from engaging
4 in infringing activity”;

5 (iv) in subparagraph (C)—

6 (I) by striking “10” and inserting “5”;

7 (II) by striking “14” and inserting “30”; and

8 (III) by striking “subsection (c)(1)(C)” and inserting “subsection (b)”;

9 (C) in paragraph (3)—

10 (i) in the matter preceding subparagraph (A), by inserting “, or submitted by
11 means of a web form (the format for which shall be established by the Register of
12 Copyrights, by rule),” after “designated agent”;

13 (ii) in subparagraph (C), by inserting “because the material is licensed to the
14 user or otherwise authorized by law” after “mistake”;

15 (iii) in subparagraph (D)—

16 (I) by inserting “the Copyright Claims Board,” after “jurisdiction of”; and

17 (II) by inserting “if damages exceed \$30,000 under subsection (e) of
18 section 1504” after “is located”; and

19 (iv) by adding at the end the following:

20 “(E) An explanation of the alleged mistake contained in the original notification and
21 a description of any license under which the subscriber is operating or a description of
22 any [subjective good faith] claim that the subscriber could make under section 107
23 with respect to the material.”;

24 (D) in paragraph (4), by striking “subsection (c)(1)(C)” and inserting “subsection
25 (b)”;

26 (E) by adding at the end the following:

27 “(5) PERSONALLY IDENTIFIABLE INFORMATION.— Not later than [X] after the date of
28 enactment of the Digital Copyright Act of 2021, the Register of Copyrights shall issue rules
29 that provide which personally identifiable information [such as physical address] shall be
30 protected by a service provider under a fiduciary duty and redacted or withheld when a
31 service provider shares any information from a counter notification under this subsection

32 “(6) CHALLENGES TO COUNTER NOTICE.—

33 “(A) IN GENERAL.—A notice sender to which a counter notification is provided
34 under this subsection may send the service provider a challenge claiming that the
35 counter notification is facially invalid.

36 “(B) SUBJECT TO DAMAGES.—A challenge brought under subparagraph (A) that is
37 not brought in good faith shall be subject to the damages under [subsection (f)].”;

38 (4) in subsection (h), by striking all references to “notification described in subsection

1 (c)(3)(A)” and replacing with the following:

2 “a notice containing substantially the same information as a notification submitted
3 under subsection (b);”;

4 (5) in subsection (i)—

5 (A) in paragraph (1)—

6 (i) in subparagraph (A), by striking “repeat infringers” and inserting “persons
7 that, on multiple occasions, were the subject of notifications under subsection (b)
8 that were not successfully challenged”; and

9 (ii) in subparagraph (B), by striking “accommodates and does not interfere
10 with” and inserting “adopts (or, where utilized by copyright owners, does not
11 interfere with)”;

12 (B) by redesignating paragraph (2) as paragraph (3);

13 (C) by inserting after paragraph (1) the following:

14 “(2) RULEMAKINGS.—

15 “(A) IN GENERAL.—Not later than [X] after the date of enactment of this Act, the
16 Register of Copyrights shall—

17 “(i) in consultation with the NTIA, develop and maintain a model policy with
18 respect to persons described in paragraph (1)(A) that shall determine minimum
19 requirements for service providers; and

20 “(ii) in consultation with the National Institute of Standards and Technology,
21 identify and adopt standard technical measures and clarify that, when adopted,
22 shall be made available to copyright owners and service providers on fair,
23 reasonable, and non-discriminatory terms.

24 “(B) UPDATES.—The Register of Copyrights shall update the material developed
25 and established under subparagraph (A) once every 5 years.”; and

26 (D) in paragraph (3), as so redesignated—

27 (i) inserting “or service providers to manage copyrighted works on the service”
28 after “or protect copyrighted works”;

29 (ii) in subparagraph (B)—

30 (I) by inserting “, or can be made available,” after “are available”; and

31 (II) by striking “and” at the end;

32 (iii) in subparagraph (C)—

33 (I) by inserting “and disproportionate” after “substantial”; and

34 (II) by striking the period at the end and inserting “; and”; and

35 (iv) by adding at the end the following:

36 “(D) vary across types and sizes of service providers.”;

1 (6) in subsection (m)(1), by inserting “or if that monitoring would be reasonable in
2 consideration of the rules issued under subsection (a)(2)” after “subsection (i)”; and

3 (7) by adding at the end the following:

4 “(o) Review.—The Attorney General, in consultation with the Register of Copyrights, may
5 review a voluntary agreement for addressing copyright infringement online that raises antitrust
6 concerns or constrains uses that are otherwise authorized under this title.”.

7 SEC. 3. LIMITATION ON REMEDIES IN CASES 8 INVOLVING ORPHAN WORKS.

9 (a) Amendment.—Chapter 5 of title 17, United States Code, is amended by adding at the end
10 the following:

11 “514. Limitation on remedies in cases involving orphan works

12 “(a) Definitions.—In this section:

13 “(1) NOTICE OF CLAIM OF INFRINGEMENT.—The term ‘notice of claim of infringement’
14 means, with respect to a claim of copyright infringement, a written notice sent from the
15 owner of the infringed copyright, or a person acting on the owner’s behalf, to the infringer,
16 or a person acting on the infringer’s behalf, that includes at a minimum—

17 “(A) the name of the owner of the infringed copyright;

18 “(B) the title of the infringed work, any alternative titles of the infringed work
19 known to the owner of the infringed copyright, or if the work has no title, a description
20 in detail sufficient to identify that work;

21 “(C) an address and telephone number at which the owner of the infringed copyright
22 or a person acting on behalf of the owner may be contacted; and

23 “(D) information reasonably sufficient to permit the infringer to locate the
24 infringer’s material in which the infringed work resides.

25 “(2) OWNER OF THE INFRINGED COPYRIGHT.—The ‘owner of the infringed copyright’ is
26 the owner of any particular exclusive right under section 106 that is applicable to the
27 infringement, or any person or entity with the authority to grant or license such right.

28 “(3) REASONABLE COMPENSATION.—The term ‘reasonable compensation’ means, with
29 respect to a claim of infringement, the amount on which a willing buyer and willing seller in
30 the positions of the infringer and the owner of the infringed copyright would have agreed
31 with respect to the infringing use of the work immediately before the infringement began.

32 “(b) Conditions for Eligibility.—

33 “(1) CONDITIONS.—

34 “(A) IN GENERAL.—Notwithstanding sections 502 through 506, and subject to
35 subparagraph (B), in an action brought under this title for infringement of copyright in
36 a work, the remedies for infringement shall be limited in accordance with subsection
37 (c) if the infringer—

38 “(i) proves by a preponderance of the evidence that before the infringement

1 began, the infringer, a person acting on behalf of the infringer, or any person
2 jointly and severally liable with the infringer for the infringement—

3 “(I) performed and documented a qualifying search, in good faith, to
4 locate and identify the owner of the infringed copyright; and

5 “(II) was unable to locate and identify an owner of the infringed copyright;

6 “(ii) prior to using the work, filed with the Register of Copyrights a Notice of
7 Use under paragraph (3);

8 “(iii) provided attribution, in a manner that is reasonable under the
9 circumstances, to the legal owner of the infringed copyright, if such legal owner
10 was known with a reasonable degree of certainty, based on information obtained
11 in performing the qualifying search;

12 “(iv) included with the public distribution, display, or performance of the
13 infringing work a symbol or other notice of the use of the infringing work, the
14 form and manner of which shall be prescribed by the Register of Copyrights;

15 “(v) asserts in the initial pleading to the civil action eligibility for such
16 limitations; and

17 “(vi) at the time of making the initial discovery disclosures required under rule
18 26 of the Federal Rules of Civil Procedure, states with particularity the basis for
19 eligibility for the limitations, including a detailed description and documentation
20 of the search undertaken in accordance with paragraph (2)(A) and produces
21 documentation of the search.

22 “(B) EXCEPTION.—Subparagraph (A) shall not apply if, after receiving notice of the
23 claim for infringement and having an opportunity to conduct an expeditious good faith
24 investigation of the claim, the infringer—

25 “(i) fails to negotiate reasonable compensation in good faith with the owner of
26 the infringed copyright; or

27 “(ii) fails to render payment of reasonable compensation in a reasonably timely
28 manner after reaching an agreement with the owner of the infringed copyright or
29 under an order described in subsection (c)(1)(A).

30 “(2) REQUIREMENTS FOR SEARCHES.—

31 “(A) REQUIREMENTS FOR QUALIFYING SEARCHES.—

32 “(i) IN GENERAL.—A search qualifies under paragraph (1)(A)(i)(I) if the
33 infringer, a person acting on behalf of the infringer, or any person jointly and
34 severally liable with the infringer for the infringement, undertakes a diligent effort
35 that is reasonable under the circumstances to locate the owner of the infringed
36 copyright prior to, and at a time reasonably proximate to, the infringement.

37 “(ii) DILIGENT EFFORT.—For purposes of clause (i), a diligent effort—

38 “(I) requires, at a minimum—

39 “(aa) a search of the records of the Copyright Office that are available
40 to the public through the Internet and relevant to identifying and

1 locating copyright owners, provided there is sufficient identifying
2 information on which to construct a search;

3 “(bb) a search of reasonably available sources of copyright
4 authorship and ownership information and, where appropriate, licensor
5 information;

6 “(cc) use of appropriate technology tools, printed publications, and
7 where reasonable, internal or external expert assistance; and

8 “(dd) use of appropriate databases, including databases that are
9 available to the public through the Internet; and

10 “(II) includes any actions that are reasonable and appropriate under the
11 facts relevant to the search, including actions based on facts known at the
12 start of the search and facts uncovered during the search, and including a
13 review, as appropriate, of Copyright Office records not available to the
14 public through the Internet that are reasonably likely to be useful in
15 identifying and locating the copyright owner.

16 “(iii) CONSIDERATION OF RECOMMENDED PRACTICES.—A qualifying search
17 under this subsection shall ordinarily be based on the applicable statement of
18 Recommended Practices made available by the Copyright Office.

19 “(iv) LACK OF IDENTIFYING OF INFORMATION.—Each of the following
20 circumstances shall not be considered to be sufficient to meet the conditions under
21 paragraph (1)(A)(i)(I):

22 “(I) A particular copy or phonorecord lacks identifying information
23 pertaining to the owner of the infringed copyright.

24 “(II) An owner of the infringed copyright fails to respond to any inquiry or
25 other communication about the work.

26 “(v) USE OF RESOURCES FOR CHARGE.—A qualifying search under paragraph
27 (1)(A)(i)(I) may require use of resources for which a charge or subscription is
28 imposed to the extent reasonable under the circumstances.

29 “(vi) EFFECT OF FOREIGN SEARCHES.—If a search is found to be qualifying
30 under the laws of a foreign jurisdiction, and this search is relied upon in part by a
31 U.S. infringer, a court may take this fact into account when determining whether
32 the United States search is qualifying, provided the foreign jurisdiction accepts
33 qualifying United States searches in a reciprocal manner.

34 “(B) INFORMATION TO GUIDE SEARCHES; RECOMMENDED PRACTICES.—

35 “(i) STATEMENTS OF RECOMMENDED PRACTICES.—

36 “(I) IN GENERAL.—The Register of Copyrights shall maintain and make
37 available to the public and, from time to time, update not less than 1
38 statement of Recommended Practices for each category, or, in the discretion
39 of the Register, subcategory of work under section 102(a), for conducting
40 and documenting a search under this subsection.

1 “(II) CONTENTS.— A statement under subclause (I) shall ordinarily
2 include reference to materials, resources, databases, and technology tools
3 that are relevant to a search.

4 “(III) ADDITIONAL STATEMENTS.—The Register of Copyrights may
5 maintain and make available more than 1 statement of Recommended
6 Practices for each category or subcategory, as appropriate.

7 “(ii) CONSIDERATION OF RELEVANT MATERIALS.—In maintaining and making
8 available and, from time to time, updating the Recommended Practices under
9 clause (i), the Register of Copyrights—

10 “(I) shall, in the discretion of the Register, consider materials, resources,
11 databases, technology tools, and practices that are reasonable and relevant to
12 the qualifying search; and

13 “(II) may consider any comments submitted to the Copyright Office by
14 any interested entities.

