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**TITLE II—INTELLECTUAL
PROPERTY
Subtitle A—Copyrights**

SEC. 211. UNAUTHORIZED STREAMING.

(a) AMENDMENT.—Chapter 113 of title 18, United States Code, is amended by inserting after section 2319B the following:

1 **“§ 2319C. Illicit digital transmission services**

2 “(a) DEFINITIONS.—In this section—

3 “(1) the terms ‘audiovisual work’, ‘computer
4 program’, ‘copies’, ‘copyright owner’, ‘digital trans-
5 mission’, ‘financial gain’, ‘motion picture’, ‘motion
6 picture exhibition facility’, ‘perform’, ‘phonorecords’,
7 ‘publicly’ (with respect to performing a work),
8 ‘sound recording’, and ‘transmit’ have the meanings
9 given those terms in section 101 of title 17;

10 “(2) the term ‘digital transmission service’
11 means a service that has the primary purpose of
12 publicly performing works by digital transmission;

13 “(3) the terms ‘publicly perform’ and ‘public
14 performance’ refer to the exclusive rights of a copy-
15 right owner under paragraphs (4) and (6) of section
16 106 (relating to exclusive rights in copyrighted
17 works) of title 17, as limited by sections 107
18 through 122 of title 17; and

19 “(4) the term ‘work being prepared for com-
20 mercial public performance’ means—

21 “(A) a computer program, a musical work,
22 a motion picture or other audiovisual work, or
23 a sound recording, if, at the time of unauthor-
24 ized public performance—

1 “(i) the copyright owner has a reason-
2 able expectation of commercial public per-
3 formance; and

4 “(ii) the copies or phonorecords of the
5 work have not been commercially publicly
6 performed in the United States by or with
7 the authorization of the copyright owner;
8 or

9 “(B) a motion picture, if, at the time of
10 unauthorized public performance, the motion
11 picture—

12 “(i)(I) has been made available for
13 viewing in a motion picture exhibition facil-
14 ity; and

15 “(II) has not been made available in
16 copies for sale to the general public in the
17 United States by or with the authorization
18 of the copyright owner in a format in-
19 tended to permit viewing outside a motion
20 picture exhibition facility; or

21 “(ii) had not been commercially pub-
22 licly performed in the United States by or
23 with the authorization of the copyright
24 owner more than 24 hours before the un-
25 authorized public performance.

1 “(b) PROHIBITED ACT.—It shall be unlawful for a
2 person to willfully, and for purposes of commercial advan-
3 tage or private financial gain, offer or provide to the public
4 a digital transmission service that—

5 “(1) is primarily designed or provided for the
6 purpose of publicly performing works protected
7 under title 17 by means of a digital transmission
8 without the authority of the copyright owner or the
9 law;

10 “(2) has no commercially significant purpose or
11 use other than to publicly perform works protected
12 under title 17 by means of a digital transmission
13 without the authority of the copyright owner or the
14 law; or

15 “(3) is intentionally marketed by or at the di-
16 rection of that person to promote its use in publicly
17 performing works protected under title 17 by means
18 of a digital transmission without the authority of the
19 copyright owner or the law.

20 “(c) PENALTIES.—Any person who violates sub-
21 section (b) shall be, in addition to any penalties provided
22 for under title 17 or any other law—

23 “(1) fined under this title, imprisoned not more
24 than 3 years, or both;

1 “(2) fined under this title, imprisoned not more
2 than 5 years, or both, if—

3 “(A) the offense was committed in connec-
4 tion with 1 or more works being prepared for
5 commercial public performance; and

6 “(B) the person knew or should have
7 known that the work was being prepared for
8 commercial public performance; and

9 “(3) fined under this title, imprisoned not more
10 than 10 years, or both, if the offense is a second or
11 subsequent offense under this section or section
12 2319(a).

13 “(d) RULE OF CONSTRUCTION.—Nothing in this sec-
14 tion shall be construed to—

15 “(1) affect the interpretation of any other pro-
16 vision of civil copyright law, including the limitations
17 of liability set forth in section 512 of title 17, or
18 principles of secondary liability; or

19 “(2) prevent any Federal or State authority
20 from enforcing cable theft or theft of service laws
21 that are not subject to preemption under section 301
22 of title 17.”.

23 (b) TABLE OF SECTIONS AMENDMENT.—The table of
24 section for chapter 113 of title 18, United States Code,

1 is amended by inserting after the item relating to section
2 2319B the following:

“2319C. Illicit digital transmission services.”.

3 **SEC. 212. COPYRIGHT SMALL CLAIMS.**

4 (a) **SHORT TITLE.**—This section may be cited as the
5 “Copyright Alternative in Small-Claims Enforcement Act
6 of 2020” or the “CASE Act of 2020”.

7 (b) **AMENDMENT.**—Title 17, United States Code, is
8 amended by adding at the end the following:

9 **“CHAPTER 15—COPYRIGHT SMALL**
10 **CLAIMS**

“1501. Definitions.

“1502. Copyright Claims Board.

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

“1504. Nature of proceedings.

“1505. Registration requirement.

“1506. Conduct of proceedings.

“1507. Effect of proceeding.

“1508. Review and confirmation by district court.

“1509. Relationship to other district court actions.

“1510. Implementation by Copyright Office.

“1511. Funding.

11 **“§ 1501. Definitions**

12 “In this chapter—

13 “(1) the term ‘claimant’ means the real party
14 in interest that commences a proceeding before the
15 Copyright Claims Board under section 1506(e), pur-
16 suant to a permissible claim of infringement brought
17 under section 1504(c)(1), noninfringement brought
18 under section 1504(c)(2), or misrepresentation
19 brought under section 1504(c)(3);

1 “(2) the term ‘counterclaimant’ means a re-
2 spondent in a proceeding before the Copyright
3 Claims Board that—

4 “(A) asserts a permissible counterclaim
5 under section 1504(c)(4) against the claimant
6 in the proceeding; and

7 “(B) is the real party in interest with re-
8 spect to the counterclaim described in subpara-
9 graph (A);

10 “(3) the term ‘party’—

11 “(A) means a party; and

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

14 “(4) the term ‘respondent’ means any person
15 against whom a proceeding is brought before the
16 Copyright Claims Board under section 1506(e), pur-
17 suant to a permissible claim of infringement brought
18 under section 1504(c)(1), noninfringement brought
19 under section 1504(c)(2), or misrepresentation
20 brought under section 1504(c)(3).

21 **“§ 1502. Copyright Claims Board**

22 “(a) IN GENERAL.—There is established in the Copy-
23 right Office the Copyright Claims Board, which shall serve
24 as an alternative forum in which parties may voluntarily

1 seek to resolve certain copyright claims regarding any cat-
2 egory of copyrighted work, as provided in this chapter.

3 “(b) OFFICERS AND STAFF.—

4 “(1) COPYRIGHT CLAIMS OFFICERS.—The Reg-
5 ister of Copyrights shall recommend 3 full-time
6 Copyright Claims Officers to serve on the Copyright
7 Claims Board in accordance with paragraph (3)(A).
8 The Officers shall be appointed by the Librarian of
9 Congress to such positions after consultation with
10 the Register of Copyrights.

11 “(2) COPYRIGHT CLAIMS ATTORNEYS.—The
12 Register of Copyrights shall hire not fewer than 2
13 full-time Copyright Claims Attorneys to assist in the
14 administration of the Copyright Claims Board.

15 “(3) QUALIFICATIONS.—

16 “(A) COPYRIGHT CLAIMS OFFICERS.—

17 “(i) IN GENERAL.—Each Copyright
18 Claims Officer shall be an attorney who
19 has not fewer than 7 years of legal experi-
20 ence.

21 “(ii) EXPERIENCE.—Two of the Copy-
22 right Claims Officers shall—

23 “(I) have substantial experience
24 in the evaluation, litigation, or adju-

1 dication of copyright infringement
2 claims; and

3 “(II) between those 2 Officers,
4 have represented or presided over a
5 diversity of copyright interests, includ-
6 ing those of both owners and users of
7 copyrighted works.

8 “(iii) ALTERNATIVE DISPUTE RESOLU-
9 TION.—The Copyright Claims Officer not
10 described in clause (ii) shall have substan-
11 tial familiarity with copyright law and ex-
12 perience in the field of alternative dispute
13 resolution, including the resolution of liti-
14 gation matters through that method of res-
15 olution.

16 “(B) COPYRIGHT CLAIMS ATTORNEYS.—
17 Each Copyright Claims Attorney shall be an at-
18 torney who has not fewer than 3 years of sub-
19 stantial experience in copyright law.

20 “(4) COMPENSATION.—

21 “(A) COPYRIGHT CLAIMS OFFICERS.—

22 “(i) DEFINITION.—In this subpara-
23 graph, the term ‘senior level employee of
24 the Federal Government’ means an em-
25 ployee, other than an employee in the Sen-

1 ior Executive Service, the position of whom
2 is classified above GS–15 of the General
3 Schedule.

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

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

17 “(5) TERMS.—

18 “(A) IN GENERAL.—Subject to subpara-
19 graph (B), a Copyright Claims Officer shall
20 serve for a renewable term of 6 years.

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

1 “(i) The first such Copyright Claims
2 Officer appointed shall be appointed for a
3 term of 4 years.

4 “(ii) The second Copyright Claims Of-
5 ficer appointed shall be appointed for a
6 term of 5 years.

7 “(iii) The third Copyright Claims Of-
8 ficer appointed shall be appointed for a
9 term of 6 years.

10 “(6) VACANCIES AND INCAPACITY.—

11 “(A) VACANCY.—

12 “(i) IN GENERAL.—If a vacancy oc-
13 curs in the position of a Copyright Claims
14 Officer, the Librarian of Congress shall,
15 upon the recommendation of, and in con-
16 sultation with, the Register of Copyrights,
17 act expeditiously to appoint a Copyright
18 Claims Officer for that position.

19 “(ii) VACANCY BEFORE EXPIRA-
20 TION.—An individual appointed to fill a
21 vacancy occurring before the expiration of
22 the term for which the predecessor of the
23 individual was appointed shall be appointed
24 to serve a 6-year term.

1 “(B) INCAPACITY.—If a Copyright Claims
2 Officer is temporarily unable to perform the du-
3 ties of the Officer, the Librarian of Congress
4 shall, upon recommendation of, and in consulta-
5 tion with, the Register of Copyrights, act expe-
6 ditiously to appoint an interim Copyright
7 Claims Officer to perform such duties during
8 the period of such incapacity.

9 “(7) SANCTION OR REMOVAL.—Subject to sec-
10 tion 1503(b), the Librarian of Congress may sanc-
11 tion or remove a Copyright Claims Officer.

12 “(8) ADMINISTRATIVE SUPPORT.—The Register
13 of Copyrights shall provide the Copyright Claims Of-
14 ficers and Copyright Claims Attorneys with nec-
15 essary administrative support, including techno-
16 logical facilities, to carry out the duties of the Offi-
17 cers and Attorneys under this chapter.

18 “(9) LOCATION OF COPYRIGHT CLAIMS
19 BOARD.—The offices and facilities of the Copyright
20 Claims Officers and Copyright Claims Attorneys
21 shall be located at the Copyright Office.

22 **“§ 1503. Authority and duties of the Copyright Claims**
23 **Board**

24 “(a) FUNCTIONS.—

1 “(1) COPYRIGHT CLAIMS OFFICERS.—Subject
2 to the provisions of this chapter and applicable regu-
3 lations, the functions of the Copyright Claims Offi-
4 cers shall be as follows:

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

9 “(B) To ensure that claims, counterclaims,
10 and defenses are properly asserted and other-
11 wise appropriate for resolution by the Copyright
12 Claims Board.

