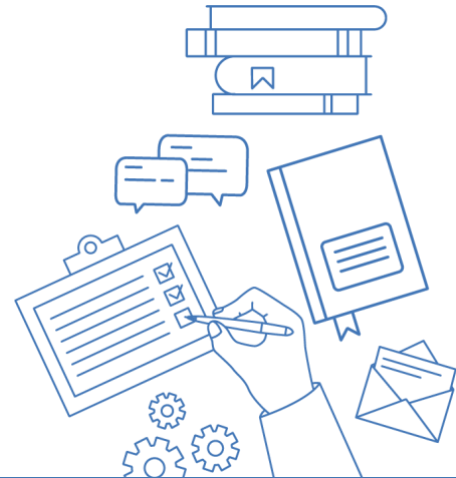


Starting an Infringement Claim

You believe someone used your original work without permission, and you have decided to bring a claim of **copyright infringement** before the CCB. You will file the claim in eCCB, the CCB's electronic filing and case management system.



NOTE: This chapter only discusses preparing an infringement claim. There are separate chapters for preparing a claim for a declaration of [noninfringement](#) and [a misrepresentation claim](#).

Chapter at a Glance

- **What Is a Copyright Infringement Claim?**
- **Questions to Ask Yourself Before You Bring an Infringement Claim**
- **How to Submit a Claim**
- **Less Common Situations**
 - **Refiled Claims**
 - **Claims Against a Library or Archives**
 - **Infringement Claims Against an Online Service Provider**

Why You Need This Information

This chapter describes key information about copyright infringement and the steps to take to submit an infringement claim to the CCB. When you fill out your claim form, you will need to identify your copyrighted work and the person(s) or entity(ies) that violated your rights, give a detailed description of what they did, and describe any harm you suffered. This chapter can guide you through explaining the facts and circumstances of your case and uploading documents in **eCCB** to help prove your infringement claim.

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?

If you are a copyright owner, and someone has used your copyrighted work without permission, you may be considering filing a copyright infringement claim against them before the CCB. This chapter explains what you need to prove for an infringement claim and how you can bring infringement claims before the CCB.

HOW DO YOU START AN INFRINGEMENT CLAIM?

To bring an infringement claim before the CCB, you need to fill out a short claim form in eCCB. eCCB will walk you through step-by-step instructions, directing you to provide:

- the names and addresses of the parties,
- information about your copyrighted work,
- a detailed description of how your rights were violated,
- any harm you suffered because of the respondent's actions,
- any documents you wish to attach to the claim (they are not required at this time, but it is helpful to gather and submit them now), and
- what relief you are seeking.

You will need to certify that your claim is true and pay an initial **\$40** filing fee. If the proceeding enters the **active phase**, a second filing fee of \$60 will be due.

The CCB handles three types of copyright-related claims:

- infringement claims,
- a declaration for noninfringement, that is that one's activity is not infringing another person's work, and
- misrepresentation claims related to a takedown notice or counter-notice under [section 512 of the Copyright Act](#).

This chapter describes how to start an infringement claim. Information on the other kinds of claims is available in the chapters on [Starting a Noninfringement Claim](#) and [Starting a Misrepresentation Claim](#). You may submit more than one of these claims in a CCB proceeding, as long as you have a basis for each claim you assert.

WHAT HAPPENS NEXT?

Once you submit your claim, the CCB will check that it complies with relevant laws and regulations and gives the respondent enough information to respond to it. The [Compliance Review](#) chapter describes that process. If your claim is not compliant, you will have two opportunities to revise and refile it.

If your claim is compliant, the CCB will notify you and authorize you to proceed with formally delivering the claim, an initial notice, and an opt-out form on each respondent. The [Service chapter](#) describes service and waiver of service. Respondents have sixty days to opt out of the proceeding, and if all respondents opt out, the proceeding will not go forward. If at least one respondent does not opt out during the opt-out period, the claim enters the "active phase." The [Opting Out chapter](#) provides further information.

What Is a Copyright Infringement Claim?