15 “(3) NOTICE OF USE ARCHIVE.—

16 “(A) IN GENERAL.—The Register of Copyrights shall create and maintain an archive
17 to retain the Notices of Use filed under paragraph (1)(A)(ii).

18 “(B) CONTENTS.—Each Notice of Use filed under paragraph (1)(A)(ii) shall
19 include—

20 “(i) the type of work being used, as described in section 102(a);

21 “(ii) a description of the work;

22 “(iii) a summary of the search conducted under paragraph (1)(A)(i)(I);

23 “(iv) the owner, author, recognized title, and other available identifying
24 element of the work to the extent the infringer knows such information with a
25 reasonable degree of certainty;

26 “(v) the source of the work, including the library or archive in which the work
27 was found, the publication in which the work originally appeared, the website
28 from which the work was taken, (including the url and the date the site was
29 accessed);

30 “(vi) a certification that the infringer performed a qualifying search in good
31 faith under this subsection to locate the owner of the infringed copyright; and

32 “(vii) the name of the infringer and how the work will be used.

33 “(C) AVAILABILITY.—A Notice of Use filed under paragraph (1)(A)(ii) and retained
34 under the control of the Copyright Office shall be made available to individuals or the
35 public only under the conditions specified by regulations of the Copyright Office.

36 “(4) PENALTY FOR FAILURE TO COMPLY.—If an infringer fails to comply with any
37 requirement under this subsection, the infringer shall not be eligible for a limitation on
38 remedies under this section.

39 “(c) Limitations on Remedies.—The limitations on remedies in an action for infringement of a

1 copyright to which this section applies are the following:

2 “(1) MONETARY RELIEF.—

3 “(A) IN GENERAL.—Subject to subparagraph (B), a court may not award monetary
4 relief (including actual damages, statutory damages, costs, and attorney’s fees), except
5 that the court may require the infringer to pay reasonable compensation to the owner of
6 the exclusive right under the infringed copyright for the use of the infringed work.

7 “(B) LIMITATIONS.—An order requiring the infringer to pay reasonable
8 compensation for the use of the infringed work may not be made under subparagraph
9 (A) if—

10 “(i) the infringer is a nonprofit educational institution, museum, library,
11 archives, or a public broadcasting entity (as such term is defined in section
12 118(f)), or any of such entities’ employees acting within the scope of their
13 employment; and

14 “(ii) the infringer proves by a preponderance of the evidence that—

15 “(I) the infringement was performed without any purpose of direct or
16 indirect commercial advantage;

17 “(II) the infringement was primarily educational, religious, or charitable in
18 nature; and

19 “(III) after receiving a notice of claim of infringement, and having an
20 opportunity to conduct an expeditious good faith investigation of the claim,
21 the infringer promptly ceased the infringement.

22 “(C) EFFECT OF REGISTRATION ON REASONABLE COMPENSATION.— If a work is
23 registered, the court may, in determining reasonable compensation under this
24 paragraph, take into account the value, if any, added to the work by reason of such
25 registration.

26 “(2) INJUNCTIVE RELIEF.—

27 “(A) IN GENERAL.—Except as provided in subparagraph (B)—

28 “(i) the court may impose injunctive relief to prevent or restrain any
29 infringement alleged in the civil action; and

30 “(ii) in the case of an infringer that has met the requirements of subsection (b),
31 the relief described in clause (i) shall, to the extent practicable and subject to
32 applicable law, account for any harm that the relief would cause the infringer due
33 to its reliance on subsection (b).

34 “(B) EXCEPTION.—

35 “(i) IN GENERAL.—In the case of an infringer, which is not a case described in
36 clause (ii), that has prepared or commenced preparation of a new work of
37 authorship that recasts, transforms, adapts, or integrates the infringed work with a
38 significant amount of original expression, any injunctive relief ordered by the
39 court may not restrain the infringer’s continued preparation or use of that new
40 work, if—

1 “(I) the infringer pays reasonable compensation in a reasonably timely
2 manner after the amount of such compensation has been agreed upon with
3 the owner of the infringed copyright or determined by the court; and

4 “(II) the court requires that the infringer provide attribution, in a manner
5 that is reasonable under the circumstances, to the legal owner of the
6 infringed copyright, if requested by such owner.

7 “(ii) CERTAIN CASES DESCRIBED.—For purposes of paragraph (1), a case
8 described in this subparagraph is a case in which the owner of the infringed
9 work—

10 “(I) is also an author of the work;

11 “(II) requests the injunctive relief described in subparagraph (A); and

12 “(III) alleges, and the court so finds, that the infringer’s continued and
13 intentional preparation or use of the new work would be prejudicial to the
14 owner’s honor or reputation, and this harm is not otherwise compensable.

15 “(C) LIMITATIONS.—The limitations on injunctive relief under subparagraphs (A)
16 and (B) may not be available to an infringer, or a representative of the infringer acting
17 in an official capacity, if the infringer asserts that neither the infringer nor any
18 representative of the infringer acting in an official capacity is subject to suit in the
19 courts of the United States for an award of damages for the infringement, unless the
20 court finds that the infringer—

21 “(i) has complied with the requirements of subsection (b); and

22 “(ii) pays reasonable compensation to the owner of the exclusive right under
23 the infringed copyright in a reasonably timely manner after the amount of
24 reasonable compensation has been agreed upon with the owner or determined by
25 the court.

26 “(D) RULE OF CONSTRUCTION.—Nothing in subparagraph (C) shall be construed to
27 authorize or require, and no action taken under such subparagraph shall be deemed to
28 constitute, either an award of damages by the court against the infringer or an
29 authorization to sue a State.

30 “(E) RIGHTS AND PRIVILEGES NOT WAIVED.—No action taken by an infringer under
31 subparagraph (C) shall be considered to waive any right or privilege that, as a matter of
32 law, protects the infringer from being subject to suit in the courts of the United States
33 for an award of damages.

34 “(d) Preservation of Other Rights, Limitations, and Defenses.—

35 “(1) IN GENERAL.—This section shall not affect any right, or any limitation or defense to
36 copyright infringement, including fair use, under this title.

37 “(2) EFFECT ON OTHER PROVISIONS.—In the case of another provision of this title that
38 provides for a statutory license that would permit the use contemplated by the infringer,
39 such other provision shall apply.

40 “(e) Copyright for Derivative Works and Compilations.—Notwithstanding section 103(a), an

1 infringer that qualifies for the limitation on remedies afforded by this section shall not be denied
2 copyright protection in a compilation or derivative work on the basis that such compilation or
3 derivative work employs preexisting material that has been used unlawfully under this section.

4 “(f) Exclusion for Fixations in or on Useful Articles.—The limitations on remedies under this
5 section shall not be available to an infringer for infringements resulting from fixation of a
6 pictorial, graphic, or sculptural work in or on a useful article that is offered for sale or other
7 commercial distribution to the public.”.

8 (b) Table of Sections Amendment.—The table of sections for chapter 5 of title 17, United
9 States Code, is amended by inserting after the item relating to section 513 the following:

10 “514. Limitation on remedies in cases involving orphan works.”.

11 (c) Effective Date.—The amendments made by this section shall take effect on [January 1,
12 20__].

13 SEC. 4. APPOINTMENT OF REGISTER OF COPYRIGHTS; 14 COPYRIGHT OFFICE RELOCATION.

15 (a) In General.—Section 701 of title 17, United States Code, is amended—

16 (1) by striking subsection (a) and inserting the following:

17 “(a) Establishment of Copyright Office.—

18 “(1) IN GENERAL.—The Copyright Office is established as an agency within the
19 Department of Commerce.

20 “(2) REGISTER OF COPYRIGHTS.—The Copyright Office shall be headed by the Register of
21 Copyrights, who—

22 “(A) shall be appointed by the President, by and with the advice and consent of the
23 Senate, for a 5-year term; and

24 “(B) shall be responsible for all administrative functions and duties under this title,
25 except as otherwise specified.

26 “(3) SUBORDINATE OFFICERS AND EMPLOYEES.—Each subordinate officer or employee of
27 the Copyright Office shall be appointed by, and act under the general direction and
28 supervision of, the Register of Copyrights.”; and

29 (2) by striking subsection (d) and inserting the following:

30 “(d) Relation to Deposit Requirements.—Nothing in paragraph (a) of this section shall be
31 construed to affect—

32 “(1) the deposit requirements under section 407 or 408;

33 (b) Conforming Amendments.—[conforming amendments throughout title 17, including
34 section 701, will need to be added.]

35 (c) Effective Date; Effect on Personnel.—

36 [(1) EFFECTIVE DATE.—The amendments made by this section shall take effect beginning
37 with the first appointment of an individual to serve as the Register of Copyrights on or after

1 the date of enactment of this Act.

2 (2) EFFECT ON PERSONNEL.—No individual who was employed by the Copyright Office
3 on the day before the date of enactment of this Act shall be separated or reduced in grade or
4 compensation because of the amendments made by this section.

5 SEC. 5. MODERNIZING CIRCUMVENTION EXEMPTIONS.

6 (a) In General.—Section 1201 of title 17, United States Code, is amended—

7 (1) in subsection (a)(1)—

8 (A) in subparagraph (B)—

9 (i) by striking “shall not apply to persons” and inserting the following: “shall
10 not apply to—

11 “(i) persons”; and

12 (ii) by striking the period at the end and inserting the following: “; or

13 “(ii) third-party assistance at the direction of an intended user, subject to
14 subparagraph (C).”;

15 (B) in subparagraph (C), in the matter preceding clause (i)—

16 (i) by striking “shall make the determination in a rulemaking proceeding for
17 purposes of subparagraph (B)” and inserting “shall make a determination in a
18 rulemaking proceeding for purposes of subparagraph (B)(i)”;

19 (ii) by striking “works.” and inserting the following: “works, and shall make a
20 determination in a rulemaking proceeding for purposes of subparagraph (B)(ii) of
21 whether third-party assistance at the direction of an intended user should be
22 exempt from the prohibition contained in subparagraph (A)”;

23 (iii) [by striking “In conducting such rulemaking” and inserting “In conducting
24 the rulemaking for purposes of subparagraph (B)(i)”;

25 (C) in subparagraph (D)—

26 (i) by inserting “(i)” after “(D)”;

27 (ii) in clause (i), as so designated, by inserting “for purposes of subparagraph
28 (B)(i)” after “subparagraph (C)”;

29 (iii) by adding at the end the following:

30 “(ii) If the Register of Copyrights determines, pursuant to the rulemaking conducted
31 under subparagraph (C) for purposes of subparagraph (B)(ii), that third-party assistance at
32 the direction of an intended user should be exempt from the prohibition contained in
33 subparagraph (A), the Register shall publish that determination and that prohibition shall
34 not apply to such third-party assistance for the ensuing 3-year period.”;

35 (D) in subparagraph (E), by striking “exception” and inserting “exceptions”; and

36 (E) by adding at the end the following:

37 “(F) Notwithstanding subparagraph (B), (C), or (D)—

1 “(i) the Register of Copyrights shall renew an exception described in clause (i) for
2 the succeeding 3-year period without additional documentation unless a party opposing
3 renewal files a good faith statement in opposition.

4 “(G)(i) Notwithstanding subparagraph (B), (C), or (D), the Register of Copyrights may
5 make permanent a temporary exception that has been—

6 “(I) adopted under subparagraph (C) for a 3-year period; and

7 “(II) renewed for the successive 3-year period under subparagraph (F) without
8 opposition.

9 “(iii) If the Register of Copyrights receives a good faith statement in opposition to a
10 temporary exception described in clause (i), the Register shall provide notice to the public
11 that the exception has reentered the rulemaking proceeding described in subsection (a)(1);

12 (2) in subsection (a)(2)—

13 (A) inserting

14 “(D) The Register of Copyrights may provide by regulation that this paragraph shall
15 not apply to the manufacture, importation, offering to the public, provision, or other
16 trafficking of a technology, product, service, device, component, or part thereof to the
17 intended user of an exemption under subsection (1).

