

# Determinations

A final determination is the CCB's decision on who wins the case and the damages to award, if any. It explains in writing the facts and laws relied on by the CCB in making its decision. CCB determinations can be enforced in federal court. If you believe the CCB's final determination is incorrect, you can ask the CCB to reconsider it, and, if the request to reconsider is denied, you can seek review from the Register of Copyrights. You can also challenge a CCB ruling in federal court.



## Chapter at a Glance

- **Final Determinations**
- **Requesting Reconsideration by the CCB**
- **Requesting Review by the Register of Copyrights**
- **Challenging a Determination in Federal Court**
- **Enforcing a Determination**

## Why You Need This Information

This chapter provides an overview of the decision the CCB makes at the end of a proceeding. It has information about what a determination is and the post-determination procedures for challenging a final determination.

## Quick Summary of Determinations

- A final determination concludes an active proceeding and explains the basis for the CCB's decision.
- If the losing party does not comply with the determination, it can be enforced in federal court.
- If you aren't satisfied with a determination, you can seek reconsideration by the CCB, and, if that is denied, you may request a review by the Register of Copyrights. You may also raise a challenge to the determination in federal court.

### WHERE YOU ARE IN A CCB PROCEEDING:

1. Filing a Claim
2. Compliance Review
3. Service
4. Opt-Out Period
5. Proceeding Becomes Active
6. Response
7. Discovery
8. Settlement
9. Written Testimony
- 10. Determination**
- 11. Post-Determination**

## HOW DID YOU GET HERE?

One of two things has happened. Either (1) discovery has finished, and the parties have submitted their written testimony; or (2) you are in the **active phase** of a proceeding, and at least one of the respondents or counterclaim respondents has failed to participate (defaulted), so the claimant or counterclaimant submitted their written testimony in response to an order from the CCB. For more information about the default process, see the [Missed Deadlines](#) chapter of this Handbook.

Note that this chapter does not address a different type of “final determination”: where the parties have *settled* and jointly request that some or all of the settlement terms be made part of a “final determination” issued by the CCB. See 17 USC § 1506(t)(1)(D) and the [Settlement](#) chapter of this Handbook for more information on that type of “final determination.”

## WHAT HAPPENS NEXT?

The CCB considers the facts and the legal issues in the case and makes its final determination in writing.

If you aren't satisfied with the determination, there is a process for challenging it, as described below. The first challenge is to request reconsideration by the CCB. If the CCB does not change its determination, you can ask the Register of Copyrights to review it. There is also a limited opportunity to challenge the determination in federal court. The determination is binding on the parties. If one party doesn't comply with the determination, the other party can go to federal court to have it confirmed and enforced.

# Final Determinations

A CCB final determination is the CCB's decision as to who wins the case and the damages to award, if any. It is in writing and includes an explanation of the facts and laws the CCB relied on to make the decision.

In a standard CCB proceeding, at least two of the three CCB Officers must agree on the final determination. If an Officer disagrees with the determination, they may write a dissent to explain the disagreement, which will appear at the end of the written determination but will not affect the validity or scope of the determination by the majority.

In a smaller claims track proceeding, one Officer presides over the case and makes the final determination alone. The exception to this is if the respondent defaults, in which case the default determination follows the same process as a standard CCB proceeding.

Determinations include clear statements explaining any monetary damages awarded to a party. All final determinations are made available to the public on eCCB.

## Effect of a Final Determination

A CCB determination is binding on the parties, including determinations reached after a default and dismissals **with prejudice**. That means the parties cannot, in another CCB proceeding or any other court or tribunal, “relitigate” any claims or counterclaims that were asserted and decided by the CCB.

A CCB determination is binding only on the parties *in the proceeding* and only for the particular claims or counterclaims addressed in the determination. No one may cite or rely on a CCB determination as “**legal precedent**” in court, the CCB, or any other tribunal, except for those parties involved in the proceeding where the final determination was made, in a case over the same specific activity.

***Example:** Marty brings a claim of misrepresentation against Avril, May, and June. Avril opts out of the CCB proceeding, and Marty agrees to dismiss May from the proceeding. If the CCB then determines that June is not liable, June can rely on that determination to preclude Marty from raising the same misrepresentation claim against June in another proceeding. But the determination does not stop Marty from bringing a new claim against Avril or May based on the same facts in either the CCB or federal court.*

When the CCB makes a finding about who owns a copyright-protected work as part of a final determination, the ownership finding cannot be relied on in other cases or proceedings.

## Requesting Reconsideration by the CCB

After a final determination or an amended final determination, each party has thirty days to submit a request to the CCB to reconsider or modify its determination. There is no filing fee for that request. When a request for reconsideration is made, the other parties have thirty days to file a response. Requests for reconsideration cannot be filed by a respondent or counterclaim respondent who defaulted and did not respond to the CCB's proposed default determination (which would then turn the proposed default determination into a final determination).

