



What You Need to Know about Small Claims and the Copyright Claims Board

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Copyright Claims Attorneys



- **Introduction to the CASE Act**
- **CCB basics including:**
 - Types of claims you can file with the CCB,
 - Where to file a CCB claim,
 - CCB proceeding structure and phases,
 - Where to find additional resources, and
 - Your questions.



Before the CASE Act...

Federal court was the **ONLY** avenue to get judicial resolution of copyright disputes, including for:

- All copyright matters, regardless of size
- All parties, including copyright owners and users

But, federal court litigation can be:

- Procedurally complicated
- Lengthy and time-consuming
- Expensive



WHY DID THAT MATTER?



Such small claims and random infringements may seem unimportant, [but] taken in the aggregate, they have an effect on the livelihoods of individual creators akin to the infamous torture “death by a thousand cuts.”

SONGWRITERS GUILD OF AMERICA

As a practical matter, except for large corporate copyright owners, our current copyright laws are virtually unenforceable when it comes to the infringement of visual works.

GRAPHIC ARTISTS GUILD

Right holders are often deterred from bringing suit for copyright infringement due to the expense of litigation.

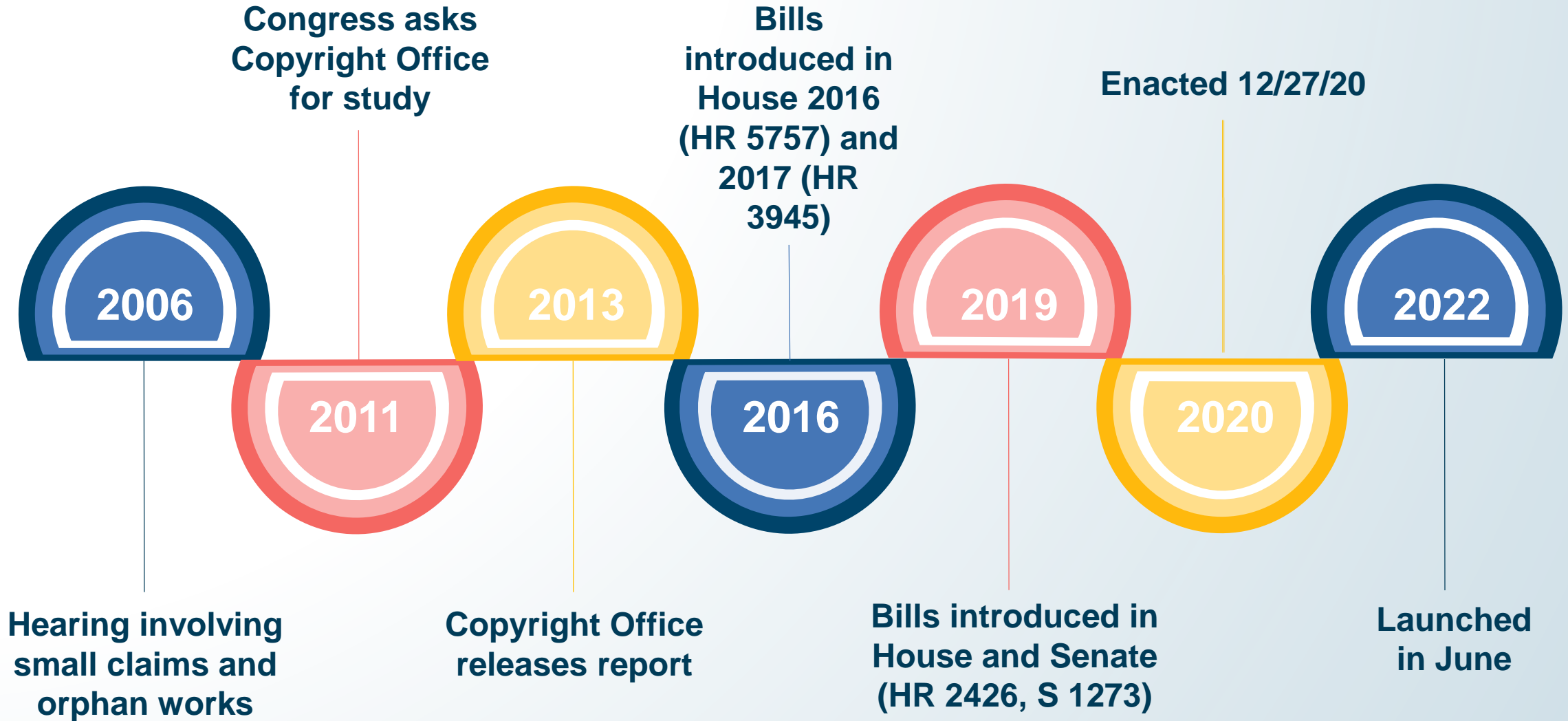
KERNOCHAN CENTER FOR LAW, MEDIA AND THE ARTS

People with disputes that didn't have a high monetary value **might not have had the resources** to pursue federal court

Few attorneys willing to handle small cases

Examples: Creators with high volume/low yield works like photographs OR users accused of infringement who believe their use was fair

TIMELINE





- Three-member Copyright Claims Board in the Copyright Office
- Voluntary (opt out) system
- Specific types of permissible claims, counterclaims
- Mostly paper-based proceedings and limited discovery
- \$30,000/proceeding
- Accessible to anyone, with or without an attorney

H. R. 133

**One Hundred Sixteenth Congress
of the
United States of America**
 AT THE SECOND SESSION
*Began and held at the City of Washington on Friday,
the third day of January, two thousand and twenty*

An Act

Making consolidated appropriations for the fiscal year ending September 30, 2021,
providing coronavirus emergency response and relief, and for other purposes.
*Be it enacted by the Senate and House of Representatives of
the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.
 This Act may be cited as the “Consolidated Appropriations Act, 2021”.

SEC. 2. TABLE OF CONTENTS.

Sec. 1. Short title.
 Sec. 2. Table of contents.
 Sec. 3. References.
 Sec. 4. Explanatory statement.
 Sec. 5. Statement of appropriations.
 Sec. 6. Availability of funds.
 Sec. 7. Adjustments to compensation.
 Sec. 8. Definition.
 Sec. 9. Office of Management and Budget Reporting Requirement.

DIVISION A—AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 2021

Title I—Agricultural Programs
 Title II—Farm Production and Conservation Programs
 Title III—Rural Development Programs
 Title IV—Domestic Food Programs
 Title V—Foreign Assistance and Related Programs
 Title VI—Related Agency and Food and Drug Administration
 Title VII—General Provisions

DIVISION B—COMMERCE, JUSTICE, SCIENCE, AND RELATED AGENCIES APPROPRIATIONS ACT, 2021

Title I—Department of Commerce
 Title II—Department of Justice
 Title III—Science
 Title IV—Related Agencies
 Title V—General Provisions

DIVISION C—DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 2021

Title I—Military Personnel
 Title II—Operation and Maintenance
 Title III—Procurement
 Title IV—Research, Development, Test and Evaluation
 Title V—Revolving and Management Funds
 Title VI—Other Department of Defense Programs
 Title VII—Related Agencies
 Title VIII—General Provisions
 Title IX—Overseas Contingency Operations

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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(c), pur-
 16 suant to a permissible claim of infringement brought
 17 under section 1504(e)(1), noninfringement brought
 18 under section 1504(e)(2), or misrepresentation
 19 brought under section 1504(e)(3);

December 21, 2020 (7:54 a.m.)