18 (3) in subsection (b)—

19 (A) by redesignating paragraph (2) as paragraph (3); and

20 (B) by inserting in paragraph (1) the following:

21 “(D) The Register of Copyrights may provide by regulation that paragraph (1) shall not
22 apply to the manufacture, importation, offering to the public, provision, or other trafficking
23 of a technology, product, service, device, component, or part thereof to the intended user of
24 an exemption under subsection (1)”;

25 (3) in subsection (g)—

26 (A) in paragraph (2)—

27 (i) in subparagraph (B), by adding “and” at the end;

28 (ii) by striking subparagraph (C); and

29 (iii) by redesignating subparagraph (D) as subparagraph (C);

30 (B) in paragraph (3)—

31 (i) by striking subparagraph (A) and inserting the following:

32 “(A) whether the information derived from the encryption research was
33 disseminated, to the copyright owner, a research body, or the public, in a manner that
34 does not facilitate infringement and can improve encryption tools; and”;

35 (ii) in subparagraph (B), by striking “; and” and inserting a period; and

36 (iii) by striking subparagraph (C);

37 (4) in subsection (j)—

1 (A) by striking “Security Testing” and replacing with “Good-Faith Security
2 Research”

3 (B) by striking paragraphs (1), (2), and (3) and inserting the following:

4 “(1) DEFINITION.—For purposes of this section, the term ‘good-faith security research’
5 means accessing a computer program for purposes of good-faith testing, investigation, or
6 correction of a security flaw or vulnerability, if—

7 “(A) the activity is carried out in an environment designed to avoid harm to
8 individuals and the public; and

9 “(B) the information derived from the activity—

10 “(i) is used primarily to promote the security or safety of—

11 “(I) the class of devices or machines on which the computer program
12 operates; or

13 “(II) the individuals or entities that use the devices or machines described
14 in subclause (I); and

15 “(ii) is not used or maintained in a manner that facilitates copyright
16 infringement.

17 “(2) PERMISSIBLE ACTS OF GOOD-FAITH SECURITY RESEARCH—Notwithstanding the
18 provisions of subsection (a)(1)(A), it is not a violation of that subsection if the
19 circumvention of a computer program—

20 “(A) is undertaken on—

21 “(i) a lawfully acquired device or machine on which the computer program
22 operates; or

23 “(ii) a computer, computer system, or computer network on which the
24 computer program operates with the authorization of the owner or operator of the
25 computer, computer system, or computer network;

26 “(B) is undertaken solely for the purpose of good-faith security research; and

27 “(C) does not violate any applicable law, including section 1030 of title 18.

28 “(3) FACTORS IN DETERMINING EXEMPTION.—In determining whether a person qualifies
29 for the exemption under paragraph (2), the factors to be considered shall include—

30 “(A) whether the person used the information derived from the security testing
31 primarily to promote the security or safety of—

32 “(i) the class of devices or machines on which the computer program operates;
33 or

34 “(ii) those individuals or entities that use the devices or machines described in
35 clause (i); and

36 “(B) whether the person used the information derived from the security testing for
37 the purpose of facilitating copyright infringement.”; and

38 (B) in paragraph (4)—

1 (i) by striking “subsection (2)” and inserting “paragraph (2) of this subsection”;
2 and

3 (ii) by striking “section (a)(2)” and inserting “subsection (a)(2)”;

4 (iii) by striking “security testing” and inserting “good-faith security research”;
5 and

6 (5) by adding at the end the following:

7 “(l) Assistive Technologies Exemption.—Notwithstanding the provisions of subsections (a)
8 and (b), it is not a violation of this section for a person to circumvent a technological protection
9 measure or to provide assistance or a tool at the direction of the user for an activity that enables a
10 blind or visually impaired individual to utilize assistive technologies, to the extent that the
11 activity does not constitute infringement under this title.

12 “(m) Unlocking Mobile Devices.— Notwithstanding the provisions of subsections (a) and (b),
13 it is not a violation of this section for a person to circumvent a technological protection measure
14 or to provide assistance or a tool at the direction of the user for an activity that unlocks a mobile
15 device, to the extent that the activity does not constitute infringement under this title.

16 “(n) Technical Assistance for Computer Programs Exemption.— Notwithstanding the
17 provisions of subsections (a) and (b), it is not a violation of this section for a person to
18 circumvent a technological protection measure or to provide assistance or a tool at the direction
19 of the user for an activity that allows the diagnosis, repair, or maintenance of a computer
20 program, including to circumvent obsolete access controls, to the extent that the activity does not
21 constitute infringement under this title.”.

22 (b) Applicability.—The amendments to section 1201(a)(1) of title 17, United States Code,
23 made by subsection (a)(1) shall apply with respect to the first rulemaking under subparagraph
24 (C) of such section 1201(a)(1) that begins on or after the date of enactment of this Act.

25 SEC. 6. PROMOTING ATTRIBUTION THROUGH 26 COPYRIGHT MANAGEMENT INFORMATION.

27 (a) Integrity of Copyright Management Information.—Section 1202 of title 17, United States
28 Code, is amended—

29 (1) in subsection (a)—

30 (A) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B),
31 respectively, and adjusting the margins accordingly;

32 (B) by striking “No person” and inserting the following:

33 “(1) IN GENERAL.—No person”; and

34 (C) by adding at the end the following:

35 “(2) MENS REA REQUIREMENT.—For purposes of paragraph (1), the requirement that an
36 action be taken with intent to induce, enable, facilitate, or conceal infringement—

37 “(A) shall be satisfied by knowledge that the action is being taken and doing so
38 would encourage or facilitate infringement; and

1 “(B) does not require any pattern of conduct or modus operandi.”;
2 (2) in subsection (b)—
3 (A) by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C),
4 respectively, and adjusting the margins accordingly;
5 (B) by striking “No person” and inserting the following:
6 “(1) IN GENERAL.—No person”;
7 (C) by moving the undesignated matter following subparagraph (C), as so
8 redesignated, 2 ems to the right; and
9 (D) by adding at the end the following:
10 “(2) MENS REA REQUIREMENT.—For purposes of paragraph (1), the requirement that an
11 action be taken with knowledge, or reasonable grounds to know, that the action will induce,
12 enable, facilitate, or conceal infringement—
13 “(A) shall be satisfied by knowledge that the action is being taken and doing so
14 would encourage or facilitate infringement; and
15 “(B) does not require any pattern of conduct or modus operandi.”; and
16 (3) in subsection (c)—
17 (A) by redesignating paragraphs (1) through (8) as subparagraphs (A) through (H),
18 respectively, and adjusting the margins accordingly;
19 (B) by striking “As used in this section” and inserting the following:
20 “(1) IN GENERAL.—As used in this section”; and
21 (C) by adding at the end the following:
22 “(2) RULE OF CONSTRUCTION.—For purposes of paragraph (1), the term ‘including in
23 digital form’ shall not be construed to exclude information conveyed in forms other than
24 digital.”.
25 (b) Requirement for Non-authors to Affix Copyright Management Information.—
26 (1) IN GENERAL.—Chapter 12 of title 17, United States Code, is amended by inserting
27 after section 1202 the following:

28 **“1202A. Requirement for non-authors to affix copyright**
29 **management information**

30 “(a) Definition.—In this section, the term ‘copyright management information’ has the
31 meaning given the term in section 1202.
32 “(b) Requirement to Affix Information.—The copyright owner of a work who is not the author
33 of the work shall affix copyright management information to any digital copy of the work
34 reproduced or distributed by the copyright owner.
35 “(c) Right of Action for Authors.—If a person removes copyright information from, or alters
36 copyright management information conveyed in connection with, a digital or analog copy of a

1 copyrighted work with the intent to conceal the attribution information of the author of the work,
2 the author may bring a civil action against the person in an appropriation district court of the
3 United States, and may pursue remedies under section 1203 of this title”.

4 (2) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 12 of
5 title 17, United States Code, is amended by inserting after the item relating to section 1202
6 the following:

7 “1202A. Requirement for non-authors to affix copyright management information.”.

8 **SEC. 7. COPYRIGHT ALTERNATIVES IN SMALL-CLAIMS** 9 **ENFORCEMENT ACT.**

10 (a) Copyright Small Claims.—

11 (1) IN GENERAL.—Title 17, United States Code, is amended by adding at the end the
12 following:

13 **“CHAPTER 15—COPYRIGHT SMALL CLAIMS**

14 “1501.Definitions.

15 “1502.Copyright Claims Board.

16 “1503.Authority and duties of the Copyright Claims Board.

17 “1504.Nature of proceedings.

18 “1505.Registration requirement.

19 “1506.Conduct of proceedings.

20 “1507.Effect of proceeding.

21 “1508.Review and confirmation by district court.

22 “1509.Relationship to other district court actions.

23 “1510.Implementation by Copyright Office.

24 “1511.Funding.

25 **“1501. Definitions**

26 “In this chapter—

27 “(1) the term ‘claimant’ means the real party in interest that commences a proceeding
28 before the Copyright Claims Board under section 1506(e), pursuant to a permissible claim
29 of infringement brought under section 1504(c)(1), noninfringement brought under section
30 1504(c)(2), or misrepresentation brought under section 1504(c)(3);

31 “(2) the term ‘counterclaimant’ means a respondent in a proceeding before the Copyright
32 Claims Board that—

33 (A) asserts a permissible counterclaim under section 1504(c)(4) against the
34 claimant in the proceeding; and

1 “(B) is the real party in interest with respect to the counterclaim described in
2 subparagraph (A);

3 “(3) the term ‘party’—

4 “(A) means a party; and

5 “(B) includes the attorney of a party, as applicable; and

6 “(4) the term ‘respondent’ means any person against whom a proceeding is brought
7 before the Copyright Claims Board under section 1506(e), pursuant to a permissible claim
8 of infringement brought under section 1504(c)(1), noninfringement brought under section
9 1504(c)(2), or misrepresentation brought under section 1504(c)(3).

10 “1502. Copyright Claims Board

11 “(a) In General.—There is established in the Copyright Office the Copyright Claims Board,
12 which shall serve as an alternative forum in which parties may voluntarily seek to resolve certain
13 copyright claims regarding any category of copyrighted work, as provided in this chapter.

14 “(b) Officers and Staff.—

15 “(1) COPYRIGHT CLAIMS OFFICERS.—The Register of Copyrights shall recommend 6 full-
16 time Copyright Claims Officers to serve on the Copyright Claims Board in accordance with
17 paragraph (3)(A). The Officers shall be appointed by the [Secretary of Commerce] to such
18 positions after consultation with the Register of Copyrights.

19 “(2) COPYRIGHT CLAIMS ATTORNEYS.—The Register of Copyrights shall hire not fewer
20 than 6 full-time Copyright Claims Attorneys to assist in the administration of the Copyright
21 Claims Board.

22 “(3) QUALIFICATIONS.—

23 “(A) COPYRIGHT CLAIMS OFFICERS.—

24 “(i) IN GENERAL.—Each Copyright Claims Officer shall be an attorney who has
25 not fewer than 7 years of legal experience.

26 “(ii) EXPERIENCE.—Four of the Copyright Claims Officers shall—

27 “(I) have substantial experience in the evaluation, litigation, or
28 adjudication of copyright infringement claims; and

29 “(II) between those 4 Officers, have represented or presided over a
30 diversity of copyright interests, including those of both owners and users of
31 copyrighted works.

32 “(iii) ALTERNATIVE DISPUTE RESOLUTION.—The Copyright Claims Officer not
33 described in clause (ii) shall have substantial familiarity with copyright law and
34 experience in the field of alternative dispute resolution, including the resolution of
35 litigation matters through that method of resolution.

36 “(B) COPYRIGHT CLAIMS ATTORNEYS.—Each Copyright Claims Attorney shall be an
37 attorney who has not fewer than 3 years of substantial experience in copyright law.

38 “(4) COMPENSATION.—

1 “(A) COPYRIGHT CLAIMS OFFICERS.—

2 “(i) DEFINITION.—In this subparagraph, the term ‘senior level employee of the
3 Federal Government’ means an employee, other than an employee in the Senior
4 Executive Service, the position of whom is classified above GS–15 of the General
5 Schedule.

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

10 “(B) COPYRIGHT CLAIMS ATTORNEYS.—Each Copyright Claims Attorney shall be
11 compensated at a rate of pay that is not more than the maximum rate of pay payable for
12 level 10 of GS–15 of the General Schedule, including locality pay, as applicable.

