

the infringing activity under paragraph (2).

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

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

(II) With respect to works not timely registered under section 412, but eligible for an award of statutory damages under this section, statutory damages may not exceed \$7,500 per work infringed, or a total of \$15,000 in any 1 proceeding.

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

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

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

- (i) to recover actual damages and profits or statutory damages under subparagraph (A); or
- (ii) not to recover damages.

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

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

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

(A) a party agrees—

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

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

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

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

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

(g) PERMISSIBLE NUMBER OF CASES.—The Register of Copyrights may establish regulations relating to the permitted number of proceedings each year by the same claimant under this chapter, in the interests of justice and the administration of the Copyright Claims Board.

(Added Pub. L. 116-260, div. Q, title II, §212(b), Dec. 27, 2020, 134 Stat. 2181.)

### § 1505. Registration requirement

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

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

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

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

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

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

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

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

(3) if the Copyright Claims Board receives notice that registration with respect to the

work has been refused, the proceeding shall be dismissed without prejudice.

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

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

(Added Pub. L. 116-260, div. Q, title II, §212(b), Dec. 27, 2020, 134 Stat. 2184.)

### § 1506. Conduct of proceedings

(a) **IN GENERAL.**—

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

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

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

(c) **CENTRALIZED PROCESS.**—Proceedings before the Copyright Claims Board shall—

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

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

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

(1) an attorney; or

(2) a law student who is qualified under applicable law governing representation by law students of parties in legal proceedings and

who provides such representation on a pro bono basis.

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

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

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

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

(f) **REVIEW OF CLAIMS AND COUNTERCLAIMS.**—

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

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

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

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