

Editorial Notes

REFERENCES IN TEXT

The General Schedule, referred to in subsec. (b)(4), is set out under section 5332 of Title 5, Government Organization and Employees.

Statutory Notes and Related Subsidiaries

IMPLEMENTATION

Pub. L. 116-260, div. Q, title II, §212(d), Dec. 27, 2020, 134 Stat. 2199, provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), not later than 1 year after the date of enactment of this Act [Dec. 27, 2020], the Copyright Claims Board established under section 1502 of title 17, United States Code, as added by subsection (b) of this section, shall begin operations.

“(2) EXTENSION.—The Register of Copyrights may, for good cause, extend the deadline under paragraph (1) by not more than 180 days if the Register of Copyrights provides notice of the extension to the public and to Congress.”

§ 1503. Authority and duties of the Copyright Claims Board

(a) FUNCTIONS.—

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

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

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

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

(D) To request, from participants and non-participants in a proceeding, the production of information and documents relevant to the resolution of a claim, counterclaim, or defense.

(E) To conduct hearings and conferences.

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

(G) To—

(i) award monetary relief; and

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

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

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

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

(K) When not engaged in performing the duties of the Officers set forth in this chap-

ter, to perform such other duties as may be assigned by the Register of Copyrights.

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

(A) To provide assistance to the Copyright Claims Officers in the administration of the duties of those Officers under this chapter.

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

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

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

(b) INDEPENDENCE IN DETERMINATIONS.—

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

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

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

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

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

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

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

(c) DIRECTION BY REGISTER.—Subject to subsection (b), the Copyright Claims Officers and Copyright Claims Attorneys shall, in the administration of their duties, be under the general direction of the Register of Copyrights.

(d) INCONSISTENT DUTIES BARRED.—A Copyright Claims Officer or Copyright Claims Attorney may not undertake any duty that conflicts with the duties of the Officer or Attorney in connection with the Copyright Claims Board.

(e) RECUSAL.—A Copyright Claims Officer or Copyright Claims Attorney shall recuse himself or herself from participation in any proceeding with respect to which the Copyright Claims Offi-

cer or Copyright Claims Attorney, as the case may be, has reason to believe that he or she has a conflict of interest.

(f) EX PARTE COMMUNICATIONS.—Except as may otherwise be permitted by applicable law, any party to a proceeding before the Copyright Claims Board shall refrain from ex parte communications with the Copyright Claims Officers and the Register of Copyrights concerning the substance of any active or pending proceeding before the Copyright Claims Board.

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

(Added Pub. L. 116–260, div. Q, title II, §212(b), Dec. 27, 2020, 134 Stat. 2179.)

§ 1504. Nature of proceedings

(a) VOLUNTARY PARTICIPATION.—Participation in a Copyright Claims Board proceeding shall be on a voluntary basis in accordance with this chapter, and the right of any party to instead pursue a claim, counterclaim, or defense in a district court of the United States, any other court, or any other forum, and to seek a jury trial, shall be preserved. The rights, remedies, and limitations under this section may not be waived except in accordance with this chapter.

(b) STATUTE OF LIMITATIONS.—

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

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

(c) PERMISSIBLE CLAIMS, COUNTERCLAIMS, AND DEFENSES.—The Copyright Claims Board may render determinations with respect to the following claims, counterclaims, and defenses, subject to such further limitations and requirements, including with respect to particular classes of works, as may be set forth in regulations established by the Register of Copyrights:

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

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

(3) A claim under section 512(f) for misrepresentation in connection with a notification of claimed infringement or a counter notification seeking to replace removed or disabled material, except that any remedies relating to such a claim in a proceeding before the Copy-

right Claims Board shall be limited to those available under this chapter.

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

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

(B) that—

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

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

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

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

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

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

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

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

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

(e) PERMISSIBLE REMEDIES.—

(1) MONETARY RECOVERY.—

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

(i) Actual damages and profits determined in accordance with section 504(b), with that award taking into consideration, in appropriate cases, whether the infringing party has agreed to cease or mitigate