SO, YOU HAVE A COPYRIGHT DISPUTE?



Before filing your claim with the CCB there are several things you should consider including

- **Type of claim**
- Type of proceeding
- Damages

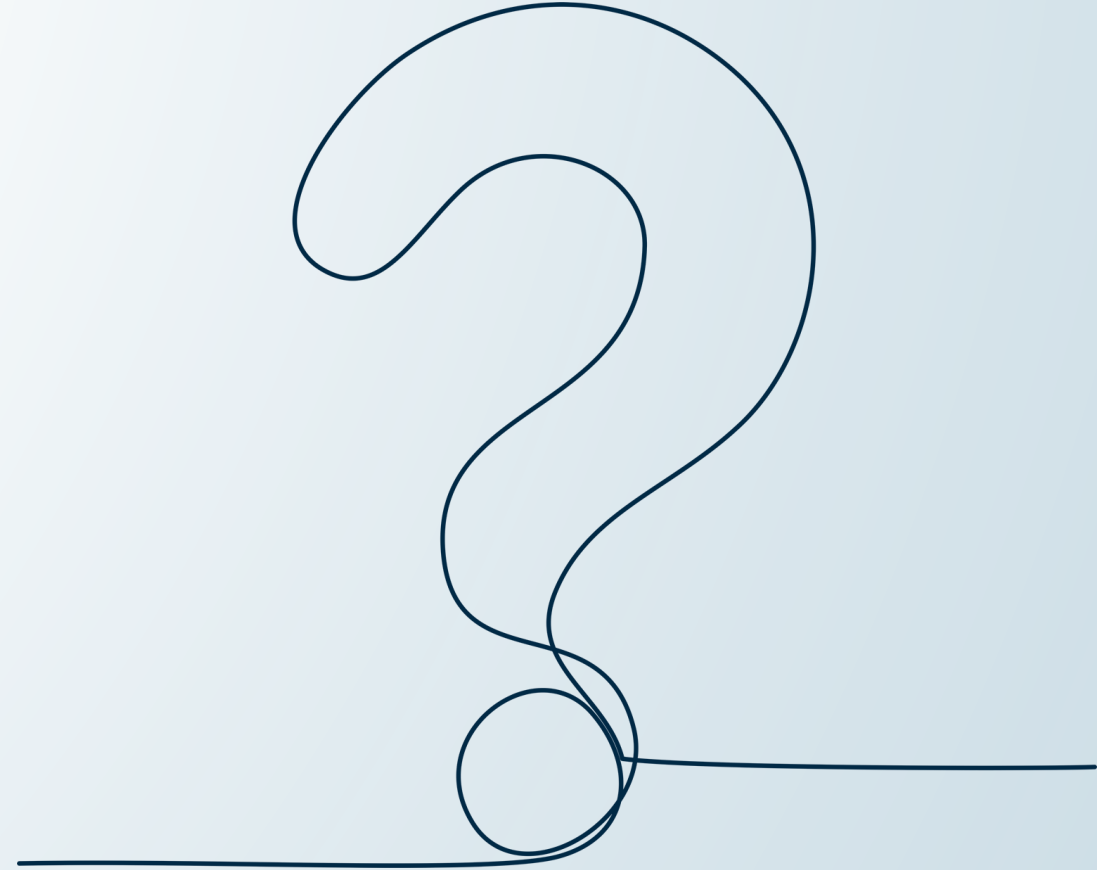
Vocabulary: If you file a CCB claim, you are a “claimant,” and the person or entity you bring the claim against is called a “respondent.”





What is copyright infringement?

- When a copyrighted work is reproduced, distributed, publicly performed or displayed, or made into a derivative work without permission of the copyright owner, if the use does not qualify for an exception, such as fair use.





Who can bring a copyright infringement claim?

- The legal or beneficial owner.
 - A **legal owner** is an author of the work who owns the exclusive rights at issue or a person or entity that has received a transfer of those rights, for example, by an assignment or an exclusive license.
 - A **beneficial owner** is a legal owner who has transferred the rights at issue but retains some of the advantages of ownership, such as the right to receive royalties from the use of the work.



Who can you bring a claim against?

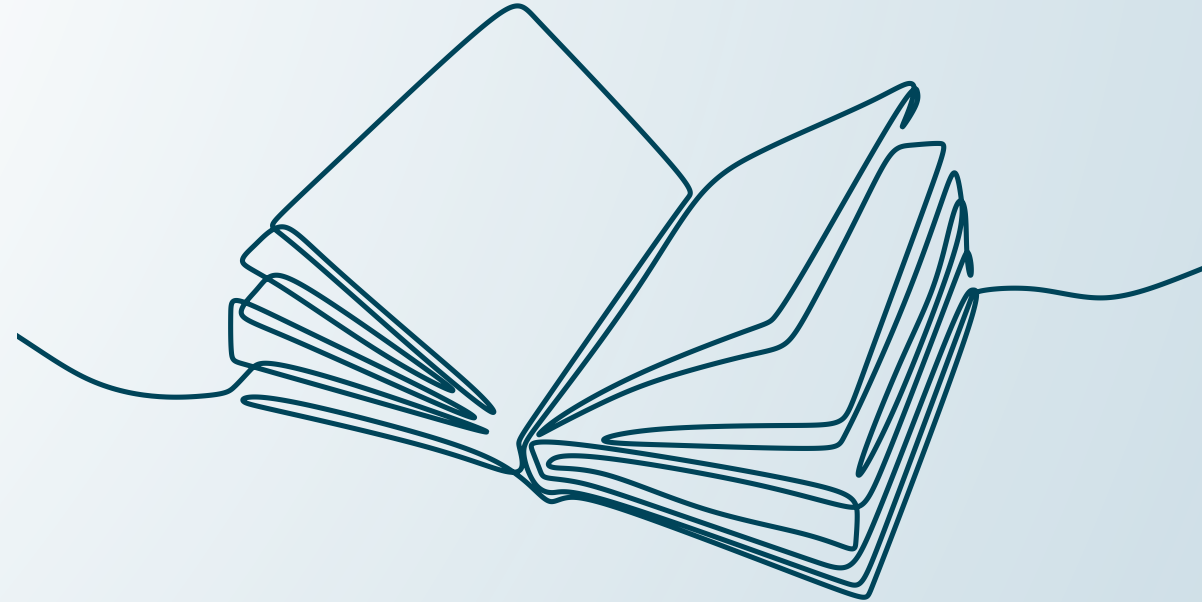
- A person or entity residing in the United States.



Dan is an author who wrote a novel about his adventures selling vintage records entitled "My Life in Vinyl."

Dan is on a music novel forum when he discovers that MB Publishing, a company he has never heard of, is marketing and selling his book online without his permission.