When you own a copyright in a work, you have certain **exclusive rights** to use the work. An exclusive right means that no one else but you (and your co-owner, if any) possesses these rights. A copyright owner may assign one or more of their exclusive rights (or even a part of an exclusive right, such as when the owner of a copyright in a novel assigns the right to make a motion picture based on the novel) to another person, who then becomes the owner of that right. If you have an **exclusive license** for a particular right (such as being the only one with the right to distribute a motion picture to theaters for a period of time), then you are the owner of that right while your license is in place. The law includes these exclusive rights:

- the right to **make copies** of the work
Examples: making photocopies, producing a series of prints
- the right to prepare other works based on the work, called **derivative works**
Examples: movie adaptations, cover songs, prequels or sequels, translations (such as translating a book from English to Chinese)
- the right to **distribute copies** of the work
Examples: distributing copies of a book to a bookstore, offering downloads of movies
- the right to **publicly perform** the work
Examples: a theatrical performance of a play, a band playing a song, streaming a movie online
NOTE: sound recordings have a limited right to public performances, but only by means of a digital audio transmission.
- the right to **publicly display** the work
Examples: a gallery exhibiting a painting, a website posting a photograph

Someone who does any of these activities without your permission may be infringing your copyright, unless they have a legitimate **defense**. You can find more information about copyright rights by viewing the [Copyright Holder's Exclusive Rights video](#).

In a copyright infringement claim, you must demonstrate:

- You own a **valid copyright** in the work, or have been given an exclusive license over the copyright rights at issue in the work.
- Someone used one of your **exclusive rights** in the work without permission. This is usually proven through two factors:
 - they had **access** to your work, meaning they had a reasonable opportunity to view or hear your work, and
 - their work is **substantially similar** to the original elements of expression in your work.

Copyright doesn't necessarily protect every aspect of a work. You can find more information about what copyright does and doesn't protect in [Copyright Basics \(Circular 1\)](#) and [Works Not Protected by Copyright \(Circular 33\)](#).

Questions to Ask Yourself Before You Bring an Infringement Claim

This section reviews key issues to consider and information to prepare for a CCB infringement claim.

Can you bring the infringement claim?

To bring an infringement claim, you must be the owner or exclusive licensee of the right in the work that was infringed at the time of infringement.

If you created the work, it's likely you are the author and are (or at least initially were) the copyright owner. However, in some cases, the author can be an employer, or a person or business that commissioned someone to create the work. In these circumstances, the work is called a “**work for hire.**”

A work can also have more than one author or owner. If two or more people contribute to a work, with the intention that their contributions will be merged into a single work, they are considered “joint authors” of that work. Any of the owners of the copyright can enforce the copyright or give permission to others to use their rights. One owner of an exclusive right in a work cannot sue another owner for copyright infringement.

An author (or another copyright owner) who assigns the copyright to somebody else is no longer the copyright owner and cannot bring a claim for an infringement that took place after the assignment of the copyright. There is, however, an exception for a “beneficial owner” of a copyright, who has retained some advantages of ownership after transfer. The typical beneficial owner is an author who assigned the copyright to somebody else but retained the right to receive royalties from the use of the work. A beneficial owner of copyright rights can still bring an infringement claim.

Did you register or apply to register the copyright for the work?

Before you bring a claim before the CCB, you must have either a registration for your work or a pending application for registration. This is different from federal court, where the Copyright Office must have made a decision on your copyright application before you may bring an infringement claim.

Copyright registration creates a public record of your claim to copyright ownership in the work. To learn more about the types of works the Copyright Office can register, and to apply to register your works, visit the [registration page](#).

Your infringement claim can proceed in the CCB even before the Copyright Office makes a decision on your application. However, the CCB cannot issue a **final determination** on your infringement claim if your application is still pending or registration has been refused by the Copyright Office. An expedited registration option is available for works involved in CCB claims. For information, see the [Expedited Registration](#) chapter.

TIP: To confirm whether your work is registered for copyright, visit the Copyright Office's [public catalog](#), which lists works that are registered for copyright from 1978 to the present. If you have questions about the registration status of your work, you can contact the Copyright Office at (202) 707-3000 or 1-877-476-0778 (toll-free).

Who do you think infringed your copyright?

You will need to identify one or more respondents against whom you are bringing your claim, including providing their name and address. A respondent is the person or entity who you believe is at least partly responsible for the harm you have suffered.

What happened?

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.

When did the infringement occur?

You'll need to identify when the infringement took place to the extent that you're able. This information helps the CCB determine whether your claim is within the time limit, or statute of limitations, for when you can begin legal proceedings. You have three years in which you can file a claim. When the clock starts running depends on the specific facts of your claim and the law that will apply to the claim. Just because the infringement happened more than three years ago does not necessarily mean it will be barred. If the infringement happened a long time ago, you can also note in your detailed description of the claim why it took you a long time to find out about the infringement.