13 “(C) To manage the proceedings before the
14 Officers and render rulings pertaining to the
15 consideration of claims, counterclaims, and de-
16 fenses, including with respect to scheduling, dis-
17 covery, evidentiary, and other matters.

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

22 “(E) To conduct hearings and conferences.

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

25 “(G) To—

1 “(i) award monetary relief; and

2 “(ii) include in the determinations of
3 the Officers a requirement that certain ac-
4 tivities under section 1504(e)(2) cease or
5 be mitigated, if the party to undertake the
6 applicable measure has so agreed.

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

10 “(I) To maintain records of the pro-
11 ceedings before the Officers, certify official
12 records of such proceedings as needed, and, as
13 provided in section 1506(t), make the records
14 in such proceedings available to the public.

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

17 “(K) When not engaged in performing the
18 duties of the Officers set forth in this chapter,
19 to perform such other duties as may be as-
20 signed by the Register of Copyrights.

21 “(2) COPYRIGHT CLAIMS ATTORNEYS.—Subject
22 to the provisions of this chapter and applicable regu-
23 lations, the functions of the Copyright Claims Attor-
24 neys shall be as follows:

1 “(A) To provide assistance to the Copy-
2 right Claims Officers in the administration of
3 the duties of those Officers under this chapter.

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

7 “(C) To provide information to potential
8 claimants contemplating bringing a permissible
9 action before the Copyright Claims Board about
10 obtaining a subpoena under section 512(h) for
11 the sole purpose of identifying a potential re-
12 spondent in such an action.

13 “(D) When not engaged in performing the
14 duties of the Attorneys set forth in this chapter,
15 to perform such other duties as may be as-
16 signed by the Register of Copyrights.

17 “(b) INDEPENDENCE IN DETERMINATIONS.—

18 “(1) IN GENERAL.—The Copyright Claims
19 Board shall render the determinations of the Board
20 in individual proceedings independently on the basis
21 of the records in the proceedings before it and in ac-
22 cordance with the provisions of this title, judicial
23 precedent, and applicable regulations of the Register
24 of Copyrights.

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

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

5 “(B) subject to section 1506(x), may not
6 consult with the Register of Copyrights with re-
7 spect to—

8 “(i) the facts of any particular matter
9 pending before the Officers and the Attor-
10 neys; or

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

13 “(3) PERFORMANCE APPRAISALS.—Notwith-
14 standing any other provision of law or any regula-
15 tion or policy of the Library of Congress or Register
16 of Copyrights, any performance appraisal of a Copy-
17 right Claims Officer or Copyright Claims Attorney
18 may not consider the substantive result of any indi-
19 vidual determination reached by the Copyright
20 Claims Board as a basis for appraisal except to the
21 extent that the result may relate to any actual or al-
22 leged violation of an ethical standard of conduct.

23 “(c) DIRECTION BY REGISTER.—Subject to sub-
24 section (b), the Copyright Claims Officers and Copyright
25 Claims Attorneys shall, in the administration of their du-

1 ties, be under the general direction of the Register of
2 Copyrights.

3 “(d) INCONSISTENT DUTIES BARRED.—A Copyright
4 Claims Officer or Copyright Claims Attorney may not un-
5 dertake any duty that conflicts with the duties of the Offi-
6 cer or Attorney in connection with the Copyright Claims
7 Board.

8 “(e) RECUSAL.—A Copyright Claims Officer or Copy-
9 right Claims Attorney shall recuse himself or herself from
10 participation in any proceeding with respect to which the
11 Copyright Claims Officer or Copyright Claims Attorney,
12 as the case may be, has reason to believe that he or she
13 has a conflict of interest.

14 “(f) EX PARTE COMMUNICATIONS.—Except as may
15 otherwise be permitted by applicable law, any party to a
16 proceeding before the Copyright Claims Board shall re-
17 frain from ex parte communications with the Copyright
18 Claims Officers and the Register of Copyrights concerning
19 the substance of any active or pending proceeding before
20 the Copyright Claims Board.

21 “(g) JUDICIAL REVIEW.—Actions of the Copyright
22 Claims Officers and Register of Copyrights under this
23 chapter in connection with the rendering of any deter-
24 mination are subject to judicial review as provided under
25 section 1508(c) and not under chapter 7 of title 5.

1 **“§ 1504. Nature of proceedings**

2 “(a) VOLUNTARY PARTICIPATION.—Participation in
3 a Copyright Claims Board proceeding shall be on a vol-
4 untary basis in accordance with this chapter, and the right
5 of any party to instead pursue a claim, counterclaim, or
6 defense in a district court of the United States, any other
7 court, or any other forum, and to seek a jury trial, shall
8 be preserved. The rights, remedies, and limitations under
9 this section may not be waived except in accordance with
10 this chapter.

11 “(b) STATUTE OF LIMITATIONS.—

12 “(1) IN GENERAL.—A proceeding may not be
13 maintained before the Copyright Claims Board un-
14 less the proceeding is commenced, in accordance
15 with section 1506(e), before the Copyright Claims
16 Board not later than 3 years after the claim ac-
17 curred.

18 “(2) TOLLING.—Subject to section 1507(a), a
19 proceeding commenced before the Copyright Claims
20 Board shall toll the time permitted under section
21 507(b) for the commencement of an action on the
22 same claim in a district court of the United States
23 during the period in which the proceeding is pend-
24 ing.

25 “(c) PERMISSIBLE CLAIMS, COUNTERCLAIMS, AND
26 DEFENSES.—The Copyright Claims Board may render de-

1 terminations with respect to the following claims, counter-
2 claims, and defenses, subject to such further limitations
3 and requirements, including with respect to particular
4 classes of works, as may be set forth in regulations estab-
5 lished by the Register of Copyrights:

6 “(1) A claim for infringement of an exclusive
7 right in a copyrighted work provided under section
8 106 by the legal or beneficial owner of the exclusive
9 right at the time of the infringement for which the
10 claimant seeks damages, if any, within the limita-
11 tions set forth in subsection (e)(1).

12 “(2) A claim for a declaration of noninfringe-
13 ment of an exclusive right in a copyrighted work
14 provided under section 106, consistent with section
15 2201 of title 28.

16 “(3) A claim under section 512(f) for misrepre-
17 sentation in connection with a notification of claimed
18 infringement or a counter notification seeking to re-
19 place removed or disabled material, except that any
20 remedies relating to such a claim in a proceeding be-
21 fore the Copyright Claims Board shall be limited to
22 those available under this chapter.

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

1 “(A) pursuant to which the counterclaim-
2 ant seeks damages, if any, within the limita-
3 tions set forth in subsection (e)(1); and

4 “(B) that—

5 “(i) arises under section 106 or sec-
6 tion 512(f) and out of the same trans-
7 action or occurrence that is the subject of
8 a claim of infringement brought under
9 paragraph (1), a claim of noninfringement
10 brought under paragraph (2), or a claim of
11 misrepresentation brought under para-
12 graph (3); or

13 “(ii) arises under an agreement per-
14 taining to the same transaction or occur-
15 rence that is the subject of a claim of in-
16 fringement brought under paragraph (1),
17 if the agreement could affect the relief
18 awarded to the claimant.

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

22 “(6) A single claim or multiple claims permitted
23 under paragraph (1), (2), or (3) by 1 or more claim-
24 ants against 1 or more respondents, but only if all
25 claims asserted in any 1 proceeding arise out of the

1 same allegedly infringing activity or continuous
2 course of infringing activities and do not, in the ag-
3 gregate, result in the recovery of such claim or
4 claims for damages that exceed the limitations under
5 subsection (e)(1).

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

9 “(1) A claim or counterclaim that is not a per-
10 missible claim or counterclaim under subsection (c).

11 “(2) A claim or counterclaim that has been fi-
12 nally adjudicated by a court of competent jurisdic-
13 tion or that is pending before a court of competent
14 jurisdiction, unless that court has granted a stay to
15 permit that claim or counterclaim to proceed before
16 the Copyright Claims Board.

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

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

25 “(e) PERMISSIBLE REMEDIES.—

1 “(1) MONETARY RECOVERY.—

2 “(A) ACTUAL DAMAGES, PROFITS, AND
3 STATUTORY DAMAGES FOR INFRINGEMENT.—

4 With respect to a claim or counterclaim for in-
5 fringement of copyright, and subject to the limi-
6 tation on total monetary recovery under sub-
7 paragraph (D), the Copyright Claims Board
8 may award either of the following:

9 “(i) Actual damages and profits deter-
10 mined in accordance with section 504(b),
11 with that award taking into consideration,
12 in appropriate cases, whether the infring-
13 ing party has agreed to cease or mitigate
14 the infringing activity under paragraph
15 (2).

16 “(ii) Statutory damages, which shall
17 be determined in accordance with section
18 504(e), subject to the following conditions:

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

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

8 “(III) The Copyright Claims
9 Board may not make any finding
10 that, or consider whether, the in-
11 fringement was committed willfully in
12 making an award of statutory dam-
13 ages.

14 “(IV) The Copyright Claims
15 Board may consider, as an additional
16 factor in awarding statutory damages,
17 whether the infringer has agreed to
18 cease or mitigate the infringing activ-
19 ity under paragraph (2).

20 “(B) ELECTION OF DAMAGES.—With re-
21 spect to a claim or counterclaim of infringe-
22 ment, at any time before final determination is
23 rendered, and notwithstanding the schedule es-
24 tablished by the Copyright Claims Board under

1 section 1506(k), the claimant or counterclaim-
2 ant shall elect—

3 “(i) to recover actual damages and
4 profits or statutory damages under sub-
5 paragraph (A); or

6 “(ii) not to recover damages.

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

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

22 “(2) AGREEMENT TO CEASE CERTAIN ACTIV-
23 ITY.—In a determination of the Copyright Claims
24 Board, the Board shall include a requirement to

1 cease conduct if, in the proceeding relating to the
2 determination—

3 “(A) a party agrees—

4 “(i) to cease activity that is found to
5 be infringing, including removing or dis-
6 abling access to, or destroying, infringing
7 materials; or

8 “(ii) to cease sending a takedown no-
9 tice or counter notice under section 512 to
10 the other party regarding the conduct at
11 issue before the Board if that notice or
12 counter notice was found to be a knowing
13 material misrepresentation under section
14 512(f); and

15 “(B) the agreement described in subpara-
16 graph (A) is reflected in the record for the pro-
17 ceeding.

18 “(3) ATTORNEYS’ FEES AND COSTS.—Notwith-
19 standing any other provision of law, except in the
20 case of bad faith conduct as provided in section
21 1506(y)(2), the parties to proceedings before the
22 Copyright Claims Board shall bear their own attor-
23 neys’ fees and costs.

24 “(f) JOINT AND SEVERAL LIABILITY.—Parties to a
25 proceeding before the Copyright Claims Board may be

1 found jointly and severally liable if all such parties and
2 relevant claims or counterclaims arise from the same ac-
3 tivity or activities.

4 “(g) PERMISSIBLE NUMBER OF CASES.—The Reg-
5 ister of Copyrights may establish regulations relating to
6 the permitted number of proceedings each year by the
7 same claimant under this chapter, in the interests of jus-
8 tice and the administration of the Copyright Claims
9 Board.

10 **“§ 1505. Registration requirement**

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

15 “(1) the legal or beneficial owner of the copy-
16 right has first delivered a completed application, a
17 deposit, and the required fee for registration of the
18 copyright to the Copyright Office; and

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

21 “(b) CERTIFICATE OF REGISTRATION.—Notwith-
22 standing any other provision of law, a claimant or counter-
23 claimant in a proceeding before the Copyright Claims
24 Board shall be eligible to recover actual damages and prof-
25 its or statutory damages under this chapter for infringe-

1 ment of a work if the requirements of subsection (a) have
2 been met, except that—

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

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

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

13 “(2) if the proceeding may not proceed further
14 because a registration certificate for the work is
15 pending, the proceeding shall be held in abeyance
16 pending submission of the certificate to the Copy-
17 right Claims Board, except that, if the proceeding is
18 held in abeyance for more than 1 year, the Copy-
19 right Claims Board may, upon providing written no-
20 tice to the parties to the proceeding, and 30 days to
21 the parties to respond to the notice, dismiss the pro-
22 ceeding without prejudice; and

23 “(3) if the Copyright Claims Board receives no-
24 tice that registration with respect to the work has

1 been refused, the proceeding shall be dismissed with-
2 out prejudice.