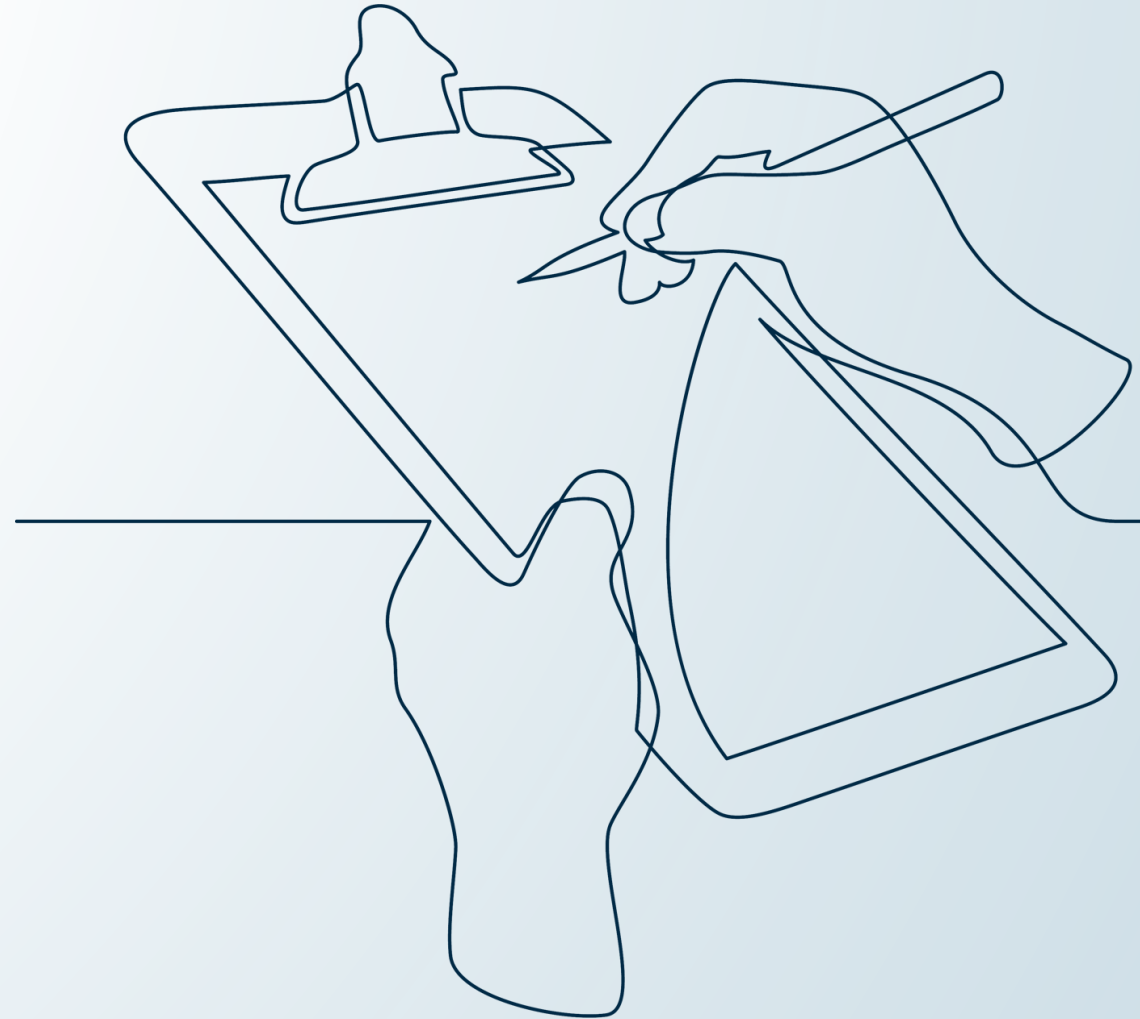
Dan can file a copyright infringement claim with the CCB.





What do you need to have before filing?

- Registration information
- Ownership information
- Contact information
- Details about your dispute





Registration

- In order to file a claim for infringement, you will need to show that you have already applied for registration.

You must provide either:

- your work's **Copyright Office registration number**; or
- the application's **service request number** (SR Number) for a complete copyright registration application.





Details about your dispute

You will need to provide a detailed description of why you think your copyright was infringed. The more details you provide in your claim, the better.

- You do not need to provide a legal argument in your claim—just a statement of the facts and circumstances that support your claim of infringement.
- Your description should help the respondent and the CCB understand how you think the respondent got access to your work, any relationship you have with the respondent relevant to the claim, and the similarities you see between your work and the respondent's allegedly infringing work.





What is a declaration of noninfringement?

- A party accused of infringement can file a claim seeking a ruling from the CCB that its actions do not infringe copyright.
- The respondent, not you, will have the burden of proof on the issue of infringement to defeat your claim.

In other words, if you bring a noninfringement claim, you don't need to prove that you didn't infringe; instead, the person or business who accused you of infringement has to prove each element of an infringement claim.





Who can bring a declaration of noninfringement?

- A party with a documented genuine dispute. If you raise a noninfringement claim, you'll need to prove there is a dispute between you and the respondent about whether your activity is infringing.

Who can you bring a claim against?

- A person or entity residing in the United States.



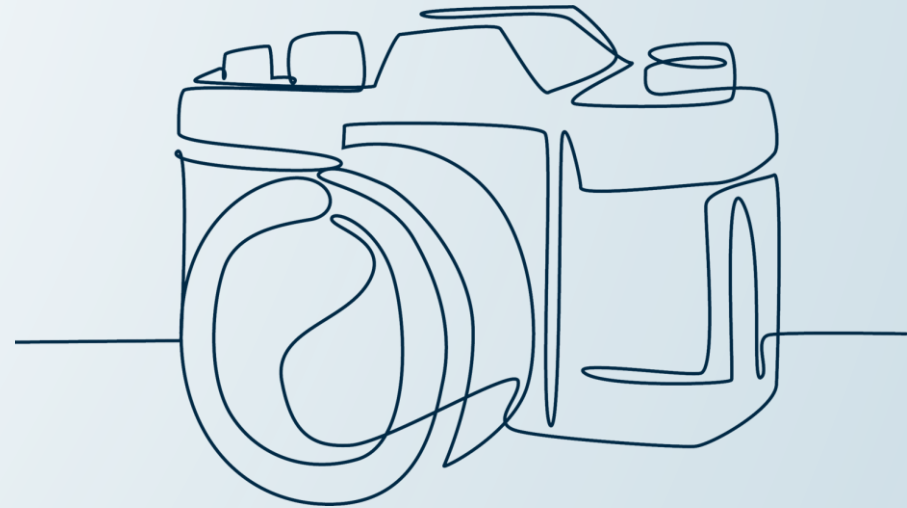


Dan decided to start a blog about photographs used in vinyl album covers called “The Secret Life of Forgotten Vinyl.”

A month ago, Dan received an “cease and desist” letter from Kim, a photographer, who says that she is the author of some of the photographs included in Dan’s blog.

Dan believes that his use of the photographs is a fair use.

Dan can file a noninfringement claim with the CCB.





What do you need to have before filing?