13 “(5) TERMS.—

14 “(A) IN GENERAL.—Subject to subparagraph (B), a Copyright Claims Officer shall
15 serve for a renewable term of 6 years.

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

18 “(i) The first two such Copyright Claims Officer appointed shall be appointed
19 for a term of 4 years.

20 “(ii) The second pair of Copyright Claims Officer appointed shall be appointed
21 for a term of 5 years.

22 “(iii) The third pair of Copyright Claims Officer appointed shall be appointed
23 for a term of 6 years.

24 “(6) VACANCIES AND INCAPACITY.—

25 “(A) VACANCY.—

26 “(i) IN GENERAL.—If a vacancy occurs in the position of a Copyright Claims
27 Officer, the [Secretary of Commerce] shall, upon the recommendation of, and in
28 consultation with, the Register of Copyrights, act expeditiously to appoint a
29 Copyright Claims Officer for that position.

30 “(ii) VACANCY BEFORE EXPIRATION.—An individual appointed to fill a vacancy
31 occurring before the expiration of the term for which the predecessor of the
32 individual was appointed shall be appointed to serve a 6-year term.

33 “(B) INCAPACITY.—If a Copyright Claims Officer is temporarily unable to perform
34 the duties of the Officer, the [Secretary of Commerce] shall, upon recommendation of,
35 and in consultation with, the Register of Copyrights, act expeditiously to appoint an
36 interim Copyright Claims Officer to perform such duties during the period of such
37 incapacity.

38 “(7) SANCTION OR REMOVAL.—Subject to section 1503(b), the [Secretary of Commerce]
39 may sanction or remove a Copyright Claims Officer.

40 “(8) ADMINISTRATIVE SUPPORT.—The Register of Copyrights shall provide the Copyright

1 Claims Officers and Copyright Claims Attorneys with necessary administrative support,
2 including technological facilities, to carry out the duties of the Officers and Attorneys under
3 this chapter.

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

7 “1503. Authority and duties of the Copyright Claims Board

8 “(a) Functions.—

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

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

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

15 “(C) To manage the proceedings before the Officers and render rulings pertaining to
16 the consideration of claims, counterclaims, and defenses, including with respect to
17 scheduling, discovery, evidentiary, and other matters.

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

21 “(E) To conduct hearings and conferences.

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

23 “(G) To—

24 “(i) award monetary relief; and

25 “(ii) include in the determinations of the Officers a requirement that certain
26 activities under section 1504(e)(2) cease or be mitigated, if the party to undertake
27 the applicable measure has so agreed.

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

30 “(I) To maintain records of the proceedings before the Officers, certify official
31 records of such proceedings as needed, and, as provided in section 1506(t), make the
32 records in such proceedings available to the public.

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

34 “(K) When not engaged in performing the duties of the Officers set forth in this
35 chapter, to perform such other duties as may be assigned by the Register of Copyrights.

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

38 “(A) To provide assistance to the Copyright Claims Officers in the administration of

1 the duties of those Officers under this chapter.

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

4 “(C) To provide information to potential claimants contemplating bringing a
5 permissible action before the Copyright Claims Board about obtaining a subpoena
6 under section 512(h) for the sole purpose of identifying a potential respondent in such
7 an action.

8 “(D) When not engaged in performing the duties of the Attorneys set forth in this
9 chapter, to perform such other duties as may be assigned by the Register of Copyrights.

10 “(b) Independence in Determinations.—

11 “(1) IN GENERAL.—The Copyright Claims Board shall render the determinations of the
12 Board in individual proceedings independently on the basis of the records in the
13 proceedings before it and in accordance with the provisions of this title, judicial precedent,
14 and applicable regulations of the Register of Copyrights.

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

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

18 “(B) subject to section 1506(x), may not consult with the Register of Copyrights
19 with respect to—

20 “(i) the facts of any particular matter pending before the Officers and the
21 Attorneys; or

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

23 “(3) PERFORMANCE APPRAISALS.—Notwithstanding any other provision of law or any
24 regulation or policy of the [Department of Commerce] or Register of Copyrights, any
25 performance appraisal of a Copyright Claims Officer or Copyright Claims Attorney may not
26 consider the substantive result of any individual determination reached by the Copyright
27 Claims Board as a basis for appraisal except to the extent that the result may relate to any
28 actual or alleged violation of an ethical standard of conduct.

29 “(c) Direction by Register.—Subject to subsection (b), the Copyright Claims Officers and
30 Copyright Claims Attorneys shall, in the administration of their duties, be under the general
31 direction of the Register of Copyrights.

32 “(d) Inconsistent Duties Barred.—A Copyright Claims Officer or Copyright Claims Attorney
33 may not undertake any duty that conflicts with the duties of the Officer or Attorney in connection
34 with the Copyright Claims Board.

35 “(e) Recusal.—A Copyright Claims Officer or Copyright Claims Attorney shall recuse himself
36 or herself from participation in any proceeding with respect to which the Copyright Claims
37 Officer or Copyright Claims Attorney, as the case may be, has reason to believe that he or she
38 has a conflict of interest.

39 “(f) Ex Parte Communications.—Except as may otherwise be permitted by applicable law, any
40 party to a proceeding before the Copyright Claims Board shall refrain from ex parte

1 communications with the Copyright Claims Officers and the Register of Copyrights concerning
2 the substance of any active or pending proceeding before the Copyright Claims Board.

3 “(g) Judicial Review.—Actions of the Copyright Claims Officers and Register of Copyrights
4 under this chapter in connection with the rendering of any determination are subject to judicial
5 review as provided under section 1508(c) and not under chapter 7 of title 5.

6 “1504. Nature of proceedings

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

11 “(b) Statute of Limitations.—

12 “(1) IN GENERAL.—A proceeding may not be maintained before the Copyright Claims
13 Board unless the proceeding is commenced, in accordance with section 1506(e), before the
14 Copyright Claims Board not later than 3 years after the claim accrued.

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

19 “(c) Permissible Claims, Counterclaims, and Defenses.—The Copyright Claims Board may
20 render determinations with respect to the following claims, counterclaims, and defenses, subject
21 to such further limitations and requirements, including with respect to particular classes of
22 works, as may be set forth in regulations established by the Register of Copyrights:

23 “(1) A claim for infringement of an exclusive right in a copyrighted work provided under
24 section 106 by the legal or beneficial owner of the exclusive right at the time of the
25 infringement for which the claimant seeks damages, if any, within the limitations set forth
26 in subsection (e)(1).

27 “(2) A claim for a declaration of noninfringement of an exclusive right in a copyrighted
28 work provided under section 106, consistent with section 2201 of title 28.

29 “(3) A claim under section 512(f) for misrepresentation in connection with a notification
30 of claimed infringement or a counter notification seeking to replace removed or disabled
31 material, except that any remedies relating to such a claim in a proceeding before the
32 Copyright Claims Board shall be limited to those available under this chapter.

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

34 “(A) pursuant to which the counterclaimant seeks damages, if any, within the
35 limitations set forth in subsection (e)(1); and

36 “(B) that—

37 “(i) arises under section 106 or section 512(f) and out of the same transaction or
38 occurrence that is the subject of a claim of infringement brought under paragraph
39 (1), a claim of noninfringement brought under paragraph (2), or a claim of
40 misrepresentation brought under paragraph (3); or

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

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

6 “(6) A single claim or multiple claims permitted under paragraph (1), (2), or (3) by 1 or
7 more claimants against 1 or more respondents, but only if all claims asserted in any 1
8 proceeding arise out of the same allegedly infringing activity or continuous course of
9 infringing activities and do not, in the aggregate, result in the recovery of such claim or
10 claims for damages that exceed the limitations under subsection (e)(1).

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

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

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

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

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

23 “(e) Permissible Remedies.—

24 “(1) MONETARY RECOVERY.—

25 “(A) ACTUAL DAMAGES, PROFITS, AND STATUTORY DAMAGES FOR INFRINGEMENT.—
26 With respect to a claim or counterclaim for infringement of copyright, and subject to
27 the limitation on total monetary recovery under subparagraph (D), the Copyright
28 Claims Board may award either of the following:

29 “(i) Actual damages and profits determined in accordance with section 504(b),
30 with that award taking into consideration, in appropriate cases, whether the
31 infringing party has agreed to cease or mitigate the infringing activity under
32 paragraph (2).

33 “(ii) Statutory damages, which shall be determined in accordance with section
34 504(c), subject to the following conditions:

35 “(I) With respect to works timely registered under section 412, so that the
36 works are eligible for an award of statutory damages in accordance with that
37 section, the statutory damages may not exceed \$15,000 for each work
38 infringed.

39 “(II) With respect to works not timely registered under section 412, but
40 eligible for an award of statutory damages under this section, statutory

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

3 “(III) The Copyright Claims Board may not make any finding that, or
4 consider whether, the infringement was committed willfully in making an
5 award of statutory damages.

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

9 “(B) ELECTION OF DAMAGES.—With respect to a claim or counterclaim of
10 infringement, at any time before final determination is rendered, the claimant or
11 counterclaimant shall, in accordance with the schedule established by the Copyright
12 Claims Board under section 1506(k), elect—

13 “(i) to pursue actual damages and profits or statutory damages under
14 subparagraph (A); or

15 “(ii) not to pursue damages.

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

19 “(D) LIMITATION ON TOTAL MONETARY RECOVERY.—Notwithstanding any other
20 provision of law, a party that pursues any 1 or more claims or counterclaims in any
21 single proceeding before the Copyright Claims Board may not seek or recover in that
22 proceeding a total monetary recovery that exceeds the sum of \$30,000, exclusive of
23 any attorneys’ fees and costs that may be awarded under section 1506(y)(2).

24 “(2) AGREEMENT TO CEASE CERTAIN ACTIVITY.—In a determination of the Copyright
25 Claims Board, the Board shall include a requirement to cease conduct if, in the proceeding
26 relating to the determination—

27 “(A) a party agrees—

28 “(i) to cease activity that is found to be infringing, including removing or
29 disabling access to, or destroying, infringing materials; or

30 “(ii) to cease sending a takedown notice or counter notice under section 512 to
31 the other party regarding the conduct at issue before the Board if that notice or
32 counter notice was found to be a knowing material misrepresentation under
33 section 512(f); and

34 “(B) the agreement described in subparagraph (A) is reflected in the record for the
35 proceeding.

36 “(3) ATTORNEYS’ FEES AND COSTS.—Notwithstanding any other provision of law, except
37 in the case of bad faith conduct as provided in section 1506(y)(2), the parties to proceedings
38 before the Copyright Claims Board shall bear their own attorneys’ fees and costs.

39 “(f) Joint and Several Liability.—Parties to a proceeding before the Copyright Claims Board
40 may be found jointly and severally liable if all such parties and relevant claims or counterclaims

1 arise from the same activity or activities.

2 “(g) Permissible Number of Cases.—The Register of Copyrights may establish regulations
3 relating to the permitted number of proceedings each year by the same claimant under this
4 chapter, in the interests of justice and the administration of the Copyright Claims Board.

5 “1505. Registration requirement

6 “(a) Application or Certificate.—A claim or counterclaim alleging infringement of an
7 exclusive right in a copyrighted work may not be asserted before the Copyright Claims Board
8 unless—

9 “(1) the legal or beneficial owner of the copyright has first delivered a completed
10 application, a deposit, and the required fee for registration of the copyright to the Copyright
11 Office; and

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

13 “(b) Certificate of Registration.—Notwithstanding any other provision of law, a claimant or
14 counterclaimant in a proceeding before the Copyright Claims Board shall be eligible to recover
15 actual damages and profits or statutory damages under this chapter for infringement of a work if
16 the requirements of subsection (a) have been met, except that—

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

19 “(A) a registration certificate with respect to the work has been issued by the
20 Copyright Office, submitted to the Copyright Claims Board, and made available to the
21 other parties to the proceeding; and

22 “(B) the other parties to the proceeding have been provided an opportunity to
23 address the registration certificate;

24 “(2) if the proceeding may not proceed further because a registration certificate for the
25 work is pending, the proceeding shall be held in abeyance pending submission of the
26 certificate to the Copyright Claims Board, except that, if the proceeding is held in abeyance
27 for more than 1 year, the Copyright Claims Board may, upon providing written notice to the
28 parties to the proceeding, and 30 days to the parties to respond to the notice, dismiss the
29 proceeding without prejudice; and

30 “(3) if the Copyright Claims Board receives notice that registration with respect to the
31 work has been refused, the proceeding shall be dismissed without prejudice.