3 “(c) PRESUMPTION.—In a case in which a registra-
4 tion certificate shows that registration with respect to a
5 work was issued not later than 5 years after the date of
6 the first publication of the work, the presumption under
7 section 410(c) shall apply in a proceeding before the Copy-
8 right Claims Board, in addition to relevant principles of
9 law under this title.

10 “(d) REGULATIONS.—In order to ensure that actions
11 before the Copyright Claims Board proceed in a timely
12 manner, the Register of Copyrights shall establish regula-
13 tions allowing the Copyright Office to make a decision,
14 on an expedited basis, to issue or deny copyright registra-
15 tion for an unregistered work that is at issue before the
16 Board.

17 **“§ 1506. Conduct of proceedings**

18 “(a) IN GENERAL.—

19 “(1) APPLICABLE LAW.—Proceedings of the
20 Copyright Claims Board shall be conducted in ac-
21 cordance with this chapter and regulations estab-
22 lished by the Register of Copyrights under this chap-
23 ter, in addition to relevant principles of law under
24 this title.

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

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

15 “(c) CENTRALIZED PROCESS.—Proceedings before
16 the Copyright Claims Board shall—

17 “(1) be conducted at the offices of the Copy-
18 right Claims Board without the requirement of in-
19 person appearances by parties or others; and

20 “(2) take place by means of written submis-
21 sions, hearings, and conferences carried out through
22 internet-based applications and other telecommuni-
23 cations facilities, except that, in cases in which phys-
24 ical or other nontestimonial evidence material to a
25 proceeding cannot be furnished to the Copyright

1 Claims Board through available telecommunications
2 facilities, the Copyright Claims Board may make al-
3 ternative arrangements for the submission of such
4 evidence that do not prejudice any other party to the
5 proceeding.

6 “(d) REPRESENTATION.—A party to a proceeding be-
7 fore the Copyright Claims Board may be, but is not re-
8 quired to be, represented by—

9 “(1) an attorney; or

10 “(2) a law student who is qualified under appli-
11 cable law governing representation by law students
12 of parties in legal proceedings and who provides
13 such representation on a pro bono basis.

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

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

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

23 “(3) is accompanied by a filing fee in such
24 amount as may be prescribed in regulations estab-
25 lished by the Register of Copyrights.

1 “(f) REVIEW OF CLAIMS AND COUNTERCLAIMS.—

2 “(1) CLAIMS.—Upon the filing of a claim under
3 subsection (e), the claim shall be reviewed by a
4 Copyright Claims Attorney to ensure that the claim
5 complies with this chapter and applicable regula-
6 tions, subject to the following:

7 “(A) If the claim is found to comply, the
8 claimant shall be notified regarding that com-
9 pliance and instructed to proceed with service of
10 the claim under subsection (g).

11 “(B) If the claim is found not to comply,
12 the claimant shall be notified that the claim is
13 deficient and be permitted to file an amended
14 claim not later than 30 days after the date on
15 which the claimant receives the notice, without
16 the requirement of an additional filing fee. If
17 the claimant files a compliant claim within that
18 30-day period, the claimant shall be so notified
19 and be instructed to proceed with service of the
20 claim. If the claim is refiled within that 30-day
21 period and still fails to comply, the claimant
22 shall again be notified that the claim is defi-
23 cient and shall be provided a second oppor-
24 tunity to amend the claim not later than 30
25 days after the date of that second notice, with-

1 out the requirement of an additional filing fee.
2 If the claim is refiled again within that second
3 30-day period and is compliant, the claimant
4 shall be so notified and shall be instructed to
5 proceed with service of the claim, but if the
6 claim still fails to comply, upon confirmation of
7 such noncompliance by a Copyright Claims Of-
8 ficer, the proceeding shall be dismissed without
9 prejudice. The Copyright Claims Board shall
10 also dismiss without prejudice any proceeding
11 in which a compliant claim is not filed within
12 the applicable 30-day period.

13 “(C)(i) Subject to clause (ii), for purposes
14 of this paragraph, a claim against an online
15 service provider for infringement by reason of
16 the storage of or referral or linking to infring-
17 ing material that may be subject to the limita-
18 tions on liability set forth in subsection (b), (c),
19 or (d) of section 512 shall be considered non-
20 compliant unless the claimant affirms in the
21 statement required under subsection (e)(1) of
22 this section that the claimant has previously no-
23 tified the service provider of the claimed in-
24 fringement in accordance with subsection
25 (b)(2)(E), (c)(3), or (d)(3) of section 512, as

1 applicable, and the service provider failed to re-
2 move or disable access to the material expedi-
3 tiously upon the provision of such notice.

4 “(ii) If a claim is found to be noncompliant
5 under clause (i), the Copyright Claims Board
6 shall provide the claimant with information con-
7 cerning the service of such a notice under the
8 applicable provision of section 512.

9 “(2) COUNTERCLAIMS.—Upon the filing and
10 service of a counterclaim, the counterclaim shall be
11 reviewed by a Copyright Claims Attorney to ensure
12 that the counterclaim complies with the provisions of
13 this chapter and applicable regulations. If the coun-
14 terclaim is found not to comply, the counterclaimant
15 and the other parties to the proceeding shall be noti-
16 fied that the counterclaim is deficient, and the
17 counterclaimant shall be permitted to file and serve
18 an amended counterclaim not later than 30 days
19 after the date of such notice. If the counterclaimant
20 files and serves a compliant counterclaim within that
21 30-day period, the counterclaimant and such other
22 parties shall be so notified. If the counterclaim is
23 refiled and served within that 30-day period but still
24 fails to comply, the counterclaimant and such other
25 parties shall again be notified that the counterclaim

1 is deficient, and the counterclaimant shall be pro-
2 vided a second opportunity to amend the counter-
3 claim not later than 30 days after the date of the
4 second notice. If the counterclaim is refiled and
5 served again within that second 30-day period and
6 is compliant, the counterclaimant and such other
7 parties shall be so notified, but if the counterclaim
8 still fails to comply, upon confirmation of such non-
9 compliance by a Copyright Claims Officer, the coun-
10 terclaim, but not the proceeding, shall be dismissed
11 without prejudice.

12 “(3) DISMISSAL FOR UNSUITABILITY.—The
13 Copyright Claims Board shall dismiss a claim or
14 counterclaim without prejudice if, upon reviewing
15 the claim or counterclaim, or at any other time in
16 the proceeding, the Copyright Claims Board con-
17 cludes that the claim or counterclaim is unsuitable
18 for determination by the Copyright Claims Board,
19 including on account of any of the following:

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

21 “(B) The lack of an essential witness, evi-
22 dence, or expert testimony.

23 “(C) The determination of a relevant issue
24 of law or fact that could exceed either the num-
25 ber of proceedings the Copyright Claims Board

1 could reasonably administer or the subject mat-
2 ter competence of the Copyright Claims Board.

3 “(g) SERVICE OF NOTICE AND CLAIMS.—In order to
4 proceed with a claim against a respondent, a claimant
5 shall, not later than 90 days after receiving notification
6 under subsection (f) to proceed with service, file with the
7 Copyright Claims Board proof of service on the respond-
8 ent. In order to effectuate service on a respondent, the
9 claimant shall cause notice of the proceeding and a copy
10 of the claim to be served on the respondent, either by per-
11 sonal service or pursuant to a waiver of personal service,
12 as prescribed in regulations established by the Register of
13 Copyrights. Such regulations shall include the following
14 requirements:

15 “(1) The notice of the proceeding shall adhere
16 to a prescribed form and shall set forth the nature
17 of the Copyright Claims Board and proceeding, the
18 right of the respondent to opt out, and the con-
19 sequences of opting out and not opting out, includ-
20 ing a prominent statement that, by not opting out
21 within 60 days after receiving the notice, the re-
22 spondent—

23 “(A) loses the opportunity to have the dis-
24 pute decided by a court created under article

1 III of the Constitution of the United States;
2 and

3 “(B) waives the right to a jury trial re-
4 garding the dispute.

5 “(2) The copy of the claim served on the re-
6 spondent shall be the same as the claim that was
7 filed with the Copyright Claims Board.

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

11 “(4) An individual, other than a minor or in-
12 competent individual, may be served by—

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

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

19 “(C) leaving a copy of the notice and claim
20 at the individual’s dwelling or usual place of
21 abode with someone of suitable age and discre-
22 tion who resides there; or

23 “(D) delivering a copy of the notice and
24 claim to an agent designated by the respondent
25 to receive service of process or, if not so des-

1 ignated, an agent authorized by appointment or
2 by law to receive service of process.

3 “(5)(A) A corporation, partnership, or unincor-
4 porated association that is subject to suit in courts
5 of general jurisdiction under a common name shall
6 be served by delivering a copy of the notice and
7 claim to its service agent. If such service agent has
8 not been designated, service shall be accomplished—

9 “(i) by complying with State law for serv-
10 ing a summons in an action brought in courts
11 of general jurisdiction in the State where serv-
12 ice is made; or

13 “(ii) by delivering a copy of the notice and
14 claim to an officer, a managing or general
15 agent, or any other agent authorized by ap-
16 pointment or by law to receive service of proc-
17 ess in an action brought in courts of general ju-
18 risdiction in the State where service is made
19 and, if the agent is one authorized by statute
20 and the statute so requires, by also mailing a
21 copy of the notice and claim to the respondent.

22 “(B) A corporation, partnership, or unincor-
23 porated association that is subject to suit in courts
24 of general jurisdiction under a common name may
25 elect to designate a service agent to receive notice of

1 a claim against it before the Copyright Claims
2 Board by complying with requirements that the Reg-
3 ister of Copyrights shall establish by regulation. The
4 Register of Copyrights shall maintain a current di-
5 rectory of service agents that is available to the pub-
6 lic for inspection, including through the internet,
7 and may require such corporations, partnerships,
8 and unincorporated associations designating such
9 service agents to pay a fee to cover the costs of
10 maintaining the directory.

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

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

24 “(B) The request shall state the date on
25 which the request is sent, and shall provide the

1 respondent a period of 30 days, beginning on
2 the date on which the request is sent, to return
3 the waiver form signed by the respondent. The
4 signed waiver form shall, for purposes of this
5 subsection, constitute acceptance and proof of
6 service as of the date on which the waiver is
7 signed.

8 “(7)(A) A respondent’s waiver of personal serv-
9 ice shall not constitute a waiver of the respondent’s
10 right to opt out of the proceeding.

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

18 “(8) A minor or an incompetent individual may
19 only be served by complying with State law for serv-
20 ing a summons or like process on such an individual
21 in an action brought in the courts of general juris-
22 diction of the State where service is made.