Furthermore, each act of infringement of a work is considered separately for purposes of the statute of limitations. If someone infringes a work multiple times over an extended period of time, you can bring an infringement claim based on activities that happened in the last three years, and you should still give the full history of the alleged infringement to the extent you can.

NOTE: Different courts have different rules for calculating the statute of limitations. Some courts calculate the three-year period based simply on the date the activities took place. Other courts calculate the three-year period based on the date you discovered, or reasonably should have discovered, the activities. The CCB will follow the rules for calculating the statute of limitations of the courts in the location with the most connection to the parties and the claim.

Where did the infringement occur?

You'll be asked where the infringement took place as part of your claim form. This could be a physical location, an online location, or both, and it may be multiple locations. You should be as specific as possible when identifying where the infringement occurred. This is important information because it helps the CCB to determine which law to apply.

Do you want to be in the “smaller claims” track?

If you are seeking damages of \$5,000 or less, you have the option to have your claim heard under the CCB's “smaller claims” procedures. Smaller claims proceedings are even more simplified and efficient than standard claims, with the information and documents that each party has to share with the others even more narrowly tailored to the needs of the proceeding. More information is available in the [Smaller Claims](#) chapter.

TIP: The claims form on eCCB will ask you whether you want to proceed on a smaller claims track and will ask you to confirm that choice. Choose carefully, because you can only change your mind about whether you want your claim to be heard as a smaller claim before you serve it on any

parties. After your claim is served, you can only change that decision with the agreement of the other parties and the CCB.

What harm did you suffer, and what do you want from the CCB?

The CCB can grant only certain types of relief. If you seek damages, you can seek either (1) actual damages and the profits of the infringer attributable to the infringement, or (2) **statutory damages**, but not both, for each claim of infringement.

Actual damages are money damages awarded based on the proven harm or loss you suffered. An example of actual damages may be the amount of lost sales revenue you experienced. An award can also include any additional profits the infringing respondent made from the infringement.

Statutory damages are money damages awarded to a successful claimant within a range set by law, without the need to provide proof of the actual amount of harm or loss. Statutory damages are not necessarily higher than actual damages, but they are useful when the amount of actual damages or profits caused by the infringement is hard to prove.

The upper limit of statutory damages available depends on when the work in question was registered.

| If the copyright was registered within three months of first publication of your work or before the infringement started . . . | If the copyright was registered more than three months after publication and after the infringement started. . . |
|--|--|
| <ul style="list-style-type: none">• \$15,000 per infringed work• \$30,000 per proceeding | <ul style="list-style-type: none">• \$7,500 per infringed work• \$15,000 per proceeding |

The CCB does not consider whether the infringement was committed willfully or intentionally when it determines the amount of damages. That means you do not need to prove what the respondent knew or believed about their infringement to get an appropriate award of damages from the CCB.

Regardless of which form of damages you ask for, the maximum amount the respondent can be ordered to pay in damages in a single proceeding is \$30,000, no matter how many claims of infringement are included and no matter which type of damages is awarded. You do not have to select the form of damages when you submit the claim, but you cannot seek more than the maximum amount allowed.

Unlike federal court, the CCB cannot order the respondent to stop or modify activities unless the respondent notifies the CCB that, if found liable for infringement, they will stop or modify the activity. The Board may consider that offer in its damages award and may include the agreement in the award. Therefore, you can state that you would like the infringer to stop their activities, but you cannot demand it as part of your claim.

Do you have any evidence you want to include in your claim?

You can attach documents or other evidence to your claim when you file. If there is a key document or set of documents that you think are helpful to your claim, you will likely want to include them. You're not required to attach any documents or other evidence though at this point in the proceeding. You will, however, have to give that evidence to the respondent during the discovery phase of your proceeding.

The following are examples of documents you may wish to consider including with your claim:

- your copyrighted work
Examples: a video file of your dance, a PDF of your screenplay
- your copyright registration certificate or your application for registration
- the allegedly infringing work
Examples: a video file of a dance that you claim infringed your rights in your choreography, a screenshot of your photographic work being used on the respondent's website
- a cease-and-desist notice or other correspondence related to the infringement claim
- a license or other agreement between you and the respondent about your work, including any permission the respondent had or did not have to use the work
- a takedown notice or counter-notice sent to an online service provider
Example: a notice you sent to YouTube asking it to remove a video that you believe copied your work, the poster's counter-notice asking the service provider to restore the work
- documents that are evidence of damages
Example: licenses that show how much you earn from licensing your photos

Do you want legal representation?

