(g) Batteries in the surveying equipment will be changed out or charged in fresh air out of the return.

(h) Qualified personnel who use surveying equipment will be properly trained to recognize the hazards associated with the use of nonpermissible surveying equipment in areas where methane could be present.

(i) The nonpermissible surveying equipment will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions in this petition.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Docket Number: M–2013–013–C.

Petitioner: Peabody Midwest Mining, LLC, Three Gateway Center, Suite 1500, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222–1000.

Mine: Wildcat Hills Underground Mine, MSHA I.D. No. 11–03156, located in Saline County, Illinois.

Regulation Affected: 30 CFR 75.1002(a) (Installation of electric equipment and conductors; permissibility).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to allow the use of battery-powered nonpermissible surveying equipment within 150 feet of pillar workings, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers. The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372 and 75.1200, use of the most practical and accurate surveying equipment is necessary. To ensure the safety of the miners in active mines and to protect miners in future mines that may mine in close proximity to these same active mines, it is necessary to determine the exact location and extent of the mine workings.

(2) Application of the existing standard would result in a diminution of safety to the miners. Underground mining, by its nature and size and the complexity of mine plans, requires that accurate and precise measurements be completed in a prompt and efficient manner. The petitioner proposes the following as an alternative to the existing standard:

(a) Nonpermissible electronic surveying equipment may be used. Such nonpermissible surveying equipment includes portable battery-operated total station surveying equipment, mine transits, distance meters, and data loggers.

(b) All nonpermissible electronic surveying equipment to be used within 150 feet of pillar workings will be examined by surveying personnel prior to use to ensure the equipment is being maintained in a safe operating condition. These examinations will include the following steps:

(i) Checking the instrument for any physical damage and the integrity of the case.

(ii) Removing the battery and inspecting for corrosion.

(iii) Inspecting the contact points to ensure a secure connection to the battery.

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections.

(v) Checking the battery compartment cover to ensure that it is securely fastened.

(c) The results of such examinations will be recorded and retained for one year and made available to MSHA on request.

(d) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment within 150 feet of pillar workings.

(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn further than 150 feet from pillar workings.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(g) Batteries in the surveying equipment will be changed out or charged in fresh air more than 150 feet from pillar workings.

(h) Qualified personnel who use surveying equipment will be properly trained to recognize the hazards associated with the use of nonpermissible surveying equipment in areas where methane could be present.

(i) The nonpermissible surveying equipment will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions in this petition.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Dated: February 21, 2013.

George F. Triebsch,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 2013–04370 Filed 2–25–13; 8:45 am]

BILLING CODE 4510–43–P

LIBRARY OF CONGRESS

United States Copyright Office

[Docket No. 2011–10]

Remedies for Small Copyright Claims: Third Request for Comments

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Notice of inquiry.

SUMMARY: The United States Copyright Office is requesting public comment for the third time on the topic of adjudicating small copyright claims. The Office is studying whether and, if so, how the current legal system hinders or prevents copyright owners from pursuing copyright claims that have a relatively small economic value and will discuss, with appropriate recommendations, potential changes in administrative, regulatory, and statutory authority. At this time, the Office seeks additional comments on possible alternatives to the current system to improve the adjudication of such claims.

DATES: Comments are due April 12, 2013.

ADDRESSES: All comments are to be submitted electronically. A comment page containing a comment form is posted on the Office Web site at *http://www.copyright.gov/docs/smallclaims.* The Web site interface requires commenting parties to complete a form specifying name and organization, as applicable, and to upload comments as an attachment via a browser button. To meet accessibility standards, commenting parties must upload comments in a single file not to exceed six megabytes (MB) in one of the following formats: The Adobe Portable Document File (PDF) format that contains searchable, accessible text (not an image); Microsoft Word; WordPerfect; Rich Text Format (RTF); or ASCII text file format (not a scanned document). The form and face of the comments must include both the name of the submitter and organization. The Office will post the comments publicly on the Office's Web site exactly as they

are received, along with names and organizations. If electronic submission of comments is not feasible, please contact the Office at 202–707–8350 for special instructions.