32 “(c) Presumption.—In a case in which a registration certificate shows that registration with
33 respect to a work was issued not later than 5 years after the date of the first publication of the
34 work, the presumption under section 410(c) shall apply in a proceeding before the Copyright
35 Claims Board, in addition to relevant principles of law under this title.

36 “(d) Regulations.—In order to ensure that actions before the Copyright Claims Board proceed
37 in a timely manner, the Register of Copyrights shall establish regulations allowing the Copyright
38 Office to make a decision, on an expedited basis, to issue or deny copyright registration for an
39 unregistered work that is at issue before the Board.

1 “1506. Conduct of proceedings

2 “(a) In General.—

3 “(1) APPLICABLE LAW.—Proceedings of the Copyright Claims Board shall be conducted
4 in accordance with this chapter and regulations established by the Register of Copyrights
5 under this chapter, in addition to relevant principles of law under this title.

6 “(2) CONFLICTING PRECEDENT.—If it appears that there may be conflicting judicial
7 precedent on an issue of substantive copyright law that cannot be reconciled, the Copyright
8 Claims Board shall follow the law of the Federal jurisdiction in which the action could have
9 been brought if filed in a district court of the United States, or, if the action could have been
10 brought in more than 1 such jurisdiction, the jurisdiction that the Copyright Claims Board
11 determines has the most significant ties to the parties and conduct at issue.

12 “(b) Record.—The Copyright Claims Board shall maintain records documenting the
13 proceedings before the Board.

14 “(c) Centralized Process.—Proceedings before the Copyright Claims Board shall—

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

17 “(2) take place by means of written submissions, hearings, and conferences carried out
18 through internet-based applications and other telecommunications facilities, except that, in
19 cases in which physical or other nontestimonial evidence material to a proceeding cannot be
20 furnished to the Copyright Claims Board through available telecommunications facilities,
21 the Copyright Claims Board may make alternative arrangements for the submission of such
22 evidence that do not prejudice any other party to the proceeding.

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

25 “(1) an attorney; or

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

29 “(e) Commencement of Proceeding.—In order to commence a proceeding under this chapter, a
30 claimant shall, subject to such additional requirements as may be prescribed in regulations
31 established by the Register of Copyrights, file a claim with the Copyright Claims Board, that—

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

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

34 “(3) is accompanied by a filing fee in such amount as may be prescribed in regulations
35 established by the Register of Copyrights.

36 “(f) Review of Claims and Counterclaims.—

37 “(1) CLAIMS.—Upon the filing of a claim under subsection (e), the claim shall be
38 reviewed by a Copyright Claims Attorney to ensure that the claim complies with this
39 chapter and applicable regulations, subject to the following:

1 “(A) If the claim is found to comply, the claimant shall be notified regarding that
2 compliance and instructed to proceed with service of the claim under subsection (g).

3 “(B) If the claim is found not to comply, the claimant shall be notified that the claim
4 is deficient and be permitted to file an amended claim not later than 30 days after the
5 date on which the claimant receives the notice, without the requirement of an
6 additional filing fee. If the claimant files a compliant claim within that 30-day period,
7 the claimant shall be so notified and be instructed to proceed with service of the claim.
8 If the claim is refiled within that 30-day period and still fails to comply, the claimant
9 shall again be notified that the claim is deficient and shall be provided a second
10 opportunity to amend the claim not later than 30 days after the date of that second
11 notice, without the requirement of an additional filing fee. If the claim is refiled again
12 within that second 30-day period and is compliant, the claimant shall be so notified and
13 shall be instructed to proceed with service of the claim, but if the claim still fails to
14 comply, upon confirmation of such noncompliance by a Copyright Claims Officer, the
15 proceeding shall be dismissed without prejudice. The Copyright Claims Board shall
16 also dismiss without prejudice any proceeding in which a compliant claim is not filed
17 within the applicable 30-day period.

18 “(C)(i) Subject to clause (ii), for purposes of this paragraph, a claim against an
19 online service provider for infringement by reason of the storage of or referral or
20 linking to infringing material that may be subject to the limitations on liability set forth
21 in subsection (b), (c), or (d) of section 512 shall be considered noncompliant unless the
22 claimant affirms in the statement required under subsection (e)(1) of this section that
23 the claimant has previously notified the service provider of the claimed infringement in
24 accordance with subsection (b)(2)(E), (c)(3), or (d)(3) of section 512, as applicable,
25 and the service provider failed to remove or disable access to the material
26 expeditiously upon the provision of such notice.

27 “(ii) If a claim is found to be noncompliant under clause (i), the Copyright Claims
28 Board shall provide the claimant with information concerning the service of such a
29 notice under the applicable provision of section 512.

30 “(2) COUNTERCLAIMS.—Upon the filing and service of a counterclaim, the counterclaim
31 shall be reviewed by a Copyright Claims Attorney to ensure that the counterclaim complies
32 with the provisions of this chapter and applicable regulations. If the counterclaim is found
33 not to comply, the counterclaimant and the other parties to the proceeding shall be notified
34 that the counterclaim is deficient, and the counterclaimant shall be permitted to file and
35 serve an amended counterclaim not later than 30 days after the date of such notice. If the
36 counterclaimant files and serves a compliant counterclaim within that 30-day period, the
37 counterclaimant and such other parties shall be so notified. If the counterclaim is refiled and
38 served within that 30-day period but still fails to comply, the counterclaimant and such
39 other parties shall again be notified that the counterclaim is deficient, and the
40 counterclaimant shall be provided a second opportunity to amend the counterclaim not later
41 than 30 days after the date of the second notice. If the counterclaim is refiled and served
42 again within that second 30-day period and is compliant, the counterclaimant and such other
43 parties shall be so notified, but if the counterclaim still fails to comply, upon confirmation
44 of such noncompliance by a Copyright Claims Officer, the counterclaim, but not the
45 proceeding, shall be dismissed without prejudice.

1 “(3) DISMISSAL OF UNSUITABILITY.—The Copyright Claims Board shall dismiss a claim
2 or counterclaim without prejudice if, upon reviewing the claim or counterclaim, or at any
3 other time in the proceeding, the Copyright Claims Board concludes that the claim or
4 counterclaim is unsuitable for determination by the Copyright Claims Board, including on
5 account of any of the following:

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

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

8 “(C) The determination of a relevant issue of law or fact that could exceed either the
9 number of proceedings the Copyright Claims Board could reasonably administer or the
10 subject matter competence of the Copyright Claims Board.

11 “(g) Service of Notice and Claims.—In order to proceed with a claim against a respondent, a
12 claimant shall, not later than 90 days after receiving notification under subsection (f) to proceed
13 with service, file with the Copyright Claims Board proof of service on the respondent. In order to
14 effectuate service on a respondent, the claimant shall cause notice of the proceeding and a copy
15 of the claim to be served on the respondent, either by personal service or pursuant to a waiver of
16 personal service, as prescribed in regulations established by the Register of Copyrights. Such
17 regulations shall include the following requirements:

18 “(1) The notice of the proceeding shall adhere to a prescribed form and shall set forth the
19 nature of the Copyright Claims Board and proceeding, the right of the respondent to opt out,
20 and the consequences of opting out and not opting out, including a prominent statement
21 that, by not opting out within 60 days after receiving the notice, the respondent—

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

24 “(B) waives the right to a jury trial regarding the dispute.

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

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

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

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

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

33 “(C) leaving a copy of the notice and claim at the individual’s dwelling or usual
34 place of abode with someone of suitable age and discretion who resides there; or

35 “(D) delivering a copy of the notice and claim to an agent designated by the
36 respondent to receive service of process or, if not so designated, an agent authorized by
37 appointment or by law to receive service of process.

38 “(5)(A) A corporation, partnership, or unincorporated association that is subject to suit in
39 courts of general jurisdiction under a common name shall be served by delivering a copy of
40 the notice and claim to its service agent. If such service agent has not been designated,

1 service shall be accomplished—

2 “(i) by complying with State law for serving a summons in an action brought in
3 courts of general jurisdiction in the State where service is made; or

4 “(ii) by delivering a copy of the notice and claim to an officer, a managing or
5 general agent, or any other agent authorized by appointment or by law to receive
6 service of process in an action brought in courts of general jurisdiction in the State
7 where service is made and, if the agent is one authorized by statute and the statute so
8 requires, by also mailing a copy of the notice and claim to the respondent.

9 “(B) A corporation, partnership, or unincorporated association that is subject to suit in
10 courts of general jurisdiction under a common name may elect to designate a service agent
11 to receive notice of a claim against it before the Copyright Claims Board by complying with
12 requirements that the Register of Copyrights shall establish by regulation. The Register of
13 Copyrights shall maintain a current directory of service agents that is available to the public
14 for inspection, including through the internet, and may require such corporations,
15 partnerships, and unincorporated associations designating such service agents to pay a fee to
16 cover the costs of maintaining the directory.

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

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

25 “(B) The request shall state the date on which the request is sent, and shall provide
26 the respondent a period of 30 days, beginning on the date on which the request is sent,
27 to return the waiver form signed by the respondent. The signed waiver form shall, for
28 purposes of this subsection, constitute acceptance and proof of service as of the date on
29 which the waiver is signed.

30 “(7)(A) A respondent’s waiver of personal service shall not constitute a waiver of the
31 respondent’s right to opt out of the proceeding.

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

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

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

41 “(h) Notification by Copyright Claims Board.—The Register of Copyrights shall establish
42 regulations providing for a written notification to be sent by, or on behalf of, the Copyright

1 Claims Board to notify the respondent of a pending proceeding against the respondent, as set
2 forth in those regulations, which shall—

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

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

11 “(i) Opt-Out Procedure.—Upon being properly served with a notice and claim, a respondent
12 who chooses to opt out of the proceeding shall have a period of 60 days, beginning on the date of
13 service, in which to provide written notice of such choice to the Copyright Claims Board, in
14 accordance with regulations established by the Register of Copyrights. If proof of service has
15 been filed by the claimant and the respondent does not submit an opt-out notice to the Copyright
16 Claims Board within that 60-day period, the proceeding shall be deemed an active proceeding
17 and the respondent shall be bound by the determination in the proceeding to the extent provided
18 under section 1507(a). If the respondent opts out of the proceeding during that 60-day period, the
19 proceeding shall be dismissed without prejudice, except that, in exceptional circumstances and
20 upon written notice to the claimant, the Copyright Claims Board may extend that 60-day period
21 in the interests of justice.

22 “(j) Service of Other Documents.—Documents submitted or relied upon in a proceeding, other
23 than the notice and claim, shall be served in accordance with regulations established by the
24 Register of Copyrights.

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

29 “(l) Conferences.—One or more Copyright Claims Officers may hold a conference to address
30 case management or discovery issues in a proceeding, which shall be noted upon the record of
31 the proceeding and may be recorded or transcribed.

32 “(m) Party Submissions.—A proceeding of the Copyright Claims Board may not include any
33 formal motion practice, except that, subject to applicable regulations and procedures of the
34 Copyright Claims Board—

35 “(1) the parties to the proceeding may make requests to the Copyright Claims Board to
36 address case management and discovery matters, and submit responses thereto; and

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

40 “(n) Discovery.—Discovery in a proceeding shall be limited to the production of relevant
41 information and documents, written interrogatories, and written requests for admission, as
42 provided in regulations established by the Register of Copyrights, except that—

1 “(1) upon the request of a party, and for good cause shown, the Copyright Claims Board
2 may approve additional relevant discovery, on a limited basis, in particular matters, and
3 may request specific information and documents from participants in the proceeding and
4 voluntary submissions from nonparticipants, consistent with the interests of justice;

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

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

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

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

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

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

25 “(1) Any such hearing shall be attended by not fewer than 2 of the Copyright Claims
26 Officers.

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

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

32 “(q) Voluntary Dismissal.—

33 “(1) BY CLAIMANT.—Upon the written request of a claimant that is received before a
34 respondent files a response to the claim in a proceeding, the Copyright Claims Board shall
35 dismiss the proceeding, or a claim or respondent, as requested, without prejudice.