The CCB is set up to be far more streamlined and easy to understand than federal court. As such, you're able to represent yourself in your CCB proceeding, whether you're an individual or a business. You're not required to hire a lawyer, but you are allowed to. Some lawyers or law students may be willing to represent you for free or for a reduced fee. The CCB provides a [directory](#) for **pro bono** law student legal representation. If you want to learn more about your options for representing yourself or getting a lawyer, you can find more information in the [Representation](#) chapter.

How to Submit a Claim

You file your CCB claim by submitting an online claim form. This section provides guidance on filling out the claim form through eCCB.

eCCB can be found on the [CCB's website](#). [eCCB](#) will guide you through the steps to file your claim, with instructions and helpful information along the way. Information about setting up an account and accessing the online form can be found in the [eCCB](#) chapter.

Keep these things in mind before you get started:

- **You must use eCCB for all filings in your CCB proceeding.** If you truly can't use eCCB, for example, because you don't have access to the internet, you can [contact the CCB](#) to request permission to file a paper claim. It's up to CCB whether to grant your request, and using the electronic system is *strongly recommended*. Using mail for your filings instead of eCCB will be costlier, increase the chances that your filings could get lost, and likely will cause delays.
- **You may file your claim on eCCB yourself, or a lawyer or law student representative can file it for you.** A business representing itself can file through an in-house attorney, owner, officer, member, partner, or another authorized employee if that employee has the permission of

an owner, officer, member, or partner in writing. You can find more information about representation in CCB proceedings in the [Representation](#) chapter. If someone else files the claim for you, they must certify that they confirmed the accuracy of the information with you.

- **eCCB will guide you through the filing step by step, asking you questions and giving you instructions.** eCCB also has “tooltips,” marked with a lowercase “i” in a circle, that give more information, including links to resources. This Handbook may also serve as a useful resource if you need additional guidance.
- **You don’t need to complete your claim in one sitting.** You always have the option to save your claim form and return to complete it later by selecting “Save & exit” at the bottom of the screen. The claim form is broken up into easy-to-digest pages, so you should complete the screen you are working on before exiting. To return to a draft claim, select “Submit a claim” on your eCCB dashboard. You will see a notice at the top of the pop-up window stating you have an incomplete filing. Click the “Continue filing” button to continue working on your claim, and then select your draft claim in the next window.

Once you’re ready to begin working on your claim, log in to your eCCB account. When you are logged in, click the “Submit a claim” link at the top of your dashboard. Then follow the steps below.

Selecting Your Claim Type

Once you have logged in to your eCCB account, click the “Submit a claim” link at the top of your dashboard. A pop-up box will appear and prompt you to identify the type of claim or claims you are asserting. There are three options:

- claims of infringement of a copyright,
- [claims seeking a declaration of noninfringement](#), meaning that your activities do not infringe someone else’s copyright (for example, if someone has threatened you with a copyright lawsuit and you wish the CCB to decide that your activities are not infringing), and
- [claims of misrepresentation](#) in takedown notices and counter-notices sent under the **Digital Millennium Copyright Act (DMCA)**.

As this chapter is about filing an infringement claim, you will select an infringement claim. If you have noninfringement or misrepresentation claims as well, you must also select those claims at this stage. You will then go through each claim one at a time. Once you select the type of claim or claims you are asserting, click “Continue.”

On the next screen, you will be asked whether you want to proceed as a “[smaller claims](#)” track proceeding. Select “Yes” to choose the smaller claims track or “No” for a standard CCB proceeding. You should only choose a smaller claims track if you are willing to have your damages limited to a maximum of \$5,000. You can learn more about the smaller claims option, which provides for, among other things, a more streamlined discovery process, in the [Smaller Claims](#) chapter.

Providing Claimant Information

On the claimant screen, you need to identify each claimant in the proceeding and who is representing them (including whether the claimants are representing themselves). You will begin by clicking “Add claimant,” providing the information further described below on the pop-up screen, and clicking “Save.”

Once you are done adding the first claimant, you may add additional claimants, if any, by clicking the “Add claimant” button again. You may only include claimants who have agreed to be added.

When you have entered all of the claimant information, click “Save & continue.” Or, if you’d like to complete this filing in more than one sitting, select “Save & exit.”

CLAIMANT TYPE INFORMATION

You will need to identify each claimant and provide all contact information required on the screen.

When you identify the claimant,

- select “individual” if the claimant is a person, or
- select “organization” if the claimant is a business, corporation, company, nonprofit organization, or some other kind of entity.