FOR FURTHER INFORMATION CONTACT: Jacqueline Charlesworth, Senior Counsel, Office of the Register, by email at *jcharlesworth@loc.gov* or by telephone at 202–707–8350; or Catherine Rowland, Senior Counsel, Office of Policy and International Affairs, by email at *crowland@loc.gov* or by telephone at 202–707–8350.

SUPPLEMENTARY INFORMATION:

I. Background

At the request of Congress, the Copyright Office is conducting a study to assess whether and, if so, how the current legal system hinders or prevents copyright owners from pursuing copyright infringement claims that have a relatively small economic value (''small copyright claims'' or ''small claims''), and to recommend potential changes in administrative, regulatory, and statutory authority to improve the adjudication of such claims. To aid with this study, the Office has published two prior Notices of Inquiry seeking public comment, and the Office also has held public hearings on small copyright claims issues. The Office's first general Notice of Inquiry, published in the fall of 2011, generated numerous comments regarding the current environment in which small copyright claims are (or are not) pursued, and possible alternatives to address concerns about the current system. *See* the original Notice of Inquiry, 76 FR 66758 (Oct. 27, 2011), and comments received in response thereto, which are posted on the Copyright Office Web site, at *http://www.copyright.gov/docs/smallclaims/comments/*. The Copyright Office published a second Notice of Inquiry in the summer of 2012 that announced public hearings and set forth a list of specific topics relating to the small copyright claims process, which resulted in additional public comments. *See* the second Notice of Inquiry, 77 FR 51068 (Aug. 23, 2012), and comments received in response thereto, posted on the Copyright Office Web site, at *http://www.copyright.gov/docs/smallclaims/comments/noi_10112012/index.html*. Finally, in November 2012, the Office held two two-day public hearings on small copyright claims in New York City and Los Angeles, during which participants provided their views on the adjudication of small copyright claims.

At this time, the Copyright Office seeks additional comments regarding how a small copyright claims system might be structured and function, including from parties who have not previously addressed these issues, or those who wish to amplify or clarify their earlier comments, or respond to the comments of others. The Office is interested in additional comments about the potential benefits and risks of creating a new procedure for adjudicating small copyright claims, as well as how such a system might be implemented—for example, as a new adjudicative body, as part of the existing federal court system, by extending the jurisdiction of state courts, or as some form of arbitration or mediation system. Based on its review of previously submitted comments and statements at the public hearings, the Office in particular seeks further commentary on the specific subjects set forth below, as the Office believes they warrant further analysis.

While commenting parties may address any matter pertinent to the adjudication of small copyright claims, they should be aware that the Office has studied and will take into consideration the comments already received, so there is no need to restate previously submitted material. A party choosing to respond to this Notice of Inquiry need not address every topic below, but the Office requests that responding parties clearly identify and separately address those subjects for which a response is submitted.

II. Subjects of Inquiry

1. *Voluntary versus mandatory participation.* Stakeholders voiced opinions in their comments and at the Office's two public hearings regarding the benefits and risks of voluntary versus mandatory small copyright claim resolution systems. Specifically, members of the public expressed conflicting views concerning the efficacy of incentives for participation in a voluntary system and the constitutional implications of a mandatory system. The Office is interested in learning more about the feasibility and constraints of voluntary and mandatory systems, and how these alternatives might be implemented. Among other questions, the Office is interested in whether a voluntary system could be implemented on an ''opt out'' basis—that is, whether a properly served defendant might be deemed to consent to participate in the voluntary process unless he or she affirmatively opts out within a certain time frame. Some stakeholders suggested that such a framework might be helpful to address the problem of alleged infringers who fail to respond to notices of infringement and thus might also be unlikely to respond to notice of a lawsuit.

2. *Eligible works.* The previous round of comments and public hearings explored the issue of what types of works should be covered by a small copyright claims process; that is, whether the procedure should cover only certain types of copyrighted works, such as photographs, illustrations, and textual works, or should cover all types of works. For example, certain music organizations proposed that musical works and sound recordings be excluded from the process (at least for the time being) as, in their view, music publishers, performing rights societies, and record companies already adequately address small copyright claims on behalf of the songwriters and recording artists they represent. At the same time, others pointed out that some songwriters and recording artists—for example, those who are self-represented—may not have access to such resources and, even if they are represented through a larger organization, may not be successful in convincing that organization to take legal action. The Office invites further comment on whether musical works, sound recordings, or any other type of copyrighted work should be excluded from the small claims process and, if so, how it might impact individual and small copyright owners of that type of work.