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

1 “(h) NOTIFICATION BY COPYRIGHT CLAIMS
2 BOARD.—The Register of Copyrights shall establish regu-
3 lations providing for a written notification to be sent by,
4 or on behalf of, the Copyright Claims Board to notify the
5 respondent of a pending proceeding against the respond-
6 ent, as set forth in those regulations, which shall—

7 “(1) include information concerning the re-
8 spondent’s right to opt out of the proceeding, the
9 consequences of opting out and not opting out, and
10 a prominent statement that, by not opting out with-
11 in 60 days after the date of service under subsection
12 (g), the respondent loses the opportunity to have the
13 dispute decided by a court created under article III
14 of the Constitution of the United States and waives
15 the right to a jury trial regarding the dispute; and

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

18 “(i) OPT-OUT PROCEDURE.—Upon being properly
19 served with a notice and claim, a respondent who chooses
20 to opt out of the proceeding shall have a period of 60 days,
21 beginning on the date of service, in which to provide writ-
22 ten notice of such choice to the Copyright Claims Board,
23 in accordance with regulations established by the Register
24 of Copyrights. If proof of service has been filed by the
25 claimant and the respondent does not submit an opt-out

1 notice to the Copyright Claims Board within that 60-day
2 period, the proceeding shall be deemed an active pro-
3 ceeding and the respondent shall be bound by the deter-
4 mination in the proceeding to the extent provided under
5 section 1507(a). If the respondent opts out of the pro-
6 ceeding during that 60-day period, the proceeding shall
7 be dismissed without prejudice, except that, in exceptional
8 circumstances and upon written notice to the claimant, the
9 Copyright Claims Board may extend that 60-day period
10 in the interests of justice.

11 “(j) SERVICE OF OTHER DOCUMENTS.—Documents
12 submitted or relied upon in a proceeding, other than the
13 notice and claim, shall be served in accordance with regu-
14 lations established by the Register of Copyrights.

15 “(k) SCHEDULING.—Upon confirmation that a pro-
16 ceeding has become an active proceeding, the Copyright
17 Claims Board shall issue a schedule for the future conduct
18 of the proceeding. The schedule shall not specify a time
19 that a claimant or counterclaimant is required make an
20 election of damages that is inconsistent with section
21 1504(e). A schedule issued by the Copyright Claims Board
22 may be amended by the Copyright Claims Board in the
23 interests of justice.

24 “(l) CONFERENCES.—One or more Copyright Claims
25 Officers may hold a conference to address case manage-

1 ment or discovery issues in a proceeding, which shall be
2 noted upon the record of the proceeding and may be re-
3 corded or transcribed.

4 “(m) PARTY SUBMISSIONS.—A proceeding of the
5 Copyright Claims Board may not include any formal mo-
6 tion practice, except that, subject to applicable regulations
7 and procedures of the Copyright Claims Board—

8 “(1) the parties to the proceeding may make re-
9 quests to the Copyright Claims Board to address
10 case management and discovery matters, and submit
11 responses thereto; and

12 “(2) the Copyright Claims Board may request
13 or permit parties to make submissions addressing
14 relevant questions of fact or law, or other matters,
15 including matters raised sua sponte by the Copy-
16 right Claims Officers, and offer responses thereto.

17 “(n) DISCOVERY.—Discovery in a proceeding shall be
18 limited to the production of relevant information and doc-
19 uments, written interrogatories, and written requests for
20 admission, as provided in regulations established by the
21 Register of Copyrights, except that—

22 “(1) upon the request of a party, and for good
23 cause shown, the Copyright Claims Board may ap-
24 prove additional relevant discovery, on a limited
25 basis, in particular matters, and may request spe-

1 cific information and documents from participants in
2 the proceeding and voluntary submissions from non-
3 participants, consistent with the interests of justice;

4 “(2) upon the request of a party, and for good
5 cause shown, the Copyright Claims Board may issue
6 a protective order to limit the disclosure of docu-
7 ments or testimony that contain confidential infor-
8 mation; and

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

16 “(o) EVIDENCE.—The Copyright Claims Board may
17 consider the following types of evidence in a proceeding,
18 and such evidence may be admitted without application
19 of formal rules of evidence:

20 “(1) Documentary and other nontestimonial
21 evidence that is relevant to the claims, counter-
22 claims, or defenses in the proceeding.

23 “(2) Testimonial evidence, submitted under
24 penalty of perjury in written form or in accordance
25 with subsection (p), limited to statements of the par-

1 ties and nonexpert witnesses, that is relevant to the
2 claims, counterclaims, and defenses in a proceeding,
3 except that, in exceptional cases, expert witness tes-
4 timony or other types of testimony may be permitted
5 by the Copyright Claims Board for good cause
6 shown.

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

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

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

17 “(3) A recording or transcript of the hearing
18 shall be made available to any Copyright Claims Of-
19 ficer who is not in attendance.

20 “(q) VOLUNTARY DISMISSAL.—

21 “(1) BY CLAIMANT.—Upon the written request
22 of a claimant that is received before a respondent
23 files a response to the claim in a proceeding, the
24 Copyright Claims Board shall dismiss the pro-

1 ceeding, or a claim or respondent, as requested,
2 without prejudice.

3 “(2) BY COUNTERCLAIMANT.—Upon written re-
4 quest of a counterclaimant that is received before a
5 claimant files a response to the counterclaim, the
6 Copyright Claims Board shall dismiss the counter-
7 claim, such dismissal to be without prejudice.

8 “(3) CLASS ACTIONS.—Any party in an active
9 proceeding before the Copyright Claims Board who
10 receives notice of a pending or putative class action,
11 arising out of the same transaction or occurrence, in
12 which that party is a class member may request in
13 writing dismissal of the proceeding before the Board.
14 Upon notice to all claimants and counterclaimants,
15 the Copyright Claims Board shall dismiss the pro-
16 ceeding without prejudice.

17 “(r) SETTLEMENT.—

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

20 “(A) jointly request a conference with a
21 Copyright Claims Officer for the purpose of fa-
22 cilitating settlement discussions; or

23 “(B) submit to the Copyright Claims
24 Board an agreement providing for settlement

1 and dismissal of some or all of the claims and
2 counterclaims in the proceeding.

3 “(2) ADDITIONAL REQUEST.—A submission
4 under paragraph (1)(B) may include a request that
5 the Copyright Claims Board adopt some or all of the
6 terms of the parties’ settlement in a final determina-
7 tion in the proceeding.

8 “(s) FACTUAL FINDINGS.—Subject to subsection
9 (n)(3), the Copyright Claims Board shall make factual
10 findings based upon a preponderance of the evidence.

11 “(t) DETERMINATIONS.—

12 “(1) NATURE AND CONTENTS.—A determina-
13 tion rendered by the Copyright Claims Board in a
14 proceeding shall—

15 “(A) be reached by a majority of the Copy-
16 right Claims Board;

17 “(B) be in writing, and include an expla-
18 nation of the factual and legal basis of the de-
19 termination;

20 “(C) set forth any terms by which a re-
21 spondent or counterclaim respondent has
22 agreed to cease infringing activity under section
23 1504(e)(2);

1 “(D) to the extent requested under sub-
2 section (r)(2), set forth the terms of any settle-
3 ment agreed to under subsection (r)(1); and

4 “(E) include a clear statement of all dam-
5 ages and other relief awarded, including under
6 subparagraphs (C) and (D).

7 “(2) DISSENT.—A Copyright Claims Officer
8 who dissents from a decision contained in a deter-
9 mination under paragraph (1) may append a state-
10 ment setting forth the grounds for that dissent.

11 “(3) PUBLICATION.—Each final determination
12 of the Copyright Claims Board shall be made avail-
13 able on a publicly accessible website. The Register
14 shall establish regulations with respect to the publi-
15 cation of other records and information relating to
16 such determinations, including the redaction of
17 records to protect confidential information that is
18 the subject of a protective order under subsection
19 (n)(2).

20 “(4) FREEDOM OF INFORMATION ACT.—All in-
21 formation relating to proceedings of the Copyright
22 Claims Board under this chapter is exempt from dis-
23 closure to the public under section 552(b)(3) of title
24 5, except for determinations, records, and informa-
25 tion published under paragraph (3).

1 “(u) RESPONDENT’S DEFAULT.—If a proceeding has
2 been deemed an active proceeding but the respondent has
3 failed to appear or has ceased participating in the pro-
4 ceeding, as demonstrated by the respondent’s failure,
5 without justifiable cause, to meet 1 or more deadlines or
6 requirements set forth in the schedule adopted by the
7 Copyright Claims Board under subsection (k), the Copy-
8 right Claims Board may enter a default determination, in-
9 cluding the dismissal of any counterclaim asserted by the
10 respondent, as follows and in accordance with such other
11 requirements as the Register of Copyrights may establish
12 by regulation:

13 “(1) The Copyright Claims Board shall require
14 the claimant to submit relevant evidence and other
15 information in support of the claimant’s claim and
16 any asserted damages and, upon review of such evi-
17 dence and any other requested submissions from the
18 claimant, shall determine whether the materials so
19 submitted are sufficient to support a finding in favor
20 of the claimant under applicable law and, if so, the
21 appropriate relief and damages, if any, to be award-
22 ed.

23 “(2) If the Copyright Claims Board makes an
24 affirmative determination under paragraph (1), the
25 Copyright Claims Board shall prepare a proposed

1 default determination, and shall provide written no-
2 tice to the respondent at all addresses, including
3 email addresses, reflected in the records of the pro-
4 ceeding before the Copyright Claims Board, of the
5 pendency of a default determination by the Copy-
6 right Claims Board and of the legal significance of
7 such determination. Such notice shall be accom-
8 panied by the proposed default determination and
9 shall provide that the respondent has a period of 30
10 days, beginning on the date of the notice, to submit
11 any evidence or other information in opposition to
12 the proposed default determination.

13 “(3) If the respondent responds to the notice
14 provided under paragraph (2) within the 30-day pe-
15 riod provided in such paragraph, the Copyright
16 Claims Board shall consider the respondent’s sub-
17 missions and, after allowing the other parties to ad-
18 dress such submissions, maintain, or amend its pro-
19 posed determination as appropriate, and the result-
20 ing determination shall not be a default determina-
21 tion.

22 “(4) If the respondent fails to respond to the
23 notice provided under paragraph (2), the Copyright
24 Claims Board shall proceed to issue the default de-
25 termination as a final determination. Thereafter, the

1 respondent may only challenge such determination to
2 the extent permitted under section 1508(c), except
3 that, before any additional proceedings are initiated
4 under section 1508, the Copyright Claims Board
5 may, in the interests of justice, vacate the default
6 determination.

7 “(v) CLAIMANT’S FAILURE TO PROCEED.—

8 “(1) FAILURE TO COMPLETE SERVICE.—If a
9 claimant fails to complete service on a respondent
10 within the 90-day period required under subsection
11 (g), the Copyright Claims Board shall dismiss that
12 respondent from the proceeding without prejudice. If
13 a claimant fails to complete service on all respond-
14 ents within that 90-day period, the Copyright Claims
15 Board shall dismiss the proceeding without preju-
16 dice.

17 “(2) FAILURE TO PROSECUTE.—If a claimant
18 fails to proceed in an active proceeding, as dem-
19 onstrated by the claimant’s failure, without justifi-
20 able cause, to meet 1 or more deadlines or require-
21 ments set forth in the schedule adopted by the Copy-
22 right Claims Board under subsection (k), the Copy-
23 right Claims Board may, upon providing written no-
24 tice to the claimant and a period of 30 days, begin-
25 ning on the date of the notice, to respond to the no-

1 tice, and after considering any such response, issue
2 a determination dismissing the claimant’s claims,
3 which shall include an award of attorneys’ fees and
4 costs, if appropriate, under subsection (y)(2). There-
5 after, the claimant may only challenge such deter-
6 mination to the extent permitted under section
7 1508(e), except that, before any additional pro-
8 ceedings are initiated under section 1508, the Copy-
9 right Claims Board may, in the interests of justice,
10 vacate the determination of dismissal.

11 “(w) REQUEST FOR RECONSIDERATION.—A party
12 may, not later than 30 days after the date on which the
13 Copyright Claims Board issues a final determination in
14 a proceeding under this chapter, submit a written request
15 for reconsideration of, or an amendment to, such deter-
16 mination if the party identifies a clear error of law or fact
17 material to the outcome, or a technical mistake. After pro-
18 viding the other parties an opportunity to address such
19 request, the Copyright Claims Board shall either deny the
20 request or issue an amended final determination.