If an individual goes by a stage name or pseudonym, you can include it in the “alias” field. Although not required, if the respondent is more likely to know the claimant by their alias than by their true name, providing the alias may help the respondent understand who is asserting the claim.

CLAIMANT REPRESENTATIVE

You will need to identify who is representing each claimant and provide all contact information required on the screen.

NOTE: Self-representing individuals cannot represent other claimants.

| Representative option. . . | Select if. . . |
|---|---|
| Myself | <ul style="list-style-type: none"> • You are the claimant, and you are representing yourself. • You are an attorney or law student representative who is completing the claim form on behalf of a client. • You are an authorized business representative completing the claim form on behalf of your organization. |
| Self-Representing | You are adding an individual, other than yourself, as a claimant and they are representing themselves. |
| Authorized Representative | The claimant is an organization, and it is represented by one of its owners, officers, partners, members, in-house attorneys, or another authorized employee other than yourself. |
| Attorney or Law Student Representative | You should select this if you do not represent the claimant, but the claimant is represented by an attorney or law student. |
| Unknown | There is a claimant involved in the proceeding who has given you authorization to file the claim on their behalf, but you don't know how they will be represented or have the necessary contact information for their representative. They will need to provide their representative's contact information before the claim can move forward in the active phase . |

Providing Respondent Information

On the next screen, you need to identify each respondent in the proceeding. You will begin by clicking “Add respondent,” providing the identifying information required on the pop-up screen, and clicking “Save.” You may add additional respondents by clicking the “Add respondent” button again.

If the respondent is an organization, you will need to confirm whether the organization has a **designated service agent** by searching the [Designated Service Agent Directory](#). There is also a link to the directory within the online claim form. If the organization has an agent, you will need to put the contact information from the directory into the claim form.

When you have entered the information for all respondents, click “Save & continue.” Or, if you’d like to complete your filing in more than one sitting, select “Save & exit.”

Sometimes, you may not know all the information you need.

- **If you don't know the respondent's identity and the infringement is online:** CCB staff attorneys can give you information about obtaining a subpoena under 17 USC § 512(h), which may help you obtain information from an online service provider to identify the respondent in cases of online infringement.
- **If you don't know an individual respondent's name, but only their alias:** You may check the "I only know the individual by their alias" box and provide their alias.
- **If you don't know the respondent's address:** A respondent's address is needed to complete service of the claim. If you know you are in danger of the **statute of limitations** expiring, you can submit your claim without the address and certify that you need to file the claim now because you believe the statute of limitations is about to expire. You will be given a set time period to provide the address before the claim is cleared for service.
- **If you don't know the respondent's email, phone, or fax:** You do not need it to file your claim. This information is optional, but it is helpful if available.

Confirming the Claim Type

After you enter the required information about all claimants and respondents, eCCB will ask you to confirm the type of claims you want to bring and your choice of whether this will be a standard CCB proceeding or a "smaller claims" proceeding.

Your previous answers should show as selected on this screen. If they are correct, select "Save & continue." If they are not correct, you may change your answers as needed, select "Apply changes," and then select "Save & continue." Changing your claim answers will reload the previous steps, so you would need to reenter the claimant and respondent information.

Completing the Infringement Section

Next, the eCCB claim form will prompt you to provide the details of your infringement claim. The claim form's infringement page is split into two sections:

- Works infringed, and
- Wrongful activities.

TIP: Be as detailed as possible. Being specific and detailed in your description gives the other party and the CCB more information about your claim. If you do not provide enough information, one of the CCB staff attorneys may require you to provide additional detail as part of the compliance review process. More information about that process is available in the [Compliance Review](#) chapter.

WORKS INFRINGED

Click the "Works infringed" tab to open and complete the Works infringed section of the claim form. It will prompt you to provide important information about each of your copyrighted works that you claim the respondents infringed. For each work that is part of your infringement claim, select the "Add work" button and enter the information in the "Add work" pop-up screen.

You need to provide five categories of information for each work that you identify as infringed. These four categories can be found in your copyright application or registration information:

- the title,
- the author or authors,

- any co-owners, and
- the copyright registration status of the work.

You will need to provide specific information about the copyright registration status.

- If your work is registered, you will need to say so and enter the registration number. If you do not have it handy, you may find the registration number, effective date, and other registration information in the [public catalog](#) on the Copyright Office’s website, which has information on works registered for copyright from 1978 to the present.
- When you enter the registration number, omit any spaces or hyphens. Registration numbers must be eleven or twelve characters long. Type two letters followed by ten digits, or three letters followed by nine digits, adding zeroes between the letters and digits if needed to get to twelve characters.