3. *Permissible claims.* Some of the comments and public hearing participants analyzed what types of claims should be eligible for the small copyright claims process. These comments and discussions raised questions regarding how to define what claims might or might not be amenable to the small copyright claims procedure. While it seems clear that a copyright small claims tribunal would address infringement matters, some infringement claims are intertwined with other issues, such as contractual or ownership disputes, thus suggesting a need for any such tribunal to address these additional types of claims and defenses as well. Some commenters indicated that plaintiffs should be limited to asserting infringement claims, with contractual or ownership issues to be adjudicated only when raised as defenses. Others suggested that certain types of issues, such as ownership disputes, should be excluded from the small claims process altogether. The Office is interested in further thoughts on the types of claims that should be included in a small copyright claims process and how the system might address situations where an allegedly

infringing act implicates an additional cause of action or defense, such as breach of contract, an ownership issue, a trademark violation, or some other claim.

4. *Injunctive relief.* In the comments and during the public hearings, some stakeholders argued strongly that any small claims system should include the possibility of injunctive relief to end infringing behavior, including in situations where the infringing conduct exploits the work in a manner that the copyright owner would not license, or violates an exclusive arrangement between the copyright owner and a third party. However, others noted that injunctive relief could be a complicated undertaking in a small claims context, partly if the unauthorized use is but one part of a larger work such as a film, book, or sound recording. It was suggested that in such a case, a plaintiff's monetary damages might be small but the economic consequences of an injunction may be considerably larger, perhaps exceeding in value any damages cap adopted for the small claims process. Stakeholders expressed differing views as to whether injunctive relief should be available through a small claims system and, if so, how the nature or scope of such relief might be tailored to the small claims context. Particular concerns raised in the comments and at the hearings included: whether preliminary injunctive relief is compatible with a small claims process; the procedural safeguards that would adequately protect parties against whom injunctive relief was sought; whether injunctive relief awarded through the small claims process should be reviewable by an Article III court; and whether Article III review would be a practical alternative for parties of limited means. A related consideration is how the question of injunctive relief might be affected by whether the small claims process is voluntary or mandatory. The Office welcomes additional thoughts on these issues.

5. *Secondary liability.* Although much of the public commentary and discussion of small copyright claims has focused on direct infringement, it has also touched upon issues of secondary liability, including the relationship of a small claims procedure to the notice and takedown requirements of Section 512 of the Copyright Act, 17 U.S.C. 512. The Office is interested in further views concerning the intersection of a small claims process with Section 512 and, more generally, any recommended approaches to claims of contributory and vicarious infringement within the small claims context.

6. *Role of attorneys.* Written comments and discussion at the two hearings revealed a range of opinions as to the role of attorneys in a small copyright claims system. Some believe attorneys should be excluded from the proceedings as the ability to retain counsel would tend to favor defendants with greater resources over small copyright owner plaintiffs who are compelled to proceed *pro se.* Other commenters believe that access to legal representation would be important to both sides—especially in cases with a degree of legal complexity—and the system should be designed to encourage attorneys to take lower-value cases by offering fee awards. It was further suggested that such fee awards might be capped to reflect the streamlined procedures and lower recoveries of a small claims process. The Office welcomes further consideration of these issues.

7. *Guiding law.* If the small claims tribunal was to be centrally located (or even if it were in multiple locations), what decisional law should it follow? In addition to the United States Supreme Court, should it look primarily to copyright decisions of any particular circuit—for example, based upon its location, the location of the infringing conduct, or the location of the parties? Should its own decisions have any precedential effect, at least with respect to future decisions of the small claims tribunal? In this regard, some expressed the concern that if small claims decisions had effect beyond the immediate dispute, defendants might be inclined to opt out of a voluntary system. The Office invites further thoughts on the decisional law that should guide the small claims tribunal.