21 “(x) REVIEW BY REGISTER.—If the Copyright
22 Claims Board denies a party a request for reconsideration
23 of a final determination under subsection (w), that party
24 may, not later than 30 days after the date of such denial,
25 request review of the final determination by the Register

1 of Copyrights in accordance with regulations established
2 by the Register. Such request shall be accompanied by a
3 reasonable filing fee, as provided in such regulations. The
4 review by the Register shall be limited to consideration
5 of whether the Copyright Claims Board abused its discre-
6 tion in denying reconsideration of the determination. After
7 providing the other parties an opportunity to address the
8 request, the Register shall either deny the request for re-
9 view, or remand the proceeding to the Copyright Claims
10 Board for reconsideration of issues specified in the remand
11 and for issuance of an amended final determination. Such
12 amended final determination shall not be subject to fur-
13 ther consideration or review, other than under section
14 1508(c).

15 “(y) CONDUCT OF PARTIES AND ATTORNEYS.—

16 “(1) CERTIFICATION.—The Register of Copy-
17 rights shall establish regulations requiring certifi-
18 cation of the accuracy and truthfulness of state-
19 ments made by participants in proceedings before
20 the Copyright Claims Board.

21 “(2) BAD FAITH CONDUCT.—Notwithstanding
22 any other provision of law, in any proceeding in
23 which a determination is rendered and it is estab-
24 lished that a party pursued a claim, counterclaim, or
25 defense for a harassing or other improper purpose,

1 or without a reasonable basis in law or fact, then,
2 unless inconsistent with the interests of justice, the
3 Copyright Claims Board shall in such determination
4 award reasonable costs and attorneys' fees to any
5 adversely affected party of in an amount of not more
6 than \$5,000, except that—

7 “(A) if an adversely affected party ap-
8 peared pro se in the proceeding, the award to
9 that party shall be for costs only, in an amount
10 of not more than \$2,500; and

11 “(B) in extraordinary circumstances, such
12 as where a party has demonstrated a pattern or
13 practice of bad faith conduct as described in
14 this paragraph, the Copyright Claims Board
15 may, in the interests of justice, award costs and
16 attorneys' fees in excess of the limitations
17 under this paragraph.

18 “(3) ADDITIONAL PENALTY.—If the Board
19 finds that on more than 1 occasion within a 12-
20 month period a party pursued a claim, counterclaim,
21 or defense before the Copyright Claims Board for a
22 harassing or other improper purpose, or without a
23 reasonable basis in law or fact, that party shall be
24 barred from initiating a claim before the Copyright
25 Claims Board under this chapter for a period of 12

1 months beginning on the date on which the Board
2 makes such a finding. Any proceeding commenced
3 by that party that is still pending before the Board
4 when such a finding is made shall be dismissed with-
5 out prejudice, except that if a proceeding has been
6 deemed active under subsection (i), the proceeding
7 shall be dismissed under this paragraph only if the
8 respondent provides written consent thereto.

9 “(z) REGULATIONS FOR SMALLER CLAIMS.—The
10 Register of Copyrights shall establish regulations to pro-
11 vide for the consideration and determination, by not fewer
12 than 1 Copyright Claims Officer, of any claim under this
13 chapter in which total damages sought do not exceed
14 \$5,000 (exclusive of attorneys’ fees and costs). A deter-
15 mination issued under this subsection shall have the same
16 effect as a determination issued by the entire Copyright
17 Claims Board.

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

19 “(1) IN GENERAL.—The Register of Copyrights
20 shall establish regulations allowing for a library or
21 archives that does not wish to participate in pro-
22 ceedings before the Copyright Claims Board to pre-
23 emptively opt out of such proceedings.

24 “(2) PROCEDURES.—The regulations estab-
25 lished under paragraph (1) shall—

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

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

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

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

14 “(B) require a library or archives to renew
15 a decision to preemptively opt out of pro-
16 ceedings under this subsection.

17 “(4) DEFINITIONS.—For purposes of this sub-
18 section, the terms ‘library’ and ‘archives’ mean any
19 library or archives, respectively, that qualifies for the
20 limitations on exclusive rights under section 108.

21 **“§ 1507. Effect of proceeding**

22 “(a) DETERMINATION.—Subject to the reconsider-
23 ation and review processes provided under subsections (w)
24 and (x) of section 1506 and section 1508(c), the issuance
25 of a final determination by the Copyright Claims Board

1 in a proceeding, including a default determination or de-
2 termination based on a failure to prosecute, shall, solely
3 with respect to the parties to such determination, preclude
4 relitigation before any court or tribunal, or before the
5 Copyright Claims Board, of the claims and counterclaims
6 asserted and finally determined by the Board, and may
7 be relied upon for such purpose in a future action or pro-
8 ceeding arising from the same specific activity or activi-
9 ties, subject to the following:

10 “(1) A determination of the Copyright Claims
11 Board shall not preclude litigation or relitigation as
12 between the same or different parties before any
13 court or tribunal, or the Copyright Claims Board, of
14 the same or similar issues of fact or law in connec-
15 tion with claims or counterclaims not asserted or not
16 finally determined by the Copyright Claims Board.

17 “(2) A determination of ownership of a copy-
18 righted work for purposes of resolving a matter be-
19 fore the Copyright Claims Board may not be relied
20 upon, and shall not have any preclusive effect, in
21 any other action or proceeding before any court or
22 tribunal, including the Copyright Claims Board.

23 “(3) Except to the extent permitted under this
24 subsection and section 1508, any determination of
25 the Copyright Claims Board may not be cited or re-

1 lied upon as legal precedent in any other action or
2 proceeding before any court or tribunal, including
3 the Copyright Claims Board.

4 “(b) CLASS ACTIONS NOT AFFECTED.—

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

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

17 “(A) opt out of the class action, in accord-
18 ance with regulations established by the Reg-
19 ister of Copyrights; or

20 “(B) seek dismissal under section
21 1506(q)(3) of the proceeding before the Copy-
22 right Claims Board.

23 “(c) OTHER MATERIALS IN PROCEEDING.—Except
24 as permitted under this section and section 1508, a sub-
25 mission or statement of a party or witness made in connec-

1 tion with a proceeding before the Copyright Claims Board,
2 including a proceeding that is dismissed, may not be cited
3 or relied upon in, or serve as the basis of, any action or
4 proceeding concerning rights or limitations on rights
5 under this title before any court or tribunal, including the
6 Copyright Claims Board.

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

15 “(1) notice of the commencement of the Copy-
16 right Claims Board proceeding is provided by the
17 claimant to the service provider’s designated agent
18 before the service provider replaces the material fol-
19 lowing receipt of a counter notification under section
20 512(g); and

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

24 “(e) FAILURE TO ASSERT COUNTERCLAIM.—The
25 failure or inability to assert a counterclaim in a proceeding

1 before the Copyright Claims Board shall not preclude the
2 assertion of that counterclaim in a subsequent court action
3 or proceeding before the Copyright Claims Board.

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

10 **“§ 1508. Review and confirmation by district court**

11 “(a) IN GENERAL.—In any proceeding in which a
12 party has failed to pay damages, or has failed otherwise
13 to comply with the relief, awarded in a final determination
14 of the Copyright Claims Board, including a default deter-
15 mination or a determination based on a failure to pros-
16 ecute, the aggrieved party may, not later than 1 year after
17 the date on which the final determination is issued, any
18 reconsideration by the Copyright Claims Board or review
19 by the Register of Copyrights is resolved, or an amended
20 final determination is issued, whichever occurs last, apply
21 to the United States District Court for the District of Co-
22 lumbia or any other appropriate district court of the
23 United States for an order confirming the relief awarded
24 in the final determination and reducing such award to
25 judgment. The court shall grant such order and direct

1 entry of judgment unless the determination is or has been
2 vacated, modified, or corrected under subsection (c). If the
3 United States District Court for the District of Columbia
4 or other district court of the United States, as the case
5 may be, issues an order confirming the relief awarded by
6 the Copyright Claims Board, the court shall impose on the
7 party who failed to pay damages or otherwise comply with
8 the relief, the reasonable expenses required to secure such
9 order, including attorneys' fees, that were incurred by the
10 aggrieved party.

11 “(b) FILING PROCEDURES.—

12 “(1) APPLICATION TO CONFIRM DETERMINA-
13 TION.—Notice of the application under subsection
14 (a) for confirmation of a determination of the Copy-
15 right Claims Board and entry of judgment shall be
16 provided to all parties to the proceeding before the
17 Copyright Claims Board that resulted in the deter-
18 mination, in accordance with the procedures applica-
19 ble to service of a motion in the district court of the
20 United States where the application is made.

21 “(2) CONTENTS OF APPLICATION.—The appli-
22 cation under subsection (a) shall include the fol-
23 lowing:

24 “(A) A certified copy of the final or
25 amended final determination of the Copyright

1 Claims Board, as reflected in the records of the
2 Copyright Claims Board, following any process
3 of reconsideration or review by the Register of
4 Copyrights, to be confirmed and rendered to
5 judgment.

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

8 “(i) that the copy is a true and cor-
9 rect copy of such determination;

10 “(ii) stating the date the determina-
11 tion was issued;

12 “(iii) stating the basis for the chal-
13 lenge under subsection (c)(1); and

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

18 “(c) CHALLENGES TO THE DETERMINATION.—

19 “(1) BASES FOR CHALLENGE.—Not later than
20 90 days after the date on which the Copyright
21 Claims Board issues a final or amended final deter-
22 mination in a proceeding, or not later than 90 days
23 after the date on which the Register of Copyrights
24 completes any process of reconsideration or review of
25 the determination, whichever occurs later, a party

1 may seek an order from a district court of the
2 United States vacating, modifying, or correcting the
3 determination of the Copyright Claims Board in the
4 following cases:

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

8 “(B) If the Copyright Claims Board ex-
9 ceeded its authority or failed to render a final
10 determination concerning the subject matter at
11 issue.

12 “(C) In the case of a default determination
13 or determination based on a failure to pros-
14 ecute, if it is established that the default or fail-
15 ure was due to excusable neglect.

16 “(2) PROCEDURE TO CHALLENGE.—

17 “(A) NOTICE OF APPLICATION.—Notice of
18 the application to challenge a determination of
19 the Copyright Claims Board shall be provided
20 to all parties to the proceeding before the Copy-
21 right Claims Board, in accordance with the pro-
22 cedures applicable to service of a motion in the
23 court where the application is made.

24 “(B) STAYING OF PROCEEDINGS.—For
25 purposes of an application under this sub-

1 section, any judge who is authorized to issue an
2 order to stay the proceedings in another action
3 brought in the same court may issue an order,
4 to be served with the notice of application, stay-
5 ing proceedings to enforce the award while the
6 challenge is pending.

7 **“§ 1509. Relationship to other district court actions**

8 “(a) STAY OF DISTRICT COURT PROCEEDINGS.—
9 Subject to section 1507(b), a district court of the United
10 States shall issue a stay of proceedings or such other relief
11 as the court determines appropriate with respect to any
12 claim brought before the court that is already the subject
13 of a pending or active proceeding before the Copyright
14 Claims Board.

15 “(b) ALTERNATIVE DISPUTE RESOLUTION PROC-
16 ESS.—A proceeding before the Copyright Claims Board
17 under this chapter shall qualify as an alternative dispute
18 resolution process under section 651 of title 28 for pur-
19 poses of referral of eligible cases by district courts of the
20 United States upon the consent of the parties.