*Examples: Registration Certificate: VAU-598-764
 Enter: VAU000598764*

*Registration Certificate: TX-320-918
Enter: TX0000320918.*

- If you have a pending application for registration, you will need to provide the Copyright Office “service request number” (SR number). The SR number is your registration application number. It begins with “SR” followed by a ten- or eleven-digit number. You can find it in the Copyright Office’s [eCO registration portal](#), or you may [contact](#) the Copyright Office for assistance.

TYPE OF WORK

Next you will be asked to identify the work’s type or category, if you know it, from a list of categories in a drop-down menu:

- [Literary Works](#)
- [Musical Works](#)
- [Sound Recordings](#)
- [Dramatic Works](#)
- [Pantomimes and Choreographic Works](#)
- [Pictorial, Graphic, and Sculptural Works](#) (this includes Photographs)
- [Motion Pictures and other Audiovisual Works](#)
- [Architectural Works](#)
- [Software and Computer Programs](#)
- Other
- Unknown

If you don’t know which category the work qualifies as, or if it does not fit any of the categories listed, you can select “Other” from the drop-down menu. Regardless of what you select, you will then be required to provide a description of the work in the “Describe the work” field, and you should add specific details here.

Examples: If you selected “Literary Work,” it may be helpful to add “young adult novel” or “nonfiction history book” in this field. If you selected “Pictorial, Graphic, and Sculptural Works,” you might add “mixed media artwork using fur and paper” or “photograph of man in red tuxedo” or “marble sculpture of birds on a telephone pole.”

After you fill out all of the fields in the “Add work” pop-up window, select “Save” at the bottom of the window. If you are claiming that the respondent infringed your copyright in more than one work, select “Add work” again and repeat the above steps for each additional work.

CERTIFICATION OF OWNERSHIP

Once you have entered the information identifying each work that you claim was infringed, you will be asked to certify that you own the rights for each work upon which an infringement claim is being brought.

WRONGFUL ACTIVITIES

Next, you will click the “Wrongful Activities” tab to open the section where you describe what you think the respondent did wrong. In this section, you will provide information about the specific activities you claim the respondent(s) took to infringe your copyright.

You will need to provide five categories of information:

- what type of wrongful activities occurred,
- when the infringement occurred,
- where the infringement occurred,
- a detailed description of the infringement, and
- how you have been harmed by the activities.

Each of these categories is discussed in more detail below.

The Type of Wrongful Activities

A drop-down menu at the top of the Wrongful Activities section lists the six **exclusive rights** that are available for a copyrighted work. Use the drop-down menu to identify which of those rights you believe the respondent violated for the work you identified in the previous section.

You may check off more than one box if you believe that the respondent infringed your copyright in more ways than one. You should only check the boxes that actually apply to the facts in your case.

Example: If the respondent is a publisher that printed and distributed copies of your book without your permission, you might check the boxes for “Reproduce the work” and “Distribute copies of the work.”

There is a seventh box in the drop-down menu for “Unknown.” Check that box, and only that box, if you cannot tell which of your six exclusive rights the respondent violated. You should then describe what rights you think were violated when you describe the infringement later on.

When the Infringement Occurred

Next you will indicate if the infringement has continued through the date you file your claim. If it is still ongoing, select “Yes.” If it is not, select “No.” Select “Unknown” if you do not know whether the infringement has stopped.

Example: If a theater company is giving public performances of your play without your permission, and months of upcoming performances are scheduled, you would select “Yes.” However, if the company has no more performances of your play on its schedule and you believe that it has ended that production, you would select “No.”

You then will provide the dates of the infringing activity. If you don’t know the exact dates the infringement started or ended, you can approximate month, year, or both to the best of your ability or type “unknown” in the box. If your answer to the previous question was that the infringement is ongoing, you won’t need to give an end date in your answer to this question since it has not ended.

Your entries in these fields are not limited to date characters (such as “1/1/2022”), so you can enter terms like “Since at least January 2022” for the start date or “Until January 15, 2022” for the end date.

Where the Infringement Occurred

The claim form includes a blank box for you to fill in a description of where the alleged infringement occurred. Be as specific as possible based on the facts you know. Include a full street address if you know it, rather than just the city and state. You may also include more than one address. If you do not know where the infringement occurred, enter “unknown.”

Example: If the respondent is a theater company that did a touring production of the allegedly infringing play, you’re encouraged to provide the location of each theater where the play was performed, rather than just the cities where the tour stopped or the description of “multiple locations.”