A request for reconsideration must identify a “clear error of law or fact material to the outcome” or a technical mistake in the determination. An error is a “clear error” if it is unquestionably wrong and it is “material” (important) to the outcome such that the CCB's decision would have been different without the error. You should not file a request for reconsideration if you cannot satisfy the standard for such a request. If you allege that there was a clear error, your request must explain

- the factual or legal error that you contend the CCB made,
- why the error was material to the CCB's determination, and
- why the error was clearly wrong.

The point of a request for reconsideration is not to repeat arguments you already made to the CCB. You must be very specific about the error or technical mistake you identify as the reason the determination should be reconsidered. The request, and any response, generally must rely on evidence that was already presented to the CCB. You can only submit new evidence if you show through clear and convincing evidence that the new evidence was not available to you, despite your reasonable diligence, before you submitted your written testimony or, if there was a hearing, before you participated in that hearing.

The CCB will not hold a hearing on a request to reconsider a final determination. After the response by the other party, or after the thirty days for a response have passed, the CCB will consider the request and any response and base its decision on the written submissions. It will either deny the request and uphold the original determination or issue an amended final determination.

## Requesting Review by the Register of Copyrights

If the CCB denies your request to reconsider a final determination, you can request a review by the Register of Copyrights, who is the Director of the Copyright Office. You must request the Register's

review within thirty days after the CCB denies reconsideration. The request *must* be accompanied by a \$300 filing fee.

*The Register can only consider your request to review a final determination if you already requested reconsideration and the CCB denied that request, in whole or in part.* This also means that a respondent or counterclaim respondent who defaulted and did not respond to the CCB's proposed default determination cannot request a review by the Register because such parties also cannot file a request for reconsideration.

The Register can only change the final determination if the Register decides that the CCB “**abused its discretion**” by denying reconsideration. This is not an easy standard to meet. You must show that the CCB had no reasonable basis to reject your request for reconsideration. The request must include the reasons you believe there was an abuse of discretion in denying the request for reconsideration. The Register of Copyrights will *not* engage in a review of your entire case. The review is limited to whether the CCB abused its discretion in denying your request for reconsideration.

If a request for review by the Register is made, a party opposing the request has thirty days to file a response. A response must give the reasons why the party opposing the review believes it was not an “abuse of discretion” for the CCB to deny reconsideration. The party requesting a review by the Register is not permitted to reply to this response.

You cannot submit new evidence to support or oppose the Register’s review. You may only rely on evidence already submitted to the CCB.

The Register will decide a request for review based on the written submissions after considering the request and any response. The Register will either deny the request or “**remand**” the proceeding, which means sending it back to the CCB. If it is remanded, the Register will specify the issues that the Board must reconsider in an amended final determination.

## Challenging a Determination in Federal Court

In limited circumstances, a party can challenge the CCB’s determination in a federal district court, either in Washington, DC, or any other appropriate U.S. district court. An application to challenge a CCB determination must be filed in district court within ninety days after the determination, denial of reconsideration, or the Register’s denial of the request for review, whichever comes later.

A court can vacate, modify, or correct a determination if a party shows that

- the determination was “a result of fraud, corruption, misrepresentation, or other misconduct”;
- the CCB “exceeded its authority” by reaching the decision;
- the CCB failed to render a final determination about the subject matter at issue; or
- in the case of a default determination or a determination based on a failure to prosecute, the default or failure was due to “**excusable neglect**.”

## Enforcing a Determination

If a party fails to comply with a CCB final determination, the determination can be enforced by an order from a federal district court (as the CCB cannot enforce its own determinations). A party can seek

federal court enforcement if the other party fails to pay the awarded damages or fails to comply with other relief ordered in a final determination.

To seek enforcement, a party must apply to the federal district court in Washington, DC, or any other appropriate U.S. district court for an order confirming the relief awarded in the final determination (or a modified or corrected final determination) and turning it into an enforceable judgment. That application must be made within one year after the final determination, resolution of any request for reconsideration or review by the Register, or any amended final determination, whichever comes later.

The federal court will grant your request and enter judgment unless the final determination has been vacated by the CCB or the Register of Copyrights on reconsideration or review. The court that confirms the CCB award must also order the party who failed to pay damages or comply with the determination to pay the reasonable expenses, including attorneys' fees, that the party seeking the order had to pay to secure the federal court order.

# Glossary

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- **Abuse of discretion:** That a decision was clearly in error or clearly not justified by the facts, circumstances, and evidence before the CCB.
- **Active phase:** The portion of the proceeding starting from the end of the respondent's sixty-day opt-out period and continuing until the CCB's final determination of your case.
- **Excusable neglect:** A justifiable reason for the failure to meet CCB deadlines such that a party may be excused from the consequences of defaulting in a proceeding.
- **Legal precedent:** A court decision that, due to the similarity of the facts and legal issues to a present case, is used as an authority that a court may consider when deciding the outcome of the case before it.
- **Material:** Important or significant.
- **Remand:** To send a case back to the CCB for further consideration of its prior decision.
- **With prejudice:** The claim cannot be filed again.