- **Contact information**
 - When filing a claim, you must identify the individuals or entities against whom you are making the claim. You will need their names and addresses.
- **Details about your dispute**
 - You must provide information that shows that there is a genuine dispute. You can attach documents or other evidence that show a genuine dispute about the work including:
 - the copyrighted work
 - your allegedly infringing work
 - a cease-and-desist letter or other correspondence showing there is a copyright dispute between you and the respondent
 - a takedown notice or counter-notice sent to an online service provider
 - communications or agreements that show you had permission to use the work



What is a misrepresentation claim?

- The Digital Millennium Copyright Act (DMCA) establishes a “notice and takedown” system for removing infringing content from the internet. Under this system, a copyright owner can send a “takedown” notice to an online service provider (such as a content-sharing website) describing material that someone has posted through the online service without the copyright owner’s permission.
- To avoid potential liability, online service providers follow specified procedures when they receive these notices, as well as when they receive counter-notices seeking the re-posting of the allegedly infringing material.
- The DMCA provides that senders of either a notice or a counter-notice may be liable for damages if they knowingly make misrepresentations.



Who can bring a misrepresentation claim?

- You can bring a claim of misrepresentation before the CCB if you believe the respondent said something false in a takedown notice or counter-notice to an online service provider, and this resulted in the online service provider taking content offline or putting it back online

Who can you bring a claim against?

- A person or entity residing in the United States.





Example 1:

Dan sees a chapter from his ebook “My Life in Vinyl” up on a social media website and submits a takedown notice.

The website removes the chapter and notifies the poster “MBVinylLover15” that the content was removed. Maya aka MBVinylLover15 sends the website a counter notice saying that she own the content.

Dan can file a misrepresentation a claim alleging that Maya’s ownership statement is a misrepresentation.





Example 2:

Dan sees a chapter from his ebook “My Life in Vinyl” up on the website for MB Publishing LLC. Dan sends a takedown notice to the publisher because he believes that the use is unauthorized. MB Publishing received a license to publish the work.

MB Publishing can file a claim against Dan alleging that Dan’s statement is a misrepresentation.





What do you need to have before filing?

- **Contact information**

- When filing a claim, you must identify the individuals or entities against whom you are making the claim. You will need their names and addresses.

- **Details about your dispute**

- Make sure your claim describes each element of misrepresentation. You ultimately will have to prove each one.
 - **Takedown Notice or Counter-notice:** You will need to provide or describe the notice the respondent sent an online service provider.
 - **Misrepresentation:** You will need to detail how the respondent made a misrepresentation (a false or incorrect statement of fact) in the takedown notice or counter-notice.
 - **Knowledge:** The respondent knew the misrepresentation was false or incorrect.
 - **Importance of the Misrepresentation:** How was the misrepresentation was important to the online service provider's decision to take down or repost the content?
 - **Reliance:** The online service provider relied on the misrepresentation.
 - **Harm:** You will need to describe how you were harmed as a result.

SO, YOU HAVE A COPYRIGHT DISPUTE?



Before filing your claim with the CCB there are several things you should consider including

- Type of claim
- **Type of proceeding**
- Damages





- **Standard track** – up to \$30,000
- **Smaller claims track** – up to \$5,000
 - More streamlined than the standard track
 - Less discovery
 - Focus on conferences between parties and a Copyright Claims Officer
 - Only the presiding Officer makes the final determination (unless there is a default by the respondent)

	Standard CCB Proceeding	Smaller Claims Proceeding
Damages	Damages are limited to \$30,000 per proceeding.	Damages are limited to \$5,000 per proceeding.
Managing a Proceeding	All three Copyright Claims Officers will hear the case. Two conferences will be held, one before and one after discovery. Otherwise, the Officers will only be involved during the information exchange process if asked by the parties.	One presiding Copyright Claims Officer is assigned to the case. That Officer plays an active role in managing the case.
Scope of Discovery	Parties use a standard set of written questions and requests for documents provided by the CCB. Parties may then request additional discovery if necessary. Parties may also request to use an expert witness , although such requests will rarely be granted.	Parties use the pre-discovery conference to meet with the Officer and discuss what evidence is needed to present their case. The Officer will only require discovery that is narrowly tailored to those needs. The use of expert witnesses will not be permitted.
Presenting the Case	Parties submit written arguments, evidence, and witness statements, and respond to each other's arguments. The CCB may decide the case based on written submissions or may hold a virtual hearing.	Parties submit shorter written arguments, and their evidence and witness statements, before having a "merits conference" to discuss the issues with the presiding Officer. After the conference, the Officer shares with the parties proposed findings of fact and provides the parties an opportunity to respond if they believe the Officer has gotten any of them wrong.
Making a Determination	All three Officers consider the evidence involved in the claim and make a final determination .	Only the presiding Officer makes the final determination. The only time all three Officers will do so is if there is a default by the respondent.

SO, YOU HAVE A COPYRIGHT DISPUTE?



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- Type of proceeding
- **Damages**