Your response can include a physical location, an online location, or both if the infringement occurred both online and offline.

Example: If the respondent is a clothing company selling T-shirts that feature one of your drawings without your permission in stores and through its website, you should state both that it is occurring in physical stores (and the locations if known) and on its website (including the website address).

Describe the Infringement

The infringement claim form includes a fillable box for you to describe the facts that lead you to believe that your work was infringed by the respondent. Be as detailed as possible based on the facts you know. This is where you can provide any relevant information about the infringement that does not go in the other sections.

Your description should help the respondent and the CCB understand, among other things, 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.

Example: If Ms. Artist is exhibiting a painting that you believe she copied from one your paintings, you should describe how you believe she saw your painting (for example, in a gallery, a museum, a catalog, on your website, or through dealings with you) and what aspects of her painting appear to be copied from the expressive content of your painting (for example, its subject, perspective, color, composition, texture, materials, or technique).

TIP: If the infringing work is an exact, duplicate copy of your work, your description may not need to say much else about the similarities of the works. For example, if a news website uses an exact copy of your photograph without your permission, you should say so. If a licensed copy of your photograph has been available online since before the news website used it, and you believe that is

where the news website found your photograph, you could indicate that and provide the dates of publication and the online address where the licensed copy appears.

In your description, you should name any person or organization who you believe participated in the infringing acts (if you know their names), whether or not they are named as a respondent, and describe what each did to infringe.

Example: If your infringement claim is against a musical group and its record company for recording and selling an album that features a sample of one of your sound recordings, you might write that the group created a derivative work based on your recording, and that the record company reproduced and distributed copies of the infringing work. If Mr. Producer suggested to the group that they should use a sample of your recording on the album, you may name him and discuss his role in your description of the facts of the infringement, even if he is not a respondent.

Less Common Situation: Infringement by an Online Service Provider

Next, you will be asked if any respondent is an online service provider. An online service provider is a provider of online services or network access, such as a content-sharing website like YouTube or Twitter. Special rules apply to infringement claims against online service providers that store, refer to, or link to infringing material posted by others. This is a less common situation, discussed separately in the [Infringement Claim Against an Online Service Provider](#) section of this chapter below.

If one or more of the respondents is an online service provider, select “Yes” and refer to that section for more information, as you will then be asked specific questions relevant to such a claim. If none of the respondents is an online service provider, select “No.”

Describe the Harm Suffered and the Relief You Are Seeking

In the last blank on the infringement claim form, you will describe the harm you have suffered as a result of the alleged infringing activity and the relief you are seeking from the respondent.

Describe the harm you have suffered in your own words. You can include an estimate of any monetary loss that you are seeking, though it is not required.

TIP: If you are requesting an award of damages, your description can include information to support that request, such as details about:

- the value of the respondent’s use of your copyrighted work based on your pricing, sales, or licensing history,
- any loss in sales or income that you believe you experienced because of the infringement, or
- any profits that you believe that the respondent made from the infringement.

You may state in this field that you would like the respondent to stop any activity that the CCB finds to be infringing. However, you should understand that the CCB can only make the respondent stop or modify their behavior as part of its final determination if the respondent informs the CCB that, if found liable for infringement, they agree to stop or modify their behavior. If the CCB finds that the respondent infringed your copyright, and the respondent has agreed to go along with the requirement, the CCB’s final determination can require the respondent to remove, disable access to, or destroy any infringing materials.

When you have completed all of the fields in the Wrongful activities section, select “Save & continue” at the bottom of the page.

Adding Supplemental Documentation

In the next section of the claim form, you can choose to submit supplementary material or documents that play a significant role in your claim. Filing documents along with the claim can help to show the respondent and the CCB that you have important evidence in support of your claim. If you do not submit these documents now, you will need to provide various relevant documents when the proceeding moves to the active phase and discovery starts. See [above](#) for examples of evidence you may wish to consider submitting with your claim.

You can add a wide variety of file types, including:

- PDF (Portable Document Format) documents;
- Microsoft Word documents, Excel spreadsheets, and PowerPoint presentations;
- Corel WordPerfect documents;
- tab-separated values (TSV) files and comma-separated values (CSV) files;
- plain text and rich text documents; and
- audio, video, and image files.

To upload, you can drag the files from a folder into the box in the middle of the page, or you can click the “choose from folder” hyperlink in that box and select the files you wish to submit.

Once you have uploaded the supplemental documents and materials you wish to file with your claim, click the “Save & continue” button.