21 **“§ 1510. Implementation by Copyright Office**

22 “(a) REGULATIONS.—

23 “(1) IMPLEMENTATION GENERALLY.—The Reg-
24 ister of Copyrights shall establish regulations to
25 carry out this chapter. Such regulations shall include

1 the fees prescribed under subsections (e) and (x) of
2 section 1506. The authority to issue such fees shall
3 not limit the authority of the Register of Copyrights
4 to establish fees for services under section 708. All
5 fees received by the Copyright Office in connection
6 with the activities under this chapter shall be depos-
7 ited by the Register of Copyrights and credited to
8 the appropriations for necessary expenses of the Of-
9 fice in accordance with section 708(d). In estab-
10 lishing regulations under this subsection, the Reg-
11 ister of Copyrights shall provide for the efficient ad-
12 ministration of the Copyright Claims Board, and for
13 the ability of the Copyright Claims Board to timely
14 complete proceedings instituted under this chapter,
15 including by implementing mechanisms to prevent
16 harassing or improper use of the Copyright Claims
17 Board by any party.

18 “(2) LIMITS ON MONETARY RELIEF.—

19 “(A) IN GENERAL.—Subject to subpara-
20 graph (B), not earlier than 3 years after the
21 date on which Copyright Claims Board issues
22 the first determination of the Copyright Claims
23 Board, the Register of Copyrights may, in order
24 to further the goals of the Copyright Claims
25 Board, conduct a rulemaking to adjust the lim-

1 its on monetary recovery or attorneys' fees and
2 costs that may be awarded under this chapter.

3 “(B) EFFECTIVE DATE OF ADJUST-
4 MENT.—Any rule under subparagraph (A) that
5 makes an adjustment shall take effect at the
6 end of the 120-day period beginning on the
7 date on which the Register of Copyrights sub-
8 mits the rule to Congress and only if Congress
9 does not, during that 120-day period, enact a
10 law that provides in substance that Congress
11 does not approve the rule.

12 “(b) NECESSARY FACILITIES.—Subject to applicable
13 law, the Register of Copyrights may retain outside vendors
14 to establish internet-based, teleconferencing, and other fa-
15 cilities required to operate the Copyright Claims Board.

16 “(c) FEES.—Any filing fees, including the fee to com-
17 mence a proceeding under section 1506(e), shall be pre-
18 scribed in regulations established by the Register of Copy-
19 rights. The sum total of such filing fees shall be in an
20 amount of not less than \$100, may not exceed the cost
21 of filing an action in a district court of the United States,
22 and shall be fixed in amounts that further the goals of
23 the Copyright Claims Board.

1 **“§ 1511. Funding**

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

8 (c) CLERICAL AMENDMENT.—The table of chapters
9 for title 17, United States Code, is amended by adding
10 at the end the following:

“15. Copyright Small Claims 1501”.

11 (d) IMPLEMENTATION.—

12 (1) IN GENERAL.—Except as provided in para-
13 graph (2), not later than 1 year after the date of en-
14 actment of this Act, the Copyright Claims Board es-
15 tablished under section 1502 of title 17, United
16 States Code, as added by subsection (b) of this sec-
17 tion, shall begin operations.

18 (2) EXTENSION.—The Register of Copyrights
19 may, for good cause, extend the deadline under
20 paragraph (1) by not more than 180 days if the
21 Register of Copyrights provides notice of the exten-
22 sion to the public and to Congress.

23 (e) STUDY.—Not later than 3 years after the date
24 on which the Copyright Claims Board issues the first de-
25 termination of the Copyright Claims Board under chapter

1 15 of title 17, United States Code, as added by subsection
2 (b) of this section, the Register of Copyrights shall con-
3 duct, and report to Congress on, a study that addresses
4 the following:

5 (1) The use and efficacy of the Copyright
6 Claims Board in resolving copyright claims, includ-
7 ing the number of proceedings the Copyright Claims
8 Board could reasonably administer.

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

12 (A) eligible claims, such as claims under
13 section 1202 of title 17, United States Code;
14 and

15 (B) works and applicable damages limita-
16 tions.

17 (3) Whether greater allowance should be made
18 to permit awards of attorneys' fees and costs to pre-
19 vailing parties, including potential limitations on
20 such awards.

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

24 (5) Whether the Copyright Claims Board
25 should be expanded to offer mediation or other non-

1 binding alternative dispute resolution services to in-
2 terested parties.

3 (6) Such other matters as the Register of Copy-
4 rights believes may be pertinent concerning the
5 Copyright Claims Board.

6 (f) SEVERABILITY.—If any provision of this section,
7 an amendment made by this section, or the application
8 of such provision or amendment to any person or cir-
9 cumstance is held to be unconstitutional, the remainder
10 of this section and the amendments made by this section,
11 and the application of the provision or the amendment to
12 any other person or circumstance, shall not be affected.

13 **Subtitle B—Trademarks**

14 **SEC. 221. SHORT TITLE; TABLE OF CONTENTS.**

15 (a) SHORT TITLE.—This subtitle may be cited as the
16 “Trademark Modernization Act of 2020” or the “TM Act
17 of 2020”.

18 (b) TABLE OF CONTENTS.—The table of contents for
19 this subtitle is as follows:

Subtitle B—Trademarks

Sec. 221. Short title; table of contents.

Sec. 222. Definitions.

Sec. 223. Providing for third-party submission of evidence during examination.

Sec. 224. Providing for flexible response periods.

Sec. 225. Ex parte expungement; ex parte reexamination; new grounds for can-
cellation.

Sec. 226. Rebuttable presumption of irreparable harm.

Sec. 227. Report on decluttering initiatives.

Sec. 228. Amendments to confirm authority of the Director.

1 **SEC. 222. DEFINITIONS.**

2 In this subtitle:

3 (1) **DIRECTOR.**—The term “Director” means
4 the Under Secretary of Commerce for Intellectual
5 Property and Director of the United States Patent
6 and Trademark Office.

7 (2) **TRADEMARK ACT OF 1946.**—The term
8 “Trademark Act of 1946” means the Act entitled
9 “An Act to provide for the registration and protec-
10 tion of trademarks used in commerce, to carry out
11 the provisions of certain international conventions,
12 and for other purposes”, approved July 5, 1946 (15
13 U.S.C. 1051 et. seq) (commonly referred to as the
14 “Trademark Act of 1946” or the “Lanham Act”).

15 **SEC. 223. PROVIDING FOR THIRD-PARTY SUBMISSION OF**
16 **EVIDENCE DURING EXAMINATION.**

17 (a) **AMENDMENT.**—Section 1 of the Trademark Act
18 of 1946 (15 U.S.C. 1051) is amended by adding at the
19 end the following:

20 “(f) A third party may submit for consideration for
21 inclusion in the record of an application evidence relevant
22 to a ground for refusal of registration. The third-party
23 submission shall identify the ground for refusal and in-
24 clude a concise description of each piece of evidence sub-
25 mitted in support of each identified ground for refusal.
26 Not later than 2 months after the date on which the sub-

1 mission is filed, the Director shall determine whether the
2 evidence should be included in the record of the applica-
3 tion. The Director shall establish by regulation appro-
4 priate procedures for the consideration of evidence sub-
5 mitted by a third party under this subsection and may
6 prescribe a fee to accompany the submission. If the Direc-
7 tor determines that the third-party evidence should be in-
8 cluded in the record of the application, only the evidence
9 and the ground for refusal to which the evidence relates
10 may be so included. Any determination by the Director
11 whether or not to include evidence in the record of an ap-
12 plication shall be final and non-reviewable, and a deter-
13 mination to include or to not include evidence in the record
14 shall not prejudice any party's right to raise any issue and
15 rely on any evidence in any other proceeding.”.

16 (b) DEADLINE FOR PROCEDURES.—Not later than 1
17 year after the date of enactment of this Act, the Director
18 shall establish the appropriate procedures described in sec-
19 tion 1(f) of the Trademark Act of 1946, as added by sub-
20 section (a).

21 (c) EFFECTIVE DATE.—The amendment made by
22 subsection (a) shall take effect 1 year after the date of
23 enactment of this Act.

1 **SEC. 224. PROVIDING FOR FLEXIBLE RESPONSE PERIODS.**

2 Section 12(b) of the Trademark Act of 1946 (15
3 U.S.C. 1062(b)) is amended to read as follows:

4 “(b)(1) If the applicant is found not entitled to reg-
5 istration, the examiner shall notify the applicant thereof
6 and of the reasons therefor. The applicant may reply or
7 amend the application, which shall then be reexamined.
8 This procedure may be repeated until the examiner finally
9 refuses registration of the mark or the application is aban-
10 doned as described in paragraph (2).

11 “(2) After notification under paragraph (1), the ap-
12 plicant shall have a period of 6 months in which to reply
13 or amend the application, or such shorter time that is not
14 less than 60 days, as prescribed by the Director by regula-
15 tion. If the applicant fails to reply or amend or appeal
16 within the relevant time period, including any extension
17 under paragraph (3), the application shall be deemed to
18 have been abandoned, unless it can be shown to the satis-
19 faction of the Director that the delay in responding was
20 unintentional, in which case the application may be revived
21 and such time may be extended. The Director may pre-
22 scribe a fee to accompany any request to revive.

23 “(3) The Director shall provide, by regulation, for ex-
24 tensions of time to respond to the examiner for any time
25 period under paragraph (2) that is less than 6 months.
26 The Director shall allow the applicant to obtain extensions

1 of time to reply or amend aggregating 6 months from the
2 date of notification under paragraph (1) when the appli-
3 cant so requests. However, the Director may set by regula-
4 tion the time for individual periods of extension, and pre-
5 scribe a fee, by regulation, for any extension request. Any
6 request for extension shall be filed on or before the date
7 on which a reply or amendment is due under paragraph
8 (1).”.

9 **SEC. 225. EX PARTE EXPUNGEMENT; EX PARTE REEXAM-**
10 **INATION; NEW GROUNDS FOR CANCELLA-**
11 **TION.**

12 (a) EX PARTE EXPUNGEMENT.—The Trademark Act
13 of 1946 is amended by inserting after section 16 (15
14 U.S.C. 1066) the following:

15 **“SEC. 16A. EX PARTE EXPUNGEMENT.**

16 “(a) PETITION.—Notwithstanding sections 7(b) and
17 22, and subsections (a) and (b) of section 33, any person
18 may file a petition to expunge a registration of a mark
19 on the basis that the mark has never been used in com-
20 merce on or in connection with some or all of the goods
21 or services recited in the registration.

22 “(b) CONTENTS OF PETITION.—A petition filed
23 under subsection (a), together with any supporting docu-
24 ments, shall—

1 “(1) identify the registration that is the subject
2 of the petition;

3 “(2) identify each good or service recited in the
4 registration for which it is alleged that the mark has
5 never been used in commerce;

6 “(3) include a verified statement that sets
7 forth—

8 “(A) the elements of the reasonable inves-
9 tigation the petitioner conducted to determine
10 that the mark has never been used in commerce
11 on or in connection with the goods and services
12 identified in the petition; and

13 “(B) any additional facts that support the
14 allegation that the mark has never been used in
15 commerce on or in connection with the identi-
16 fied goods and services;

17 “(4) include any supporting evidence on which
18 the petitioner relies; and

19 “(5) be accompanied by the fee prescribed by
20 the Director.

21 “(c) INITIAL DETERMINATION; INSTITUTION.—

22 “(1) PRIMA FACIE CASE DETERMINATION, IN-
23 STITUTION, AND NOTIFICATION.—The Director
24 shall, for each good or service identified under sub-
25 section (b)(2), determine whether the petition sets

1 forth a prima facie case of the mark having never
2 been used in commerce on or in connection with
3 each such good or service, institute an ex parte
4 expungement proceeding for each good or service for
5 which the Director determines that a prima facie
6 case has been set forth, and provide a notice to the
7 registrant and petitioner of the determination of
8 whether or not the proceeding was instituted. Such
9 notice shall include a copy of the petition and any
10 supporting documents and evidence that were in-
11 cluded with the petition.