36 “(2) BY COUNTERCLAIMANT.—Upon written request of a counterclaimant that is received
37 before a claimant files a response to the counterclaim, the Copyright Claims Board shall
38 dismiss the counterclaim, such dismissal to be without prejudice.

39 “(3) CLASS ACTIONS.—Any party in an active proceeding before the Copyright Claims
40 Board who receives notice of a pending or putative class action, arising out of the same
41 transaction or occurrence, in which that party is a class member may request in writing

1 dismissal of the proceeding before the Board. Upon notice to all claimants and
2 counterclaimants, the Copyright Claims Board shall dismiss the proceeding without
3 prejudice.

4 “(r) Settlement.—

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

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

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

10 “(2) ADDITIONAL REQUEST.—A submission under paragraph (1)(B) may include a request
11 that the Copyright Claims Board adopt some or all of the terms of the parties’ settlement in
12 a final determination in the proceeding.

13 “(s) Factual Findings.—Subject to subsection (n)(3), the Copyright Claims Board shall make
14 factual findings based upon a preponderance of the evidence.

15 “(t) Determinations.—

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

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

19 “(B) be in writing, and include an explanation of the factual and legal basis of the
20 determination;

21 “(C) set forth any terms by which a respondent or counterclaim respondent has
22 agreed to cease infringing activity under section 1504(e)(2);

23 “(D) to the extent requested under subsection (r)(2), set forth the terms of any
24 settlement agreed to under subsection (r)(1); and

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

27 “(2) DISSENT.—A Copyright Claims Officer who dissents from a decision contained in a
28 determination under paragraph (1) may append a statement setting forth the grounds for that
29 dissent.

30 “(3) PUBLICATION.—Each final determination of the Copyright Claims Board shall be
31 made available on a publicly accessible website. The Register shall establish regulations
32 with respect to the publication of other records and information relating to such
33 determinations, including the redaction of records to protect confidential information that is
34 the subject of a protective order under subsection (n)(2).

35 “(4) FREEDOM OF INFORMATION ACT.—All information relating to proceedings of the
36 Copyright Claims Board under this chapter is exempt from disclosure to the public under
37 section 552(b)(3) of title 5, except for determinations, records, and information published
38 under paragraph (3).

39 “(u) Respondent’s Default.—If a proceeding has been deemed an active proceeding but the

1 respondent has failed to appear or has ceased participating in the proceeding, as demonstrated by
2 the respondent's failure, without justifiable cause, to meet 1 or more deadlines or requirements
3 set forth in the schedule adopted by the Copyright Claims Board under subsection (k), the
4 Copyright Claims Board may enter a default determination, including the dismissal of any
5 counterclaim asserted by the respondent, as follows and in accordance with such other
6 requirements as the Register of Copyrights may establish by regulation:

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

13 “(2) If the Copyright Claims Board makes an affirmative determination under paragraph
14 (1), the Copyright Claims Board shall prepare a proposed default determination, and shall
15 provide written notice to the respondent at all addresses, including email addresses,
16 reflected in the records of the proceeding before the Copyright Claims Board, of the
17 pendency of a default determination by the Copyright Claims Board and of the legal
18 significance of such determination. Such notice shall be accompanied by the proposed
19 default determination and shall provide that the respondent has a period of 30 days,
20 beginning on the date of the notice, to submit any evidence or other information in
21 opposition to the proposed default determination.

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

27 “(4) If the respondent fails to respond to the notice provided under paragraph (2), the
28 Copyright Claims Board shall proceed to issue the default determination as a final
29 determination. Thereafter, the respondent may only challenge such determination to the
30 extent permitted under section 1508(c), except that, before any additional proceedings are
31 initiated under section 1508, the Copyright Claims Board may, in the interests of justice,
32 vacate the default determination.

33 “(v) Claimant's Failure To Proceed.—

34 “(1) FAILURE TO COMPLETE SERVICE.—If a claimant fails to complete service on a
35 respondent within the 90-day period required under subsection (g), the Copyright Claims
36 Board shall dismiss that respondent from the proceeding without prejudice. If a claimant
37 fails to complete service on all respondents within that 90-day period, the Copyright Claims
38 Board shall dismiss the proceeding without prejudice.

39 “(2) FAILURE TO PROSECUTE.—If a claimant fails to proceed in an active proceeding, as
40 demonstrated by the claimant's failure, without justifiable cause, to meet 1 or more
41 deadlines or requirements set forth in the schedule adopted by the Copyright Claims Board
42 under subsection (k), the Copyright Claims Board may, upon providing written notice to the
43 claimant and a period of 30 days, beginning on the date of the notice, to respond to the

1 notice, and after considering any such response, issue a determination dismissing the
2 claimant's claims, which shall include an award of attorneys' fees and costs, if appropriate,
3 under subsection (y)(2). Thereafter, the claimant may only challenge such determination to
4 the extent permitted under section 1508(c), except that, before any additional proceedings
5 are initiated under section 1508, the Copyright Claims Board may, in the interests of justice,
6 vacate the determination of dismissal.

7 “(w) Request for Reconsideration.—A party may, not later than 30 days after the date on
8 which the Copyright Claims Board issues a final determination in a proceeding under this
9 chapter, submit a written request for reconsideration of, or an amendment to, such determination
10 if the party identifies a clear error of law or fact material to the outcome, or a technical mistake.
11 After providing the other parties an opportunity to address such request, the Copyright Claims
12 Board shall either deny the request or issue an amended final determination.

13 “(x) Review by Register.—If the Copyright Claims Board denies a party a request for
14 reconsideration of a final determination under subsection (w), that party may, not later than 30
15 days after the date of such denial, request review of the final determination by the Register of
16 Copyrights in accordance with regulations established by the Register. Such request shall be
17 accompanied by a reasonable filing fee, as provided in such regulations. The review by the
18 Register shall be limited to consideration of whether the Copyright Claims Board abused its
19 discretion in denying reconsideration of the determination. After providing the other parties an
20 opportunity to address the request, the Register shall either deny the request for review, or
21 remand the proceeding to the Copyright Claims Board for reconsideration of issues specified in
22 the remand and for issuance of an amended final determination. Such amended final
23 determination shall not be subject to further consideration or review, other than under section
24 1508(c).

25 “(y) Conduct of Parties and Attorneys.—

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

29 “(2) BAD FAITH CONDUCT.—Notwithstanding any other provision of law, in any
30 proceeding in which a determination is rendered and it is established that a party pursued a
31 claim, counterclaim, or defense for a harassing or other improper purpose, or without a
32 reasonable basis in law or fact, then, unless inconsistent with the interests of justice, the
33 Copyright Claims Board shall in such determination award reasonable attorneys' fees and
34 costs to any adversely affected party of in an amount of not more than \$5,000, except that—

35 “(A) if an adversely affected party appeared pro se in the proceeding, the award to
36 that party shall be for costs only, in an amount of not more than \$2,500; and

37 “(B) in extraordinary circumstances, such as where a party has demonstrated a
38 pattern or practice of bad faith conduct as described in this paragraph, the Copyright
39 Claims Board may, in the interests of justice, award costs in excess of the limitations
40 under this paragraph.

41 “(3) ADDITIONAL PENALTY.—If the Board finds that on more than 1 occasion within a 12-
42 month period a party pursued a claim, counterclaim, or defense before the Copyright Claims
43 Board for a harassing or other improper purpose, or without a reasonable basis in law or

1 fact, that party shall be barred from initiating a claim before the Copyright Claims Board
2 under this chapter for a period of 12 months beginning on the date on which the Board
3 makes such a finding. Any proceeding commenced by that party that is still pending before
4 the Board when such a finding is made shall be dismissed without prejudice, except that if a
5 proceeding has been deemed active under subsection (i), the proceeding shall be dismissed
6 under this paragraph only if the respondent provides written consent thereto.

7 “(z) Regulations for Smaller Claims.—The Register of Copyrights shall establish regulations
8 to provide for the consideration and determination, by not less than 1 Copyright Claims Officer,
9 of any claim under this chapter in which total damages sought do not exceed \$5,000 (exclusive
10 of attorneys’ fees and costs). A determination issued under this subsection shall have the same
11 effect as a determination issued by the entire Copyright Claims Board.

12 “1507. Effect of proceeding

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

21 “(1) A determination of the Copyright Claims Board shall not preclude litigation or
22 relitigation as between the same or different parties before any court or tribunal, or the
23 Copyright Claims Board, of the same or similar issues of fact or law in connection with
24 claims or counterclaims not asserted or not finally determined by the Copyright Claims
25 Board.

26 “(2) A determination of ownership of a copyrighted work for purposes of resolving a
27 matter before the Copyright Claims Board may not be relied upon, and shall not have any
28 preclusive effect, in any other action or proceeding before any court or tribunal, including
29 the Copyright Claims Board.

30 “(3) Except to the extent permitted under this subsection and section 1508, any
31 determination of the Copyright Claims Board may not be cited or relied upon as legal
32 precedent in any other action or proceeding before any court or tribunal, including the
33 Copyright Claims Board.

34 “(b) Class Actions Not Affected.—

35 “(1) IN GENERAL.—A proceeding before the Copyright Claims Board shall not have any
36 effect on a class action proceeding in a district court of the United States, and section
37 1509(a) shall not apply to a class action proceeding in a district court of the United States.

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

42 “(A) opt out of the class action, in accordance with regulations established by the

1 Register of Copyrights; or

2 “(B) seek dismissal under section 1506(q)(3) of the proceeding before the Copyright
3 Claims Board.

4 “(c) Other Materials in Proceeding.—Except as permitted under this section and section 1508,
5 a submission or statement of a party or witness made in connection with a proceeding before the
6 Copyright Claims Board, including a proceeding that is dismissed, may not be cited or relied
7 upon in, or serve as the basis of, any action or proceeding concerning rights or limitations on
8 rights under this title before any court or tribunal, including the Copyright Claims Board.

9 “(d) Applicability of Section 512(g).—A claim or counterclaim before the Copyright Claims
10 Board that is brought under subsection (c)(1) or (c)(4) of section 1504, or brought under
11 subsection (c)(6) of section 1504 and that relates to a claim under subsection (c)(1) or (c)(4) of
12 such section, qualifies as an action seeking an order to restrain a subscriber from engaging in
13 infringing activity under section 512(g)(2)(C) if—

14 “(1) notice of the commencement of the Copyright Claims Board proceeding is provided
15 by the claimant to the service provider’s designated agent before the service provider
16 replaces the material following receipt of a counter notification under section 512(g); and

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

19 “(e) Failure To Assert Counterclaim.—The failure or inability to assert a counterclaim in a
20 proceeding before the Copyright Claims Board shall not preclude the assertion of that
21 counterclaim in a subsequent court action or proceeding before the Copyright Claims Board.

22 “(f) Opt-Out or Dismissal of Party.—If a party has timely opted out of a proceeding under
23 section 1506(i) or is dismissed from a proceeding before the Copyright Claims Board issues a
24 final determination in the proceeding, the determination shall not be binding upon and shall have
25 no preclusive effect with respect to that party.

26 “1508. Review and confirmation by district court

27 “(a) In General.—In any proceeding in which a party has failed to pay damages, or has failed
28 otherwise to comply with the relief, awarded in a final determination of the Copyright Claims
29 Board, including a default determination or a determination based on a failure to prosecute, the
30 aggrieved party may, not later than 1 year after the date on which the final determination is
31 issued, any reconsideration by the Copyright Claims Board or review by the Register of
32 Copyrights is resolved, or an amended final determination is issued, whichever occurs last, apply
33 to the United States District Court for the District of Columbia or any other appropriate district
34 court of the United States for an order confirming the relief awarded in the final determination
35 and reducing such award to judgment. The court shall grant such order and direct entry of
36 judgment unless the determination is or has been vacated, modified, or corrected under
37 subsection (c). If the United States District Court for the District of Columbia or other district
38 court of the United States, as the case may be, issues an order confirming the relief awarded by
39 the Copyright Claims Board, the court shall impose on the party who failed to pay damages or
40 otherwise comply with the relief, the reasonable expenses required to secure such order,
41 including attorneys’ fees, that were incurred by the aggrieved party.