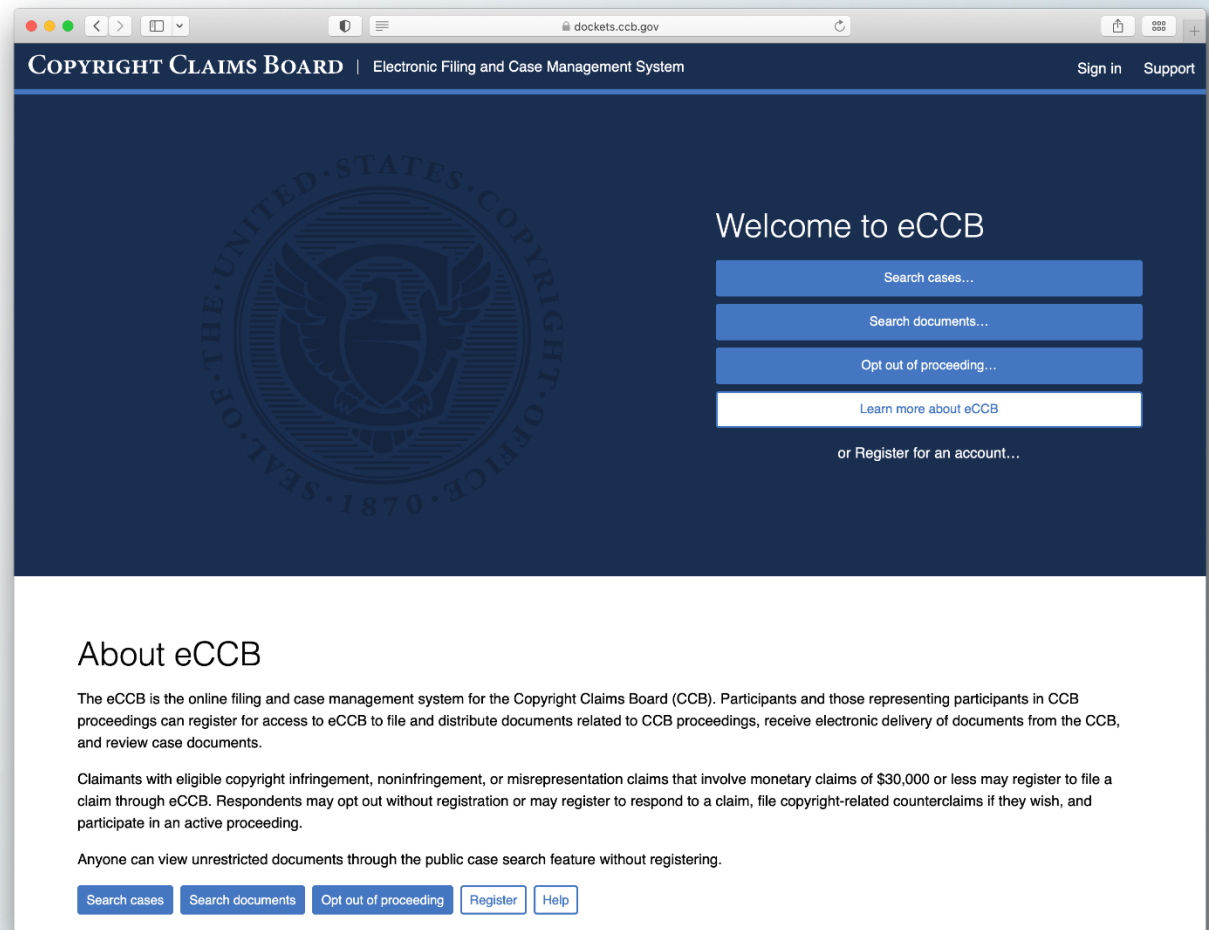


- Monetary awards **cannot exceed \$30,000**.
 - Maximum **reduced to \$5,000** for a smaller claims proceeding.
- The CCB cannot take into account “willfulness.”
- No monetary awards granted outside the above limits. For example, no monetary awards granted for punitive damages, interest, claims of physical or mental harm, lost wages, or harm to a brand.
- For claims for infringement claimant may get:
 - Actual damages and the alleged infringer’s profits attributable to infringement
 - OR**
 - Statutory damages
- CCB **cannot order a party to stop or modify** infringement or misrepresentation activities. If a party agrees to stop or modify the activities if the CCB finds them liable, the CCB can make that part of its order.



eCCB: Electronic Filing and Case Management System

- Is the online filing system for the CCB.
- Participants can register for eCCB to *file, respond, receive, and review* documents related to CCB proceedings.
- Anyone can view unrestricted documents through the public case search feature without registering.

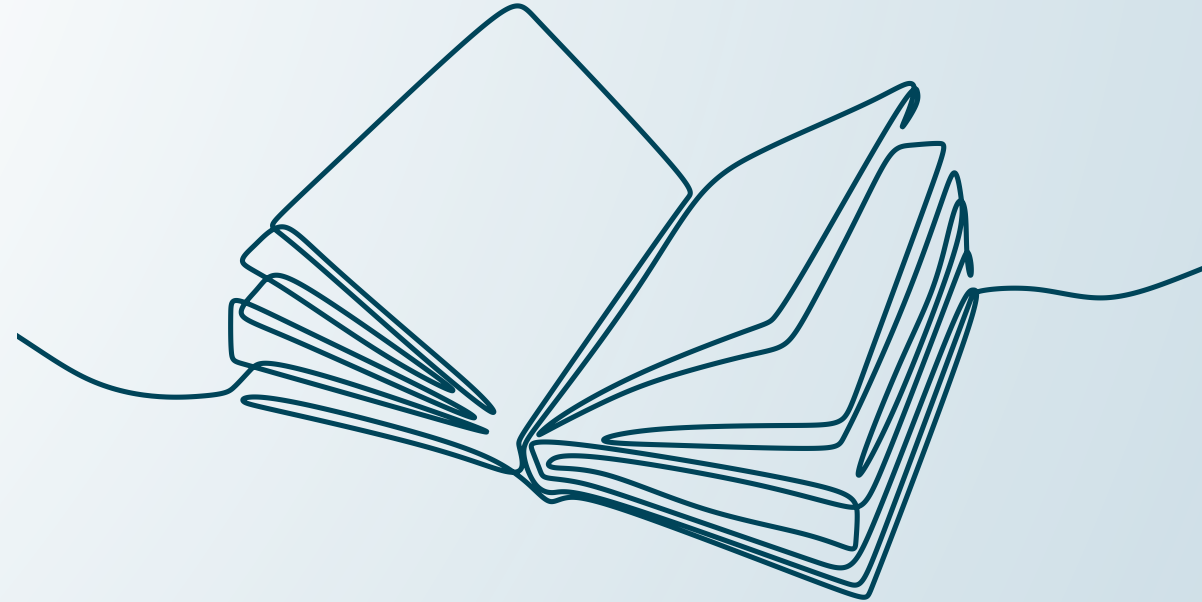




Dan is an author who wrote a novel about his adventures selling vintage records entitled "My Life in Vinyl."

Dan is on a music novel forum when he discovers that MB Publishing, a company he has never heard of, is marketing and selling his book online without his permission.

Dan can file a copyright infringement claim with the CCB.





○ Works infringed (Click to open and complete form)

Title of work

My Life in Vinyl

Author(s)

Dan

 Edit

 Delete

Has the work been registered by the Copyright Office?

Yes

Registration number

TX123456

Effective date

01/02/2023

Type of work

Literary (such as fiction, nonfiction, poetry, reference works)

Describe the work

Novel

 Add work

I hereby certify that the claimant(s) are the legal or beneficial owner of * rights in work(s) protected by copyright, and that the claimant(s) are bringing an action on that work.



Wrongful activities (Click to open and complete form)

Wrongful activities *

Distribute copies of the work, Publicly display the work

Is the infringement ongoing? *

Yes No Unknown

Dates of infringing activity may be unknown. If you do not know the exact start or end date of infringement, please approximate the month and/or year to the best of your ability or write unknown.

Infringement dates *

12/1/2022 –

Where the alleged infringing acts occurred, such as a physical place or online. If unknown, type unknown. *

Online on the MB Publishing website

Describe the infringement *

My book "My Life in Vinyl" was widely published in 2022 and has been a huge success. I went on a multicity book tour and was even on TV discussing the book. Vinyl Lovers Daily listed my book as one of their must-read books of 2022. MB Publishing has published excerpts of my book online and is selling an exact copy of my book on their website. I sent the owner of MB Publishing a cease and desist letter but it was ignored.