12 “(2) REASONABLE INVESTIGATION GUID-
13 ANCE.—The Director shall promulgate regulations
14 regarding what constitutes a reasonable investigation
15 under subsection (b)(3) and the general types of evi-
16 dence that could support a prima facie case that a
17 mark has never been used in commerce, but the Di-
18 rector shall retain the discretion to determine wheth-
19 er a prima facie case is set out in a particular pro-
20 ceeding.

21 “(3) DETERMINATION BY DIRECTOR.—Any de-
22 termination by the Director whether or not to insti-
23 tute a proceeding under this section shall be final
24 and non-reviewable, and shall not prejudice any par-
25 ty’s right to raise any issue and rely on any evidence

1 in any other proceeding, except as provided in sub-
2 section (j).

3 “(d) EX PARTE EXPUNGEMENT PROCEDURES.—The
4 procedures for ex parte expungement shall be the same
5 as the procedures for examination under section 12(b), ex-
6 cept that the Director shall promulgate regulations estab-
7 lishing and governing a proceeding under this section,
8 which may include regulations that—

9 “(1) set response and extension times particular
10 to this type of proceeding, which, notwithstanding
11 section 12(b)(3), need not be extendable to 6
12 months;

13 “(2) set limits governing the timing and num-
14 ber of petitions filed for a particular registration or
15 by a particular petitioner or real parties in interest;
16 and

17 “(3) define the relation of a proceeding under
18 this section to other proceedings concerning the
19 mark.

20 “(e) REGISTRANT’S EVIDENCE OF USE.—A reg-
21 istrant’s documentary evidence of use shall be consistent
22 with when a mark shall be deemed to be in use in com-
23 merce under the definition of ‘use in commerce’ in section
24 45, but shall not be limited in form to that of specimens
25 as provided in section 1(a).

1 “(f) **EXCUSABLE NONUSE.**—During an ex parte
2 expungement proceeding, for a mark registered under sec-
3 tion 44(e) or an extension of protection under section 66,
4 the registrant may offer evidence showing that any nonuse
5 is due to special circumstances that excuse such nonuse.
6 In such a case, the examiner shall determine whether the
7 facts and evidence demonstrate excusable nonuse and shall
8 not find that the registration should be cancelled under
9 subsection (g) for any good or service for which excusable
10 nonuse is demonstrated.

11 “(g) **EXAMINER’S DECISION; ORDER TO CANCEL.**—
12 For each good or service for which it is determined that
13 a mark has never been used in commerce, and for which
14 the provisions of subsection (f) do not apply, the examiner
15 shall find that the registration should be cancelled for each
16 such good or service. A mark shall not be found to have
17 never been used in commerce if there is evidence of use
18 in commerce by the registrant that temporally would have
19 supported registration at the time the application was filed
20 or the relevant allegation of use was made, or after reg-
21 istration, but before the petition to expunge was filed
22 under subsection (a), or an ex parte expungement pro-
23 ceeding was instituted by the Director under subsection
24 (h). Unless overturned on review of the examiner’s deci-
25 sion, the Director shall issue an order cancelling the reg-

1 istration, in whole or in part, after the time for appeal
2 has expired or any appeal proceeding has terminated.

3 “(h) EX PARTE EXPUNGEMENT BY THE DIREC-
4 TOR.—

5 “(1) IN GENERAL.—The Director may, on the
6 Director’s own initiative, institute an ex parte
7 expungement proceeding if the Director discovers in-
8 formation that supports a prima facie case of a
9 mark having never been used in commerce on or in
10 connection with any good or service covered by a
11 registration. The Director shall promptly notify the
12 registrant of such determination, at which time the
13 ex parte expungement proceeding shall proceed ac-
14 cording to the same procedures for ex parte
15 expungement established pursuant to subsection (d).
16 If the Director determines, based on the Director’s
17 own initiative, to institute an expungement pro-
18 ceeding, the Director shall transmit or make avail-
19 able the information that formed the basis for that
20 determination as part of the institution notice sent
21 to the registrant.

22 “(2) RULE OF CONSTRUCTION.—Nothing in
23 this subsection shall be construed to limit any other
24 authority of the Director.

25 “(i) TIME FOR INSTITUTION.—

1 “(1) WHEN PETITION MAY BE FILED, EX
2 PARTE EXPUNGEMENT PROCEEDING INSTITUTED.—
3 A petition for ex parte expungement of a registra-
4 tion under subsection (a) may be filed, or the Direc-
5 tor may institute on the Director’s own initiative an
6 ex parte expungement proceeding of a registration
7 under subsection (h), at any time following the expi-
8 ration of 3 years after the date of registration and
9 before the expiration of 10 years following the date
10 of registration.

11 “(2) EXCEPTION.—Notwithstanding paragraph
12 (1), for a period of 3 years after the date of enact-
13 ment of this section, a petition for expungement of
14 a registration under subsection (a) may be filed, or
15 the Director may institute on the Director’s own ini-
16 tiative an ex parte expungement proceeding of a reg-
17 istration under subsection (h), at any time following
18 the expiration of 3 years after the date of registra-
19 tion.

20 “(j) LIMITATION ON LATER EX PARTE
21 EXPUNGEMENT PROCEEDINGS.—

22 “(1) NO CO-PENDING PROCEEDINGS.—With re-
23 spect to a particular registration, while an ex parte
24 expungement proceeding is pending, no later ex
25 parte expungement proceeding may be instituted

1 with respect to the same goods or services that are
2 the subject of a pending ex parte expungement pro-
3 ceeding.

4 “(2) ESTOPPEL.—With respect to a particular
5 registration, for goods or services previously subject
6 to an instituted expungement proceeding for which,
7 in that proceeding, it was determined that the reg-
8 istrant had used the mark for particular goods or
9 services, as relevant, and the registration was not
10 cancelled as to those goods or services, no further ex
11 parte expungement proceedings may be initiated as
12 to those goods or services, regardless of the identity
13 of the petitioner.

14 “(k) USE IN COMMERCE REQUIREMENT NOT AL-
15 TERED.—Nothing in this section shall affect the require-
16 ment for use in commerce of a mark registered under sec-
17 tion 1(a) or 23.”

18 (b) NEW GROUNDS FOR CANCELLATION.—Section 14
19 of the Trademark Act of 1946 (15 U.S.C. 1064) is amend-
20 ed—

21 (1) by striking the colon at the end of para-
22 graph (5) and inserting a period;

23 (2) by inserting after paragraph (5) the fol-
24 lowing:

1 “(6) At any time after the 3-year period fol-
2 lowing the date of registration, if the registered
3 mark has never been used in commerce on or in con-
4 nection with some or all of the goods or services re-
5 cited in the registration:”; and

6 (3) in the flush text following paragraph (6), as
7 added by paragraph (2) of this subsection, by insert-
8 ing “Nothing in paragraph (6) shall be construed to
9 limit the timing applicable to any other ground for
10 cancellation. A registration under section 44(e) or
11 66 shall not be cancelled pursuant to paragraph (6)
12 if the registrant demonstrates that any nonuse is
13 due to special circumstances that excuse such non-
14 use.” after “identical certification mark is applied.”.

15 (c) **EX PARTE REEXAMINATION.**—The Trademark
16 Act of 1946 is amended by inserting after section 16A,
17 as added by subsection (a), the following:

18 **“SEC. 16B. EX PARTE REEXAMINATION.**

19 “(a) **PETITION FOR REEXAMINATION.**—Any person
20 may file a petition to reexamine a registration of a mark
21 on the basis that the mark was not in use in commerce
22 on or in connection with some or all of the goods or serv-
23 ices recited in the registration on or before the relevant
24 date.

1 “(b) RELEVANT DATE.—In this section, the term
2 ‘relevant date’ means, with respect to an application for
3 the registration of a mark with an initial filing basis of—

4 “(1) section 1(a) and not amended at any point
5 to be filed pursuant to section 1(b), the date on
6 which the application was initially filed; or

7 “(2) section 1(b) or amended at any point to be
8 filed pursuant to section 1(b), the date on which—

9 “(A) an amendment to allege use under
10 section 1(c) was filed; or

11 “(B) the period for filing a statement of
12 use under section 1(d) expired, including all ap-
13 proved extensions thereof.

14 “(c) REQUIREMENTS FOR THE PETITION.—A peti-
15 tion filed under subsection (a), together with any sup-
16 porting documents, shall—

17 “(1) identify the registration that is the subject
18 of the petition;

19 “(2) identify each good and service recited in
20 the registration for which it is alleged that the mark
21 was not in use in commerce on or in connection with
22 on or before the relevant date;

23 “(3) include a verified statement that sets
24 forth—

1 “(A) the elements of the reasonable inves-
2 tigation the petitioner conducted to determine
3 that the mark was not in use in commerce on
4 or in connection with the goods and services
5 identified in the petition on or before the rel-
6 evant date; and

7 “(B) any additional facts that support the
8 allegation that the mark was not in use in com-
9 merce on or before the relevant date on or in
10 connection with the identified goods and serv-
11 ices;

12 “(4) include supporting evidence on which the
13 petitioner relies; and

14 “(5) be accompanied by the fee prescribed by
15 the Director.

16 “(d) INITIAL DETERMINATION; INSTITUTION.—

17 “(1) PRIMA FACIE CASE DETERMINATION, IN-
18 STITUTION, AND NOTIFICATION.—The Director
19 shall, for each good or service identified under sub-
20 section (c)(2), determine whether the petition sets
21 forth a prima facie case of the mark having not been
22 in use in commerce on or in connection with each
23 such good or service, institute an ex parte reexam-
24 ination proceeding for each good or service for which
25 the Director determines that the prima facie case

1 has been set forth, and provide a notice to the reg-
2 istrant and petitioner of the determination of wheth-
3 er or not the proceeding was instituted. Such notice
4 shall include a copy of the petition and any sup-
5 porting documents and evidence that were included
6 with the petition.

7 “(2) REASONABLE INVESTIGATION GUID-
8 ANCE.—The Director shall promulgate regulations
9 regarding what constitutes a reasonable investigation
10 under subsection (c)(3) and the general types of evi-
11 dence that could support a prima facie case that the
12 mark was not in use in commerce on or in connec-
13 tion with a good or service on or before the relevant
14 date, but the Director shall retain discretion to de-
15 termine whether a prima facie case is set out in a
16 particular proceeding.

17 “(3) DETERMINATION BY DIRECTOR.—Any de-
18 termination by the Director whether or not to insti-
19 tute a reexamination proceeding under this section
20 shall be final and non-reviewable, and shall not prej-
21 udice any party’s right to raise any issue and rely
22 on any evidence in any other proceeding, except as
23 provided in subsection (j).

24 “(e) REEXAMINATION PROCEDURES.—The proce-
25 dures for reexamination shall be the same as the proce-

1 dures established under section 12(b) except that the Di-
2 rector shall promulgate regulations establishing and gov-
3 erning a proceeding under this section, which may include
4 regulations that—

5 “(1) set response and extension times particular
6 to this type of proceeding, which, notwithstanding
7 section 12(b)(3), need not be extendable to 6
8 months;

9 “(2) set limits governing the timing and num-
10 ber of petitions filed for a particular registration or
11 by a particular petitioner or real parties in interest;
12 and

13 “(3) define the relation of a reexamination pro-
14 ceeding under this section to other proceedings con-
15 cerning the mark.

16 “(f) REGISTRANT’S EVIDENCE OF USE.—A reg-
17 istrant’s documentary evidence of use shall be consistent
18 with when a mark shall be deemed to be in use in com-
19 merce under the definition of ‘use in commerce’ in section
20 45, but shall not be limited in form to that of specimens
21 as provided in section 1(a).

