

or practice of bad faith conduct as described in this paragraph, the Copyright Claims Board may, in the interests of justice, award costs and attorneys' fees in excess of the limitations under this paragraph.

(3) ADDITIONAL PENALTY.—If the Board finds that on more than 1 occasion within a 12-month period a party pursued a claim, counterclaim, or defense before the Copyright Claims Board for a harassing or other improper purpose, or without a reasonable basis in law or fact, that party shall be barred from initiating a claim before the Copyright Claims Board under this chapter for a period of 12 months beginning on the date on which the Board makes such a finding. Any proceeding commenced by that party that is still pending before the Board when such a finding is made shall be dismissed without prejudice, except that if a proceeding has been deemed active under subsection (i), the proceeding shall be dismissed under this paragraph only if the respondent provides written consent thereto.

(z) REGULATIONS FOR SMALLER CLAIMS.—The Register of Copyrights shall establish regulations to provide for the consideration and determination, by not fewer than 1 Copyright Claims Officer, of any claim under this chapter in which total damages sought do not exceed \$5,000 (exclusive of attorneys' fees and costs). A determination issued under this subsection shall have the same effect as a determination issued by the entire Copyright Claims Board.

(aa) OPT-OUT FOR LIBRARIES AND ARCHIVES.—

(1) IN GENERAL.—The Register of Copyrights shall establish regulations allowing for a library or archives that does not wish to participate in proceedings before the Copyright Claims Board to preemptively opt out of such proceedings.

(2) PROCEDURES.—The regulations established under paragraph (1) shall—

(A) set forth procedures for preemptively opting out of proceedings before the Copyright Claims Board; and

(B) require that the Copyright Office compile and maintain a publicly available list of the libraries and archives that have successfully opted out of proceedings in accordance with the procedures described in subparagraph (A).

(3) NO FEE OR RENEWAL REQUIRED.—The Register of Copyrights may not—

(A) charge a library or archives a fee to preemptively opt out of proceedings under this subsection; or

(B) require a library or archives to renew a decision to preemptively opt out of proceedings under this subsection.

(4) DEFINITIONS.—For purposes of this subsection, the terms “library” and “archives” mean any library or archives, respectively, that qualifies for the limitations on exclusive rights under section 108.

(Added Pub. L. 116-260, div. Q, title II, § 212(b), Dec. 27, 2020, 134 Stat. 2185.)

§ 1507. Effect of proceeding

(a) DETERMINATION.—Subject to the reconsideration and review processes provided under sub-

sections (w) and (x) of section 1506 and section 1508(c), the issuance of a final determination by the Copyright Claims Board in a proceeding, including a default determination or determination based on a failure to prosecute, shall, solely with respect to the parties to such determination, preclude relitigation before any court or tribunal, or before the Copyright Claims Board, of the claims and counterclaims asserted and finally determined by the Board, and may be relied upon for such purpose in a future action or proceeding arising from the same specific activity or activities, subject to the following:

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

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

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

(b) CLASS ACTIONS NOT AFFECTED.—

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

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

(A) opt out of the class action, in accordance with regulations established by the Register of Copyrights; or

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

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

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

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

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

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

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

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

(Added Pub. L. 116–260, div. Q, title II, §212(b), Dec. 27, 2020, 134 Stat. 2195.)

§ 1508. Review and confirmation by district court

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

(b) FILING PROCEDURES.—

(1) APPLICATION TO CONFIRM DETERMINATION.—Notice of the application under subsection (a) for confirmation of a determination of the Copyright Claims Board and entry of judgment shall be provided to all parties to the proceeding before the Copyright Claims Board that resulted in the determination, in

accordance with the procedures applicable to service of a motion in the district court of the United States where the application is made.

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

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

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

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

(ii) stating the date the determination was issued;

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

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

(c) CHALLENGES TO THE DETERMINATION.—

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

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

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

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

(2) PROCEDURE TO CHALLENGE.—

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

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

(Added Pub. L. 116–260, div. Q, title II, §212(b), Dec. 27, 2020, 134 Stat. 2196.)