Are any of the respondents online service providers? *

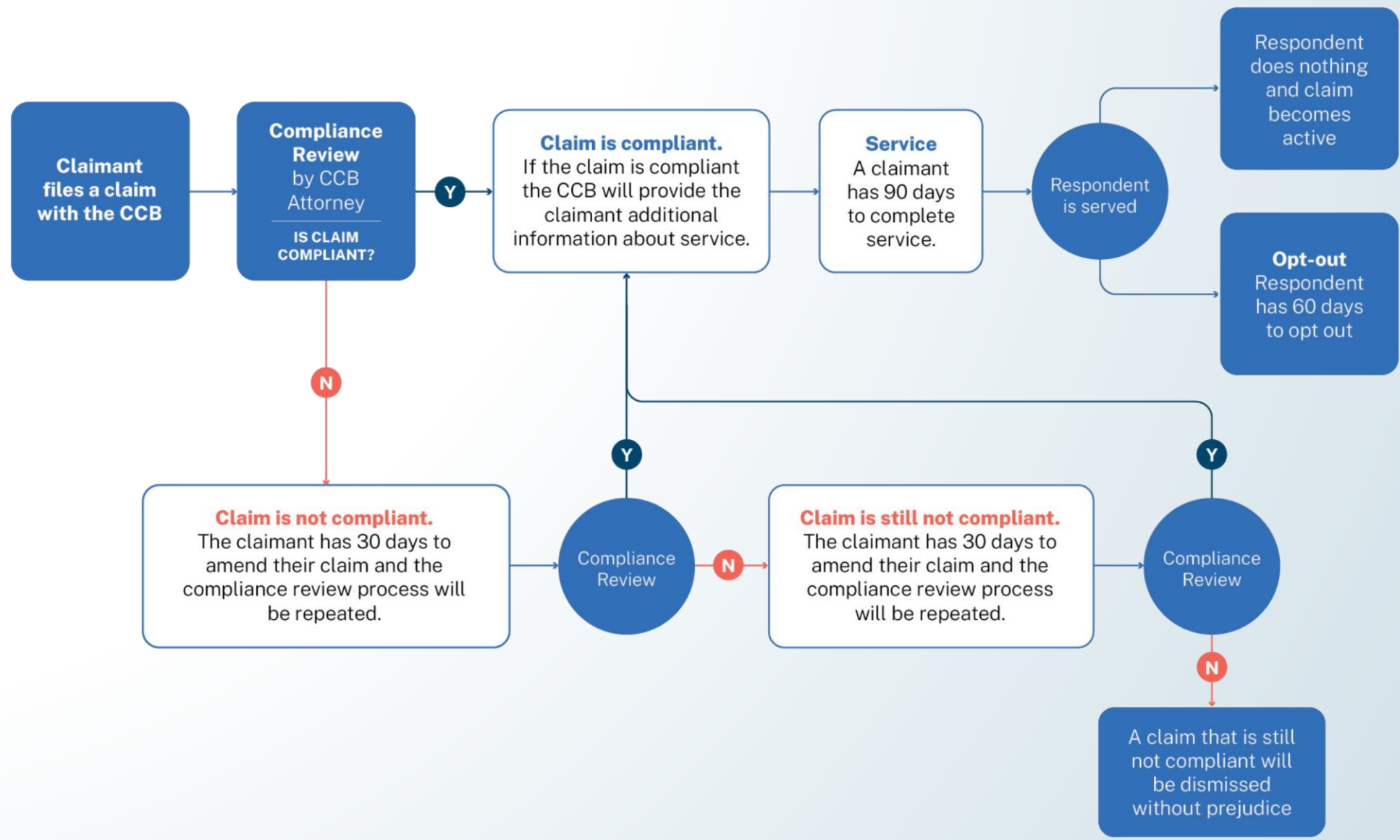
i Yes No

i You can submit supplementary material and activity documents in the documentation section.

Describe the harm suffered as a result of the alleged activity and the relief you are seeking. *

i I have lost book revenue on my own website Vinylbooks.net.

INITIATING PROCEEDINGS





- If you are served with an “initial notice” from a claimant notifying you that you are a respondent in a CCB proceeding, you will have **sixty days** to decide whether to participate or to opt out of the proceeding.
- When deciding whether to participate in a CCB proceeding, keep in mind that **there are important differences between the CCB and federal court**, such as the costs involved, the time and complexity of procedures, and the subject matter expertise of the decision makers.
- You may opt out at any time during these sixty days and do not have to provide any reason for your decision.
- If you opt out, the CCB will dismiss the claim against you, but **the claimant can still bring the same claim in federal court.**





Maya, owner of MB Publishing received the initial notice of Dan's CCB claim.

Maya believes Dan is wrong about the infringement but doesn't want to take the chance of Dan going to federal court and getting higher damages.

As an owner of the business Maya can represent MB Publishing in the CCB.





- Before you file your response, you should review the claim carefully and think through what the claimant is accusing you of, the facts and arguments they're making, the evidence they included, and whether you would describe the events differently from the claimant's version of events.
- Filing your response is the first thing you'll do in your proceeding. It's your first opportunity to respond to the allegations the claimant made against you and raise defenses you have to those allegations.
- You'll need to file your response through eCCB by the deadline in the schedule, which will usually be **thirty days** from the date the schedule was issued.





As a respondent, you may also assert related claims against the claimant. These are called “**counterclaims.**” You must do so at the time you file your response.

The CCB may consider the following:

- Counterclaims related to the same facts or circumstances that are the subject of the original claim;
- Counterclaims on a contract (such as a licensing agreement that permits the respondent to use the disputed work) that affects the claimant’s asserted rights in the original claim; and

NOTE: You cannot add unrelated claims to an already existing CCB proceeding, even if they are against the same claimant.