22 “(g) EXAMINER’S DECISION; ORDER TO CANCEL.—
23 For each good or service for which it is determined that
24 the registration should not have issued because the mark
25 was not in use in commerce on or before the relevant date,

1 the examiner shall find that the registration should be
2 cancelled for each such good or service. Unless overturned
3 on review of the examiner's decision, the Director shall
4 issue an order cancelling the registration, in whole or in
5 part, after the time for appeal has expired or any appeal
6 proceeding has terminated.

7 “(h) REEXAMINATION BY DIRECTOR.—

8 “(1) IN GENERAL.—The Director may, on the
9 Director's own initiative, institute an ex parte reex-
10 amination proceeding if the Director discovers infor-
11 mation that supports a prima facie case of the mark
12 having not been used in commerce on or in connec-
13 tion with some or all of the goods or services covered
14 by the registration on or before the relevant date.
15 The Director shall promptly notify the registrant of
16 such determination, at which time reexamination
17 shall proceed according to the same procedures es-
18 tablished pursuant to subsection (e). If the Director
19 determines, based on the Director's own initiative, to
20 institute an ex parte reexamination proceeding, the
21 Director shall transmit or make available the infor-
22 mation that formed the basis for that determination
23 as part of the institution notice.

1 “(2) RULE OF CONSTRUCTION.—Nothing in
2 this subsection shall be construed to limit any other
3 authority of the Director.

4 “(i) TIME FOR INSTITUTION.—A petition for ex parte
5 reexamination may be filed, or the Director may institute
6 on the Director’s own initiative an ex parte reexamination
7 proceeding, at any time not later than 5 years after the
8 date of registration of a mark registered based on use in
9 commerce.

10 “(j) LIMITATION ON LATER EX PARTE REEXAMINA-
11 TION PROCEEDINGS.—

12 “(1) NO CO-PENDING PROCEEDINGS.—With re-
13 spect to a particular registration, while an ex parte
14 reexamination proceeding is pending, no later ex
15 parte reexamination proceeding may be instituted
16 with respect to the same goods or services that are
17 the subject of a pending ex parte reexamination pro-
18 ceeding.

19 “(2) ESTOPPEL.—With respect to a particular
20 registration, for any goods or services previously
21 subject to an instituted ex parte reexamination pro-
22 ceeding for which, in that proceeding, it was deter-
23 mined that the registrant had used the mark for
24 particular goods or services before the relevant date,
25 and the registration was not cancelled as to those

1 goods or services, no further ex parte reexamination
2 proceedings may be initiated as to those goods or
3 services, regardless of the identity of the petitioner.

4 “(k) SUPPLEMENTAL REGISTER.—The provisions of
5 subsection (b) apply, as appropriate, to registrations
6 under section 23. Nothing in this section shall be con-
7 strued to limit the timing of a cancellation action under
8 section 24.”.

9 (d) APPEAL.—

10 (1) APPEAL TO TRADEMARK TRIAL AND APPEAL
11 BOARD.—Section 20 of the Trademark Act of 1946
12 (15 U.S.C. 1070) is amended by inserting “or a
13 final decision by an examiner in an ex parte
14 expungement proceeding or ex parte reexamination
15 proceeding” after “registration of marks”.

16 (2) APPEAL TO COURTS.—

17 (A) EXPUNGEMENT OR EX PARTE REEX-
18 AMINATION.—Section 21(a)(1) of the Trade-
19 mark Act of 1946 (15 U.S.C. 1071(a)(1)) is
20 amended by striking “or an applicant for re-
21 newal” and inserting the following: “an appli-
22 cant for renewal, or a registrant subject to an
23 ex parte expungement proceeding or an ex parte
24 reexamination proceeding”.

1 (B) EXCEPTION.—Section 21(b)(1) of the
2 Trademark Act of 1946 (15 U.S.C. 1071(b)(1))
3 is amended by inserting “, except for a reg-
4 istrant subject to an ex parte expungement pro-
5 ceeding or an ex parte reexamination pro-
6 ceeding,” before “is dissatisfied”.

7 (e) TECHNICAL AND CONFORMING AMENDMENTS.—
8 The Trademark Act of 1946 is amended—

9 (1) in section 15 (15 U.S.C. 1065), by striking
10 “paragraphs (3) and (5)” and inserting “paragraphs
11 (3), (5), and (6)”; and

12 (2) in section 26 (15 U.S.C. 1094), by adding
13 at the end the following: “Registrations on the sup-
14 plemental register shall be subject to ex parte
15 expungement and ex parte reexamination under sec-
16 tions 16A and 16B, respectively.”.

17 (f) DEADLINE FOR PROCEDURES.—Not later than 1
18 year after the date of enactment of this Act, the Director
19 shall issue regulations to carry out sections 16A and 16B
20 of the Trademark Act of 1946, as added by subsections
21 (a) and (c).

22 (g) EFFECTIVE DATE.—The amendments made by
23 this section shall take effect upon the expiration of the
24 1-year period beginning on the date of enactment of this

1 Act, and shall apply to any mark registered before, on,
2 or after that effective date.

3 **SEC. 226. REBUTTABLE PRESUMPTION OF IRREPARABLE**
4 **HARM.**

5 (a) AMENDMENT.—Section 34(a) of the Trademark
6 Act of 1946 (15 U.S.C. 1116(a)) is amended by inserting
7 after the first sentence the following: “A plaintiff seeking
8 any such injunction shall be entitled to a rebuttable pre-
9 sumption of irreparable harm upon a finding of a violation
10 identified in this subsection in the case of a motion for
11 a permanent injunction or upon a finding of likelihood of
12 success on the merits for a violation identified in this sub-
13 section in the case of a motion for a preliminary injunction
14 or temporary restraining order.”.

15 (b) RULE OF CONSTRUCTION.—The amendment
16 made by subsection (a) shall not be construed to mean
17 that a plaintiff seeking an injunction was not entitled to
18 a presumption of irreparable harm before the date of en-
19 actment of this Act.

20 **SEC. 227. REPORT ON DECLUTTERING INITIATIVES.**

21 (a) STUDY.—The Comptroller General of the United
22 States shall consult with the Director to conduct a study
23 on the efforts of the Director during the period beginning
24 12 months after the date of enactment of this Act and
25 ending 30 months after the date of enactment of this Act

1 to address inaccurate and false claims of use in trademark
2 applications and registrations. Inaccurate and false claims
3 of use include any declaration of use by a trademark appli-
4 cant or registrant that cannot be supported by use in com-
5 merce as defined in section 45 of the Trademark Act of
6 1946 (15 U.S.C. 1127) or the regulations relevant to the
7 definition of specimens under section 1 of the Trademark
8 Act of 1946 (15 U.S.C. 1051), as applicable.

9 (b) CONTENTS OF STUDY.—In conducting the study
10 under subsection (a), the Comptroller General shall assess
11 the following:

12 (1) With respect to sections 16A and 16B of
13 the Trademark Act of 1946, as added by section
14 225—

15 (A) the number of petitions filed under
16 each such section for which a decision not to in-
17 stitute was issued;

18 (B) the number of petitions filed under
19 each such section for which a decision to insti-
20 tute was issued;

21 (C) the number of in-process and com-
22 pleted proceedings instituted under each such
23 section, including any proceedings instituted by
24 the Director's own initiative;

1 (D) the average time taken to resolve pro-
2 ceedings instituted under each such section, in-
3 cluding the average time between—

4 (i) the filing of a petition under each
5 such section and an examiner's final deci-
6 sion under section 16A(g) and 16B(g), or
7 the last decision issued by the examiner if
8 the registrant failed to respond to the lat-
9 est-in-time decision by the examiner; and

10 (ii) the institution of a proceeding
11 under each such section, including any pro-
12 ceedings instituted by the Director's own
13 initiative, and an examiner's final decision
14 under section 16A(g) and 16B(g), or the
15 last decision issued by the examiner if the
16 registrant failed to respond to the latest-
17 in-time decision by the examiner;

18 (E) the number of appeals of decisions of
19 examiners to the Trademark Trial and Appeal
20 Board and to the courts for each such pro-
21 ceeding; and

22 (F) an accounting of the final outcome of
23 each such proceeding instituted by identifying
24 the number of goods or services for which such
25 proceedings were instituted, and the number of

1 goods or services for each involved registration
2 that were cancelled pursuant to such pro-
3 ceedings.

4 (2) With respect to section 1(f) of the Trade-
5 mark Act of 1946, as added by section 223—

6 (A) the number of third-party submissions
7 filed under such section for which the third-
8 party asserts in the submission that the mark
9 has not been used in commerce; and

10 (B) of the applications identified in sub-
11 paragraph (A), the number of applications in
12 which the third-party submission evidence is in-
13 cluded in the application; and

14 (C) of those applications identified in sub-
15 paragraph (B), the number of applications—

16 (i) refused registration based on an
17 assertion by the examiner that the mark
18 has not been used in commerce; and

19 (ii) for which the examiner requested
20 additional information from the applicant
21 related to claims of use.

22 (3) The effectiveness of—

23 (A) the proceedings under sections 16A
24 and 16B of the Trademark Act of 1946, as
25 added by section 225, in addressing inaccurate

1 and false claims of use in trademark registra-
2 tions; and

3 (B) any additional programs conducted by
4 the Director designed to address inaccurate and
5 false claims of use in trademark applications
6 and registrations, including the post-registra-
7 tion use audit, as implemented as of the date
8 of enactment of this Act under sections
9 2.161(h) and 7.37(h) of title 37, Code of Fed-
10 eral Regulations.

11 (c) REPORT TO CONGRESS.—Not later than 3 years
12 after the date of enactment of this Act, the Comptroller
13 General of the United States shall submit to the Com-
14 mittee on the Judiciary of the Senate and the Committee
15 on the Judiciary of the House of Representatives a re-
16 port—

17 (1) on the results of the study conducted under
18 this section; and

19 (2) that includes any recommendations, based
20 on the results of the study, for any changes to laws
21 or regulations that will improve the integrity of the
22 trademark register or reduce inaccurate or false
23 claims of use.

1 **SEC. 228. AMENDMENTS TO CONFIRM AUTHORITY OF THE**
2 **DIRECTOR.**

3 (a) AMENDMENTS.—

4 (1) Section 18 of the Trademark Act of 1946
5 (15 U.S.C. 1068) is amended by inserting after “es-
6 tablished in the proceedings” the following: “. The
7 authority of the Director under this section includes
8 the authority to reconsider, and modify or set aside,
9 a decision of the Trademark Trial and Appeal
10 Board”.

11 (2) Section 20 of the Trademark Act of 1946
12 (15 U.S.C. 1070) is amended by adding at the end
13 the following: “The Director may reconsider, and
14 modify or set aside, a decision of the Trademark
15 Trial and Appeal Board under this section.”.

16 (3) Section 24 of the Trademark Act of 1946
17 (15 U.S.C. 1092) is amended by inserting after
18 “shall be canceled by the Director” the following: “,
19 unless the Director reconsiders the decision of the
20 Board, and modifies or sets aside, such decision”.

21 (b) RULES OF CONSTRUCTION.—

22 (1) AUTHORITY BEFORE DATE OF ENACT-
23 MENT.—The amendments made by subsection (a)
24 shall not be construed to mean that the Director
25 lacked the authority to reconsider, and modify or set

1 aside, a decision of the Trademark Trial and Appeal
2 Board before the date of enactment of this Act.

3 (2) AUTHORITY WITH RESPECT TO PARTICULAR
4 DECISIONS.—The amendments made by subsection
5 (a) shall not be construed to require the Director to
6 reconsider, modify, or set aside any particular deci-
7 sion of the Trademark Trial and Appeal Board.