Review and Payment

The “Review & Pay” page includes all the information that you have provided in the claim up to this point. Carefully double-check the information on this page. If you have any corrections, you can select “Edit” to revise any entries necessary. Each section of information has an “Edit” button, which will take you back to that section so you can make changes. After you make changes, you can click “Save & review” to go right back to the review page.

DECLARATION

Once you have completed your review and any revisions, you must confirm that the information in your claim is accurate and truthful to the best of your knowledge. This declaration is “under penalty of perjury,” which means that you recognize you may be subject to penalties if you know that any statement in the declaration or your claim is not true.

To complete the declaration, type your full name into the “Digital signature” box near the bottom of the “Review filing” page and click “Agree & submit.”

FILING FEE

eCCB will then take you to a page to submit your payment. Your initial payment for the claim is a **\$40** filing fee (a second **\$60** payment will come if the opt-out period ends and at least one respondent has not opted out of the proceeding). You make the payment through Pay.gov, a secure government website portal for electronic collection of funds. You may select one of four ways to pay:

- bank account (ACH),
- Amazon account,

- PayPal account, or
- debit or credit card.

The fee is not refundable. You must submit the initial payment to complete the filing process, or the CCB will not receive and process your claim.

Select the way you want to pay, and click “Enter.” The website will direct you to a page to enter the account information for your method of payment.

When your payment is complete, congratulations! You have initiated your claim.

Less Common Situations

Refiled Claims

If the CCB dismisses your claim without prejudice, it means you may be able to refile it at some point, either in federal court or before the CCB. However, if the CCB dismissed your claim because a respondent opted out of the proceeding, you cannot refile it in a new CCB proceeding against the same respondent if it still covers the same acts and claims you raised in the earlier proceeding.

Example: You wrote and self-published a book of essays, and you bring an infringement claim against a publisher that sold copies of the book without your permission. The publisher opts out of the proceeding. A year later, you reprint the book with a new foreword and one additional essay, and you obtain a new copyright registration for the book. Despite the new registration, you may not refile the claim against the publisher over the same allegedly infringing acts from the previous year because it already opted out. However, if the publisher then sent you a cease-and-desist letter accusing you of infringing one of its works, the earlier proceeding would not prohibit you filing a claim for a declaration of noninfringement against the publisher.

The CCB will apply the earlier opt-out and dismiss the claim again, unless you can show that the respondent has affirmatively agreed to have the dispute resubmitted to the CCB for resolution.

Example: If you brought an infringement claim against a publisher and it opted out of the proceeding, you may not refile the claim in the CCB unless the publisher agrees to have the CCB resolve the dispute, which it may decide to do rather than be sued in federal court.

Claims Against a Library or Archives

Generally, respondents who do not wish to have a claim against them heard by the CCB must opt out of proceedings on a case-by-case basis. A special rule lets libraries and archives, including their employees acting in the scope of their employment, opt out of all CCB proceedings in advance, before anyone files a claim against them.

The Copyright Office maintains a [public list of the libraries and archives](#) that have opted out of all proceedings. If you are filing a claim against a library or archives, including their employees acting in the scope of their employment, you should check this list before filing a CCB claim to avoid paying an unnecessary filing fee for a claim that will not move forward.

Libraries and archives can only preemptively opt out and be placed on the blanket opt-out list if they qualify for the [limitations on exclusive rights](#) under the Copyright Act. You can bring a claim against

an entity on the blanket opt-out list if your statement of material facts includes enough allegations to support a belief that the library or archives is not eligible to be on the list. The claim will then go through a process to determine whether the library or archives is eligible.

TIP: The respondent may choose to opt out of your proceeding even if the CCB determines that it is not eligible for the blanket opt-out list. As a result, bringing a claim that alleges the respondent is not eligible does not guarantee that the proceeding will reach the active phase.

Infringement Claims Against an Online Service Provider

An online service provider is a provider of online services or network access, or the operator of facilities therefor, such as a content-sharing website like YouTube or Facebook. Special rules apply to infringement claims brought against online service providers for storing, referring to, or linking to infringing material posted by others. In many cases, online service providers are not liable for such claims because of protections in the copyright law under section 512 of the Copyright Act.

SECTION 512 SAFE HARBORS

Section 512 contains limitations on liability, referred to as “safe harbors,” that protect certain service providers that provide (or operate facilities for) online services or internet access. The safe harbors protect a qualifying online service provider from paying damages over an infringement claim based on certain kinds of actions of their users.

These online service providers must, among other things, comply with the requirements of the notice-and-