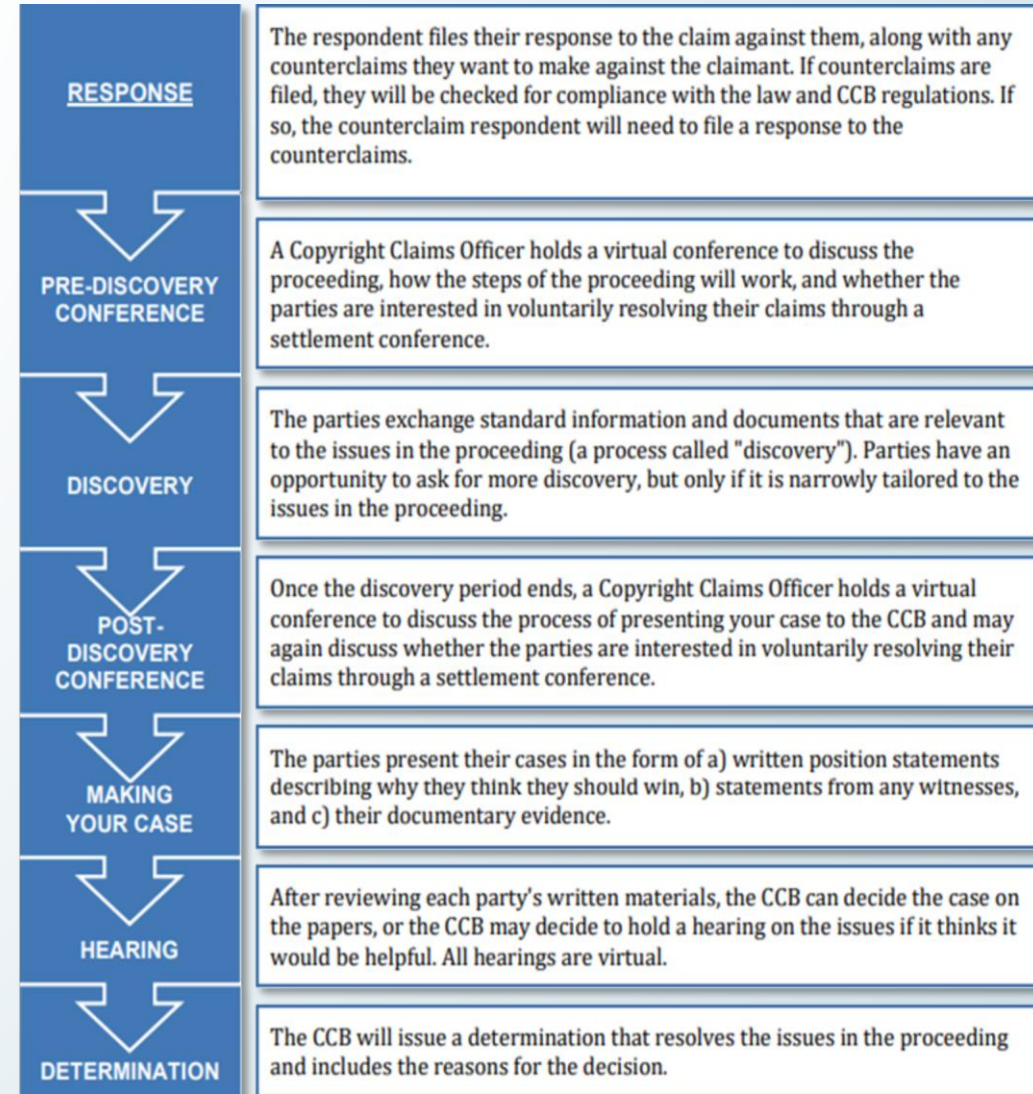


Maya submits a response to Dan's claim on behalf of MB Publishing. The response gives her side of the claim and includes details about a licensing agreement she believed gave her permission to sell the book.





- Standard interrogatories and document requests
- You may request more discovery if you wish
- No depositions
- No third-party subpoenas
- Expert testimony rarely granted

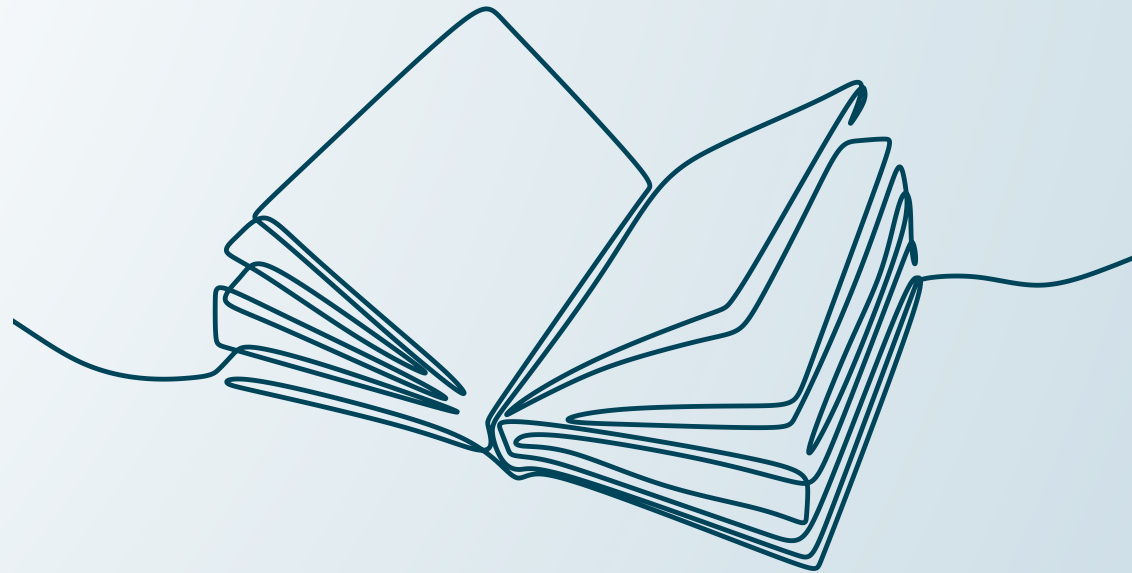


COPYRIGHT INFRINGEMENT EXAMPLE



Maya and Dan exchange information and documents relevant to the issues in a case.

Dan and Maya answer answers to standard questions (known as “interrogatories”) and send each other documents including the licensing agreement mentioned in the MB Publishing response and Dan’s correspondence with the Copyright Office about registering the book.





Conferences

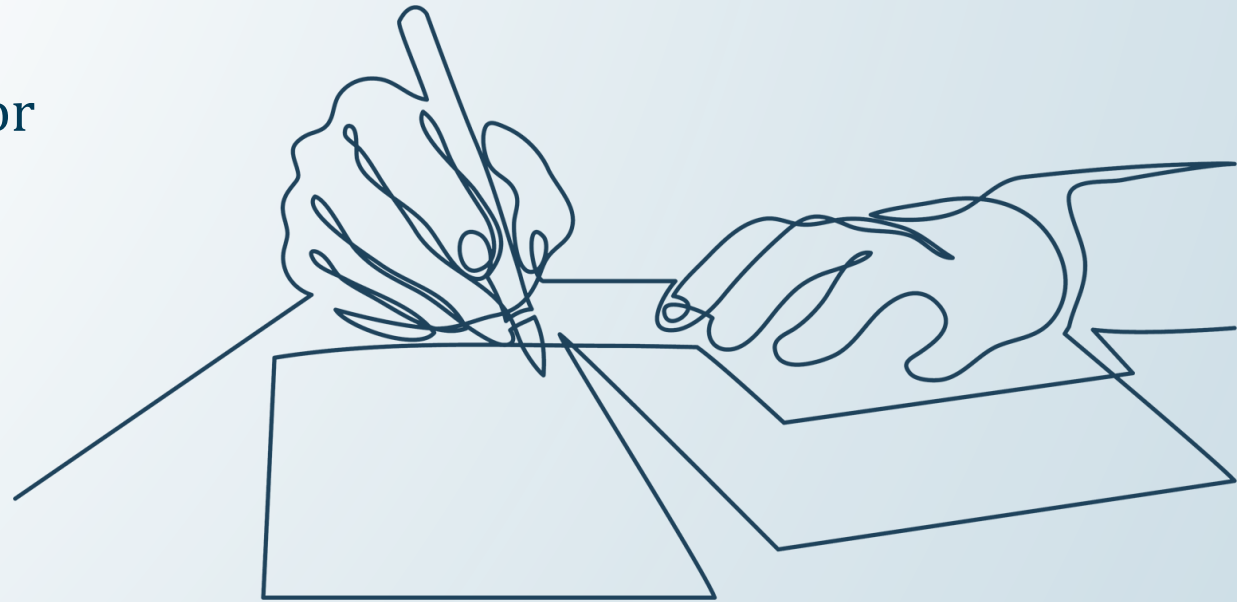
- A conference is a conversation where the parties (and their legal representatives) have a chance to discuss the claim with the Copyright Claims Officers.
- Conferences may be held by one or more Copyright Claims Officers and will be held virtually by videoconference or telephone to allow all parties to participate.