8. *Willful and innocent infringement.* At the hearings, it was suggested by some that a small claims process should not include a potential finding of willfulness, in part because it could be more difficult to establish the appropriate evidentiary record to support such a finding under a streamlined procedure. In addition, a damages cap for small copyright claims appreciably below the existing $150,000 maximum in statutory damages for willful infringement—for example, a ceiling of $30,000, as has been suggested by some—would limit the economic significance of a willfulness finding. *See* 17 U.S.C. 504(c)(2). If the willfulness element were to be eliminated in the small claims context, a question also arises as to whether the ''innocent infringer'' distinction—which permits a court to reduce statutory damages to as low as $200 for a defendant who was not aware and had no reason to believe his or her actions were infringing—should remain. *See id.* Should the small claims procedure eliminate distinctions as to the nature of the infringement, along with their potential impact on damages awards?

9. *Service of process.* At the hearings, participants shared views on how potential small claims defendants might be notified of the action. A particular concern is that copyright owners of limited means may have difficulty effectuating traditional service on distant or elusive defendants. It was suggested that Federal Rule of Civil Procedure 4, including the provision that permits a defendant to be notified of an action by mail or other means via a waiver of formal service of process, could be appropriate for the small claims system. *See* Fed. R. Civ. P. 4. It was also suggested that a Web site might properly be served by sending electronic notice to an agent designated to receive notifications of infringement pursuant to Section 512 of the Copyright Act. *See* 17 U.S.C. 512(c)(2). In addition, it was observed that the small claims tribunal might handle service of defendants, as is sometimes the case in other contexts (including in some state courts). The Office seeks further comments on potential procedures to notify defendants that an action has been filed.

10. *Offers of judgment.* Some commenters have suggested that a process such as that contemplated by Federal Rule of Civil Procedure 68—which allows a defendant to make an offer of judgment and recover certain costs if the plaintiff rejects the offer and fails to obtain a more favorable outcome—could play a useful role in the small claims setting. *See* Fed. R. Civ. P. 68. Others feel that once a plaintiff has filed an action, pretrial settlement procedures would merely delay the process in most cases. The Office is interested in additional comments as to whether and how a mechanism akin to Rule 68 might be useful in the small claims context.

11. *Default judgments.* Current federal district court procedures allow a plaintiff to seek default judgments if a lawfully served defendant fails to appear. The Office is interested in whether such a procedure should be available in a small copyright claim proceeding. If plaintiffs are able to seek default judgments, what are the procedural safeguards that should apply, what type of remedies should be available, and what type of showing should be required to justify relief?

12. *Enforceability of judgments.* A primary concern of commenters and participants at the small claims hearings is that a small claims judgment—in

particular one rendered through a voluntary system—should be enforceable. In addition to monetary damages, such a judgment might include some form of injunctive relief. Participants offered a range of suggestions on the matter of enforcement. Some indicated that the Federal Arbitration Act, 9 U.S.C. 1 *et seq.,* might to some degree serve as a model for obtaining an enforceable federal court judgment following adjudication by the small claims tribunal. Participants also commented on the practical aspects of collecting on judgments. Noting that the challenges of enforcing a judgment, once obtained, are not unique to the copyright context, some suggested that successful small claims plaintiffs could avail themselves of existing federal and state court procedures. The Office welcomes further discussion of existing or potential mechanisms that successful plaintiffs might employ to enforce small claims judgments without incurring prohibitive costs.

13. *Unknown defendants.* Some hearing participants observed that in many instances—especially in the case of internet-based infringement—the infringer's identity may not be known and/or the infringer may be difficult to locate. Web sites may lack usable contact data and/or may be registered anonymously. Should the small claims procedure permit parties to pursue claims against ''John Doe'' defendants, including, when appropriate, the means to subpoena an internet service provider to learn the identity and location of such a defendant? The Office invites comments on how such a process might work, with reference to existing practices in other courts as appropriate.

