

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

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