Hearings

- Hearings are possible, but may not be held in every CCB proceeding. If the CCB conducts a hearing, it will be done by videoconference.



- After the discovery phase, each party will present their claims or defenses to the CCB through written statements and supporting evidence.
- Any party with a claim or counterclaim can submit a sworn statement on its own behalf or from witnesses, documents for the CCB to consider, and a statement setting forth its position on why it should win the case.





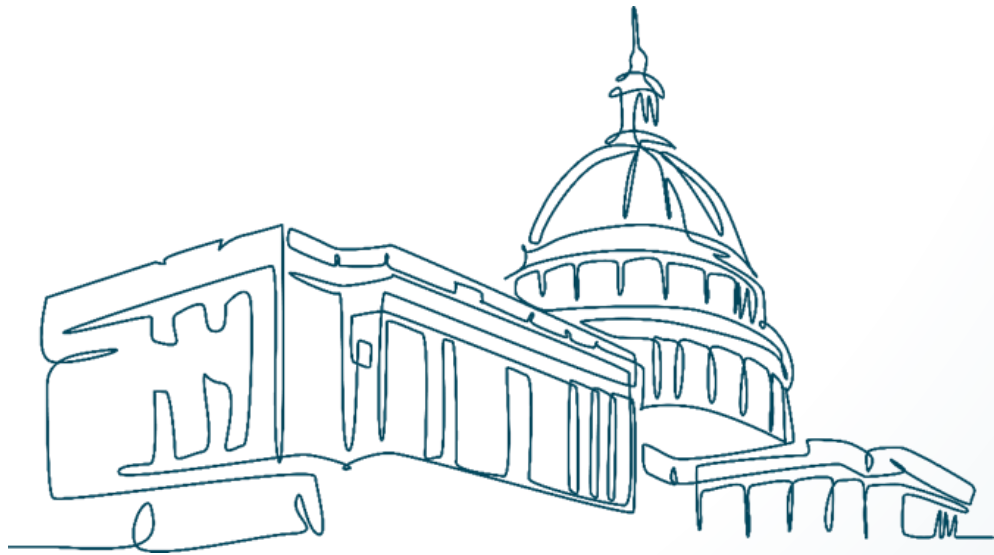
Maya and Dan each draft their written testimony using the information they gathered during discovery. Both Maya and Dan include documents that they received in discovery as exhibits.





- After parties have submitted their written testimony and any hearings have been held, the CCB will issue its final determination.
- The determination will be in writing and include an explanation of the facts and laws that it relied on to make its determination.
- If the parties have reached an agreement to settle or dismiss some or all of the claims and counterclaims, and have requested that the CCB include them in its determination, the CCB will do so.





1. Requests for reconsideration

- After issuing final determination
- Correct a mistake of fact or law

2. Register's review

- After request for reconsideration
- Abuse of discretion

3. Federal court review

- Fraud, misrepresentation, or other misconduct
- CCB exceeded its authority/ failed to render a final determination
- If default, set aside for excusable neglect

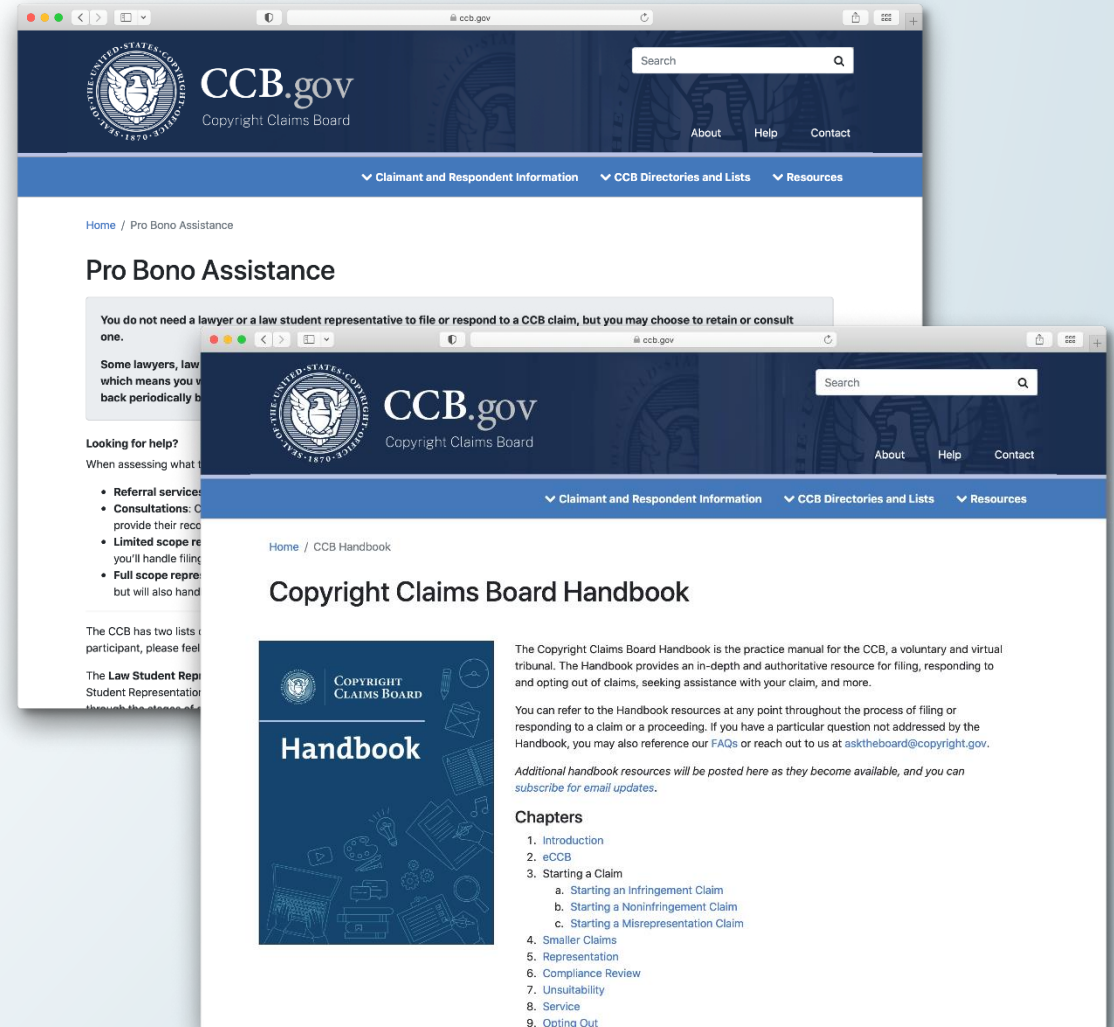


There are various resources on ccb.gov:

Handbook: The Handbook is a step by step guide to help participants file or respond to a claim before the CCB.

Pro Bono Assistance Page: Some lawyers, law school clinics, or organizations may be available to provide legal assistance or representation on a pro bono basis, which means you will not be charged for their services. The CCB maintains a list of these organizations on our website.

Email Us: Asktheboard@ccb.gov





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Q & A

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