42 “(b) Filing Procedures.—

1 “(1) APPLICATION TO CONFIRM DETERMINATION.—Notice of the application under
2 subsection (a) for confirmation of a determination of the Copyright Claims Board and entry
3 of judgment shall be provided to all parties to the proceeding before the Copyright Claims
4 Board that resulted in the determination, in accordance with the procedures applicable to
5 service of a motion in the district court of the United States where the application is made.

6 “(2) CONTENTS OF APPLICATION.—The application under subsection (a) shall include the
7 following:

8 “(A) A certified copy of the final or amended final determination of the Copyright
9 Claims Board, as reflected in the records of the Copyright Claims Board, following
10 any process of reconsideration or review by the Register of Copyrights, to be
11 confirmed and rendered to judgment.

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

13 “(i) that the copy is a true and correct copy of such determination;

14 “(ii) stating the date the determination was issued;

15 “(iii) stating the basis for the challenge under subsection (c)(1); and

16 “(iv) stating whether the applicant is aware of any other proceedings before the
17 court concerning the same determination of the Copyright Claims Board.

18 “(c) Challenges to the Determination.—

19 “(1) BASES FOR CHALLENGE.—Not later than 90 days after the date on which the
20 Copyright Claims Board issues a final or amended final determination in a proceeding, or
21 not later than 90 days after the date on which the Register of Copyrights completes any
22 process of reconsideration or review of the determination, whichever occurs later, a party
23 may seek a court order vacating, modifying, or correcting the determination of the
24 Copyright Claims Board in the following cases:

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

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

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

31 “(2) PROCEDURE TO CHALLENGE.—

32 “(A) NOTICE OF APPLICATION.—Notice of the application to challenge a
33 determination of the Copyright Claims Board shall be provided to all parties to the
34 proceeding before the Copyright Claims Board, in accordance with the procedures
35 applicable to service of a motion in the court where the application is made.

36 “(B) STAYING OF PROCEEDINGS.—For purposes of an application under this
37 subsection, any judge who is authorized to issue an order to stay the proceedings in
38 another action brought in the same court may issue an order, to be served with the
39 notice of application, staying proceedings to enforce the award while the challenge is
40 pending.

1 “1509. Relationship to other district court actions

2 “(a) Stay of District Court Proceedings.—Subject to section 1507(b), a district court of the
3 United States shall issue a stay of proceedings or such other relief as the court determines
4 appropriate with respect to any claim brought before the court that is already the subject of a
5 pending or active proceeding before the Copyright Claims Board.

6 “(b) Alternative Dispute Resolution Process.—A proceeding before the Copyright Claims
7 Board under this chapter shall qualify as an alternative dispute resolution process under section
8 651 of title 28 for purposes of referral of eligible cases by district courts of the United States
9 upon the consent of the parties.

10 “1510. Implementation by Copyright Office

11 “(a) Regulations.—

12 “(1) IMPLEMENTATION GENERALLY.—The Register of Copyrights shall establish
13 regulations to carry out this chapter. Such regulations shall include the fees prescribed under
14 subsections (e) and (x) of section 1506. The authority to issue such fees shall not limit the
15 authority of the Register of Copyrights to establish fees for services under section 708. All
16 fees received by the Copyright Office in connection with the activities under this chapter
17 shall be deposited by the Register of Copyrights and credited to the appropriations for
18 necessary expenses of the Office in accordance with section 708(d). In establishing
19 regulations under this subsection, the Register of Copyrights shall provide for the efficient
20 administration of the Copyright Claims Board, and for the ability of the Copyright Claims
21 Board to timely complete proceedings instituted under this chapter, including by
22 implementing mechanisms to prevent harassing or improper use of the Copyright Claims
23 Board by any party.

24 “(2) LIMITS ON MONETARY RELIEF.—

25 “(A) IN GENERAL.—Subject to subparagraph (B), the Register of Copyrights may, in
26 order to further the goals of the Copyright Claims Board, conduct a rulemaking to
27 adjust the limits on monetary recovery or attorneys’ fees and costs that may be
28 awarded under this chapter.

29 “(B) EFFECTIVE DATE OF ADJUSTMENT.—Any rule under subparagraph (A) that
30 makes an adjustment shall take effect at the end of the 120-day period beginning on the
31 date on which the Register of Copyrights submits the rule to Congress and only if
32 Congress does not, during that 120-day period, enact a law that provides in substance
33 that Congress does not approve the rule.

34 “(b) Necessary Facilities.—Subject to applicable law, the Register of Copyrights may retain
35 outside vendors to establish internet-based, teleconferencing, and other facilities required to
36 operate the Copyright Claims Board.

37 “(c) Fees.—Any filing fees, including the fee to commence a proceeding under section
38 1506(e), shall be prescribed in regulations established by the Register of Copyrights. The sum
39 total of such filing fees shall be in an amount of not less than \$100, may not exceed the cost of
40 filing an action in a district court of the United States, and shall be fixed in amounts that further
41 the goals of the Copyright Claims Board.

1 “1511. Funding

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

6 (2) CLERICAL AMENDMENT.—The table of chapters for title 17, United States Code, is
7 amended by adding at the end the following:

8 “15. Copyright Small Claims
9 1501”.

10 (b) Implementation.—Not later than 1 year after the date of enactment of this Act, the
11 Copyright Claims Board established under section 1502 of title 17, United States Code, as added
12 by subsection (a) of this section, shall begin operations.

13 (c) Study.—Not later than 3 years after the date on which the Copyright Claims Board issues
14 the first determination of the Copyright Claims Board under chapter 15 of title 17, United States
15 Code, as added by subsection (a) of this section, the Register of Copyrights shall conduct, and
16 report to Congress on, a study that addresses the following:

17 (1) The use and efficacy of the Copyright Claims Board in resolving copyright claims,
18 including the number of proceedings the Copyright Claims Board could reasonably
19 administer.

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

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

24 (B) works and applicable damages limitations.

25 (3) Whether greater allowance should be made to permit awards of attorneys’ fees and
26 costs to prevailing parties, including potential limitations on such awards.

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

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

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

33 (d) Severability.—If any provision of this section, an amendment made by this section, or the
34 application of such provision or amendment to any person or circumstance is held to be
35 unconstitutional, the remainder of this section and the amendments made by this section, and the
36 application of the provision or the amendment to any other person or circumstance, shall not be
37 affected.

38 **SEC. 8. STUDY ON ANCILLARY COPYRIGHT FOR PRESS**

1 **PUBLISHERS.**

2 The Register of Copyrights shall study the costs, benefits, and viability of adding ancillary
3 copyright for press publishers to Federal law. The Register shall, not later than 12 months after
4 the date of the enactment of this Act, submit to the Congress a report on the evaluation, including
5 any legislative recommendations the Register may have.
6

7 **SEC. 9. GOOD FAITH ERROR IN APPLICATION FOR**
8 **REGISTRATION.**

9 (a) Effect on Application.—Section 409 of title 17, United States Code, is amended—

10 (1) by striking “The application” and inserting the following:

11 “(a) In General.—The application”;

12 (2) by striking “If an application” and inserting the following:

13 “(b) Application for Renewed and Extended Term.—If an application”; and

14 (3) by adding at the end the following:

15 “(c) Good Faith Error in Application for Registration.—If an application for copyright
16 registration under this section contains a good faith error, but would otherwise be registrable, the
17 Register of Copyrights—

18 “(1) may not refuse registration based on the error; and

19 “(2) shall allow the applicant to amend the application to correct the error at any time,
20 including after the registration of the work, without payment of any additional fee, unless
21 correction of the error requires that the original application be split into multiple separate
22 applications, in which case the applicant shall elect to which application the initial fee shall
23 be applied.”.

24 (b) Effect on Enforcement of Copyright.—Section 411 of title 17, United States Code, is
25 amended—

26 (1) in subsection (b)—

27 (A) by striking “(b)(1)” and all that follows through the end of paragraph (2) and
28 inserting the following:

29 “(b)(1) A certificate of registration that contains inaccurate information shall not be deemed to
30 satisfy the requirements of this section and section 412, for the purposes of a civil action for

1 infringement, if the alleged infringer proves that—

2 “(A) the alleged infringer reasonably relied on the inaccurate information in engaging in
3 the act alleged to constitute infringement; and

4 “(B) the act described in subparagraph (A) would not have constituted infringement had
5 the correct information been included in the application.”; and

6 (B) by redesignating paragraph (3) as paragraph (2); and

7 (2) by adding at the end the following:

8 “(d) Effect of Inaccurate Information on Validity of Registration.—The inclusion of inaccurate
9 information in an application for registration shall not affect the validity of any registration
10 unless subsection (b)(1) or section 413 is satisfied.”.

11 (c) Effective Date of New Registration.—Section 410(d) of title 17, United States Code, is
12 amended—

13 (1) by striking “The Effective date” and inserting “(1) Except as provided in paragraph
14 (2), the effective date”; and

15 (2) by adding at the end, the following:

16 “(2) If an application or certificate of registration contains a good faith error and a new
17 application or an application for supplementary registration is required due to the nature of the
18 error, the effective date of the new registration shall be the same as the effective date of the
19 initial registration.”.

20 (d) Fraud Against Copyright Office.—

21 (1) IN GENERAL.—Chapter 4 of title 17, United States Code, is amended by adding at the
22 end the following:

23 “SEC. 413. FRAUD AGAINST COPYRIGHT OFFICE.

24 “If an application for copyright registration includes inaccurate information, a certificate of
25 registration shall not be deemed to satisfy the requirements of sections 411 and 412 if the
26 inaccurate information was included on the application for copyright registration in bad faith or
27 with an intent to defraud the Register of Copyrights.”.

28 (2) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 4 of
29 title 17, United States Code, is amended by adding at the end the following:

30 “413. Fraud against Copyright Office.”.

1 **SEC. 10. DEPOSIT COPY RETENTION.**

2 Section 704(d) of title 17, United States Code, is amended, in the second sentence—

3 (1) by inserting “, provided that the Copyright Office, based on regulations that the
4 Register may promulgate, attempts to notify the depositer of the copy or the copyright
5 owner of record of the pending destruction or other disposition not later than 90 days before
6 the date on which the Register and the Librarian plan to destroy or otherwise dispose of the
7 deposits” after “or other disposition”; and

8 (2) by inserting “and published works deposited electronically” after “in the case of
9 unpublished works”.

10 **SEC. 11. FEE FUNDING AUTHORITY DURING LAPSE IN**
11 **APPROPRIATIONS.**

12 (a) In General.—Section 708 of title 17, United States Code, is amended by adding at the end
13 the following:

14 “(e) Funding Flexibility.—In the event of a lapse in annual appropriations, fees received under
15 this title, and amounts deducted from filing fees and royalty payments under this title, shall be
16 available for obligation to support operations at the rate of offsetting collections provided in the
17 applicable appropriations act for the preceding fiscal year.”.

18 (b) Effective Date.—The amendment made by subsection (a) shall apply with respect to fiscal
19 year 2021 and each fiscal year thereafter.

20 **SEC. 12. AUTHORITY TO SET ALTERNATIVE FEE**
21 **STRUCTURES FOR REGISTRATION AND OTHER**
22 **COPYRIGHT OFFICE SERVICES.**

23 Section 708 of title 17, United States Code, as amended by section 6 of this Act, is amended
24 by adding at the end the following:

25 “(f) Subscription Fees.—The Register of Copyrights may allow the payment of the fees
26 required under subsection (a) on an annual basis, or with another frequency to be determined by
27 the Register, through a subscription rather than on a per-service basis.

28 “(g) Small Entities.—

29 “(1) AUTHORITY TO REDUCE FEES.—To encourage registration and use of Copyright
30 Office services by individual authors and small businesses, the Register of Copyrights may
31 reduce the fees that a small entity is required to pay under subsection (a).

1 “(2) SMALL ENTITY DEFINED.—The Register of Copyrights shall by regulation define the
2 term ‘small entity’ for purposes of this subsection.”.