14. *Multiple tracks or proceedings.* During the hearings, some participants discussed the possibility of having more than one type of small copyright claims proceeding—a highly simplified process for straightforward claims with perhaps only a few hundred or few thousand dollars at stake, and a more robust process for matters of greater complexity or economic consequence that are still too small to be practically pursued in federal district court. Stakeholders considered whether, even within the small claims context, there should be a greater amount of discovery and procedure in certain types of cases, for example, when an injunction is sought. The Office seeks further comment on whether a tiered system would be desirable, or whether a single, unified approach to small claims is the better alternative, perhaps with the possibility of developing additional ''tracks'' over time if warranted.

15. *Constitutional issues.* The Office continues to be interested in learning more about the constitutional impact of any small copyright claims procedure. Thus, the Office requests additional comments on whether a small copyright claims system might implicate any one or more of the following constitutional concerns—or any other constitutional issue—and, if so, how the particular concern might be addressed:

a. Separation of powers questions arising from the creation of specialized tribunals outside of the Article III framework, including how a right of review by an Article III court might impact the analysis;

b. The Seventh Amendment right to have a copyright infringement case tried by a jury, as confirmed in *Feltner* v. *Columbia Pictures Television, Inc.,* 523 U.S. 340 (1998);

c. Constitutional requirements for a court's assertion of personal jurisdiction, in particular when adjudicating claims of a defendant located in another state; and/or

d. Due process considerations arising from abbreviated procedures that impose limitations on briefing, discovery, testimony, evidence, appellate review, etc.

16. *International issues.* At the public hearings, some participants sought to ensure that the small claims procedure would be available to foreign plaintiffs seeking redress for infringing activity in the United States, as well as to U.S. plaintiffs seeking to take action against foreign defendants, as is permitted under the existing federal system. The operation of a small copyright claims system could have implications for the United States' rights and responsibilities under the Berne Convention, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), and other instruments. The Office welcomes additional comments on the international implications of a small claims system, including how the voluntary or mandatory nature of such a system might affect the analysis.

17. *Empirical data.* Previous comments provided helpful empirical data relevant to the adjudication of small copyright claims, including surveys by the American Bar Association Section on Intellectual Property Law and the Graphic Artists Guild. The Office welcomes additional surveys and empirical studies bearing upon:

a. Whether copyright owners are or are not pursuing small infringement claims through the existing federal court process, and the factors that influence copyright owners' decisions in that regard, including the value of claims pursued or forgone;

b. The overall cost to a plaintiff and/or a defendant to litigate a copyright infringement action to conclusion in federal court, including costs and attorneys' fees, discovery expenditures, expert witness fees and other expenses (with reference to the stage of proceedings at which the matter was concluded);

c. The frequency with which courts award costs and/or attorneys' fees to prevailing parties pursuant to 17 U.S.C. 505, and the amount of such awards in relation to the underlying claim or recovery; and/or

d. The frequency with which litigants decline to accept an outcome in state small copyright claims court and seek *de novo* review (with or without a jury trial) or file an appeal in a different court.

Parties considering the submission of additional survey or empirical data may wish to review the studies mentioned above, which are available at *http://www.copyright.gov/docs/smallclaims/.*

18. *Other issues.* Please comment on any other issues the Copyright Office should consider in conducting its small copyright claims study.

Dated: February 20, 2013.

Maria A. Pallante,

Register of Copyrights.

[FR Doc. 2013–04466 Filed 2–25–13; 8:45 am]

BILLING CODE 1410–30–P

NUCLEAR REGULATORY COMMISSION

[NRC–2013–0038]

Electric Power Research Institute; Seismic Evaluation Guidance

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Endorsement letter; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an endorsement letter with clarifications of Electric Power Research Institute (EPRI)-1025287, ''Seismic Evaluation Guidance: Screening, Prioritization and Implementation Details (SPID) for the Resolution of Fukushima Near-Term Task Force Recommendation 2.1: Seismic,'' Revision 0, hereafter referred to as the SPID report. This SPID report provides guidance and clarification of an acceptable approach to assist nuclear power reactor licensees when responding to the NRC staff's request for information dated March 12, 2012, Enclosure 1, ''Recommendation 2.1: Seismic.'' The NRC staff's endorsement