3 **SEC. 13. CONVERSION OF APPLICATION FOR**
4 **REGISTRATION TO APPLICATION TO AMEND;**
5 **PENDING REGISTRATION APPLICATIONS.**

6 (a) In General.—Section 409 of title 17, United States Code, as amended by section 4 of this
7 Act, is amended by adding at the end the following:

8 “(d) Conversion of Application for Registration to Application to Amend.—If the Copyright
9 Office receives an application for copyright registration claiming ownership or co-ownership of a
10 copyright or any exclusive right in a work for which the Copyright Office previously received a
11 separate application and for which the Copyright Office has granted or has not yet refused
12 registration, the Register of Copyrights—

13 “(1) shall, upon written consent of the initial applicant, allow the subsequent applicant to
14 convert the application for registration to an application to amend the existing registration
15 or initially pending application, as the case may be; and

16 “(2) may not charge the subsequent applicant a fee for converting the application.”.

17 (b) Pending Registration Application Search Function.—Section 705 of title 17, United States
18 Code, is amended—

19 (1) in subsection (a), by inserting “pending applications for registration,” before
20 “registrations,”; and

21 (2) in subsection (c), by inserting “pending applications for registration,” before
22 “registrations,”.

23 (c) Constructive Notice of Registration of Works.—Title 17, United States Code, is
24 amended—

25 (1) in section 205(c), by striking paragraph (2) and inserting the following;

26 “(2)(A) the copyright in the work has been registered; or

27 “(B) the deposit, application, and fee required for registration have been delivered to the
28 Copyright Office and registration has not been refused.”;

29 (2) in section 411(c)—

30 (B) in paragraph (2), by striking “makes registration for the work” and inserting
31 “delivers the deposit, application, and fee required for registration to the Copyright

1 Office”; and

2 (3) in section 412(2), by striking “such registration is made” and inserting “the effective
3 date of the registration is”.

4 (d) Registrations Upon Counter Notification.—Section 411 of title 17, United States Code, as
5 amended by section 4, is amended by adding at the end the following:

6 “(e) Counter Notification.—

7 “(1) IN GENERAL.—The owner of a copyright or of any exclusive right in a work that is
8 the subject of a counter notification provided under section 512(g) shall be deemed to have
9 satisfied the requirements under subsection (a) of this section and may institute a civil
10 action for infringement of the copyright if—

11 “(A) the owner—

12 “(i) delivers the deposit, application, and fee required for registration to the
13 Copyright Office in proper form; and

14 “(ii) requests and pays any applicable fees for expedited handling for the
15 application in accordance with practices or regulations of the Copyright Office
16 authorizing expedited processing of applications; and

17 “(B) the Copyright Office does not issue a certificate of registration within 48 hours
18 of receiving a proper—

19 “(i) application described in subparagraph (A)(i); and

20 “(ii) request for expedited handling described in subparagraph (A)(ii).

21 “(2) LIMITATION ON FINAL JUDGMENT.—No final judgment may be entered in a civil
22 action for infringement under paragraph (1) until the Register of Copyrights registers or
23 refuses to register the work that is the basis for the civil action.”.

24 SEC. 14. DEPOSIT REQUIREMENT.

25 (a) Study on Digital Deposits.—

26 (1) STUDY.—The Register of Copyrights shall conduct a study, in consultation with the
27 Librarian of Congress, on the acceptance of copies or phonorecords for deposit by means of
28 electronic transmission under sections 407 and 408 of title 17, United States Code.

29 (2) REPORT TO CONGRESS.—The Register of Copyrights, in consultation with the
30 Librarian of Congress, shall submit to Congress a final report that describes the results of
31 the study conducted under paragraph (1) and any recommendations resulting from the

1 study.

2 (b) Study on Best Edition.—

3 (1) STUDY.—The Register of Copyrights shall conduct a study, in consultation with the
4 Librarian of Congress, on best edition as it relates to the deposit of copies or phonorecords
5 for the use or disposition of the Library of Congress under section 407 of title 17, United
6 States Code, and the registration of copyright claims under section 408 of title 17, United
7 States Code.

8 (2) REPORT TO CONGRESS.—The Register of Copyrights, in consultation with the
9 Librarian of Congress, shall submit to Congress a final report that describes the results of
10 the study conducted under paragraph (1) and any recommendations resulting from the
11 study.

12 SEC. 15. BEST EDITION DEFINITION.

13 The fifth undesignated paragraph in section 101 of title 17, United States Code, is amended by
14 inserting after “purposes” the following: “and publishes that standard to its website”.

15 SEC. 16. STUDY ON PUBLICATION.

16 (a) In General.—The Register of Copyrights shall conduct a study on the definition of the term
17 “publication” and how the Copyright Office can better educate applicants on how to correctly
18 designate publication status in an application for copyright registration.

19 (b) Date and Nation of First Publication.—In conducting the study under subsection (a), the
20 Register of Copyrights shall examine whether the requirement under section 409(8) of title 17,
21 United States Code, should be eliminated or made voluntary for some or all copyright
22 applications.

23 SEC. 17. STUDY ON DEFERRED EXAMINATION.

24 The Register of Copyrights, in consultation with the Librarian of Congress, shall conduct a
25 study on the feasibility and benefits of adding an option for registering a work in which the
26 registrant can obtain an effective date of registration upon submission of an application and
27 deposit while choosing to defer the examination of the submitted work until the registrant
28 subsequently requests the examination. Such study shall take particular account of the needs of
29 the Library to maintain and grow its collection.

30 SEC. 18. AMENDMENT OF APPLICATION FOR 31 REGISTRATION; DERIVATIVE WORKS.

32 (a) Amendment of Application for Registration.—Section 409 of title 17, United States Code,

1 as amended by section 8 of this Act, is amended by adding at the end the following:

2 “(e) Amendment of Application After Filing.—The owner of a copyright or of any exclusive
3 right in a work who submits an application for registration of the copyright under this section
4 may subsequently amend the application.”.

5 (b) Derivative Works.—Section 409 of title 17, United States Code, as amended by subsection
6 (a), is amended—

7 (1) in subsection (a)(9), as so designated by section 4 of this Act, by inserting “subject to
8 subsection (f),” after “(9)”; and

9 (2) by adding at the end the following:

10 “(f) Computer Programs That Are Derivative Works.—

11 “(1) SIMPLIFIED APPLICATION PROCESS.—The Register of Copyrights shall establish a
12 simplified process for the application for copyright registration of a computer program that
13 is a derivative work of a previously registered computer program.

14 “(2) DATE OF REGISTRATION.—A derivative work described in paragraph (1) shall be
15 deemed registered as of the date on which the deposit, application, and fee required for
16 registration have been delivered to the Copyright Office, subject to the registration
17 requirements under this title.

18 “(g) Regulations.—The Register of Copyrights shall issue regulations to establish
19 procedures—

20 “(1) for the deposit and registration of serial digital, online, mobile application, and other
21 electronic-based publications, including newspapers and magazines; and

22 “(2) that shall provide a reasonable means for copyright owners to file applications with
23 respect to the publications described in paragraph (1).”.

24 SEC. 19. COPYRIGHT OFFICE PUBLIC ADVISORY 25 BOARD.

26 (a) In General.—Chapter 7 of title 17, United States Code, is amended by adding at the end the
27 following:

28 “11. Copyright Office Public Advisory Board

29 “(a) Establishment.—The Register of Copyrights shall establish a Copyright Office Public
30 Advisory Board (referred to in this section as the ‘Public Advisory Board’) to advise the Register
31 on the operation and modernization of the information technology of the Copyright Office.

1 “(b) Members.—

2 “(1) IN GENERAL.—The Public Advisory Board shall be composed of 12 members
3 appointed by Register of Copyrights in accordance with paragraph (2) who—

4 “(A) are citizens of the United States;

5 “(B) have substantial background or experience in copyright and copyright
6 registration practice; and

7 “(C) represent a diverse group of users of the services of the Copyright Office.

8 “(2) APPOINTMENT.—

9 “(A) APPOINTMENT.—Each year, the Register of Copyrights shall appoint 4
10 members to the Public Advisory Board for a 3-year term that begins on January 1 of
11 that year.

12 “(B) VACANCIES.—

13 “(i) FILLING VACANCIES.—The Register of Copyrights shall fill a vacancy on
14 the Public Advisory Board not later than 90 days after the vacancy occurs.

15 “(ii) LENGTH OF SERVICE.—A new member who is appointed to fill a vacancy
16 on the Public Advisory Board shall serve for the remainder of the predecessor’s
17 term.

18 “(C) AUTHORITY OF THE REGISTER.—A member appointed to the Public Advisory
19 Board shall serve at the pleasure of the Register of Copyrights.

20 “(c) Chair.—

21 “(1) IN GENERAL.—The Register of Copyrights shall designate a Chair and Vice-Chair of
22 the Public Advisory Board, from among the members of the Public Advisory Board, to
23 serve for a 3-year term.

24 “(2) VACANCY.—If the Chair resigns before the completion of his or her term, or is
25 otherwise removed or unable to exercise the functions of the Chair, the Vice-Chair shall
26 exercise the functions of the Chair.

27 “(d) Duties.—

28 “(1) IN GENERAL.—The Public Advisory Board shall advise the Register of Copyrights on
29 the management of copyright information technology operations and information
30 technology modernization, including the needs of the users of the online services and
31 website of the Copyright Office.

1 “(2) PRE-RELEASE EVALUATION.—The Register of Copyrights, as applicable, shall
2 provide the Public Advisory Board with the opportunity to provide input regarding user-
3 facing systems and content, with sufficient time to provide reasonable feedback, before the
4 systems and content are released to the public.

5 “(e) Copyright Law and Policy.—The Public Advisory Board may not advise the Copyright
6 Office on matters of substantive copyright law or policy.

7 “(f) Meetings.—The Public Advisory Board—

8 “(1) shall meet not less frequently than twice a year, at the call of the Chair; and

9 “(2) at each meeting, shall consider an agenda set by the Chair.

10 “(g) Applicability of Certain Ethics Laws.—A member of the Public Advisory Board
11 appointed under subsection (b)(2) shall be treated as a special Government employee within the
12 meaning of section 202(a) of title 18, United States Code.

13 “(h) Inapplicability of Federal Advisory Committee Act.—The Federal Advisory Committee
14 Act (5 U.S.C. App.) shall not apply to the Public Advisory Board.

15 “(i) Open Meetings.—The meetings of the Public Advisory board shall be open to the public,
16 except that the Public Advisory Board may by majority vote meet in executive session when
17 considering privileged or confidential information.”.

18 (b) Technical and Conforming Amendment.—The table of sections for chapter 7 of title 17,
19 United States Code, is amended by adding at the end the following:

20 “11. Copyright Office Public Advisory Board.”.

21 SEC. 20. GROUP REGISTRATION OF PUBLISHED AND 22 UNPUBLISHED WORKS.

23 (a) In General.—Section 408(c) of title 17, United States Code, as amended by section 8 of
24 this Act, is amended by adding at the end the following:

25 “(4) OPTIONAL DELIVERY OF EXAMINATION MATERIALS.—In carrying out paragraph (1),
26 the Register of Copyrights—

27 “(A) shall establish regulations specifically permitting a single registration for a
28 group of works by the same individual author, all first published as contributions to
29 periodicals, including newspapers and online publications, whether or not updated on a
30 set schedule, within a twelve-month period, on the basis of a single delivery of a
31 registration deposit, application, and fee,—

1 “(i) the deposit consists of one copy of each entire issue of each periodical, or
2 of each entire section in the case of a newspaper or online publication, in which
3 each contribution was first published; and

4 “(ii) the application identifies each work separately, including each periodical
5 containing it and its date of first publication;

6 “(B) may, for works not addressed in subparagraph (A), establish regulations
7 specifically permitting a single registration for a group of works by the same individual
8 author, all first published within a twelve-month period, on the basis of a single
9 delivery of a registration deposit, application, and fee if the application identifies each
10 work separately; and

11 “(C) in cases in which the Register has provided for group registration, shall allow
12 published and unpublished works to be registered together in one group registration.”.

13 (b) Effective Date.—The amendment made by subsection (a) shall take effect on the date on
14 which the Register of Copyrights certifies to Congress that the information technology system of
15 the Copyright Office is able to support group registration of published and unpublished works, as
16 described in section 408(b)(4)(C) of title 17, United States Code, as added by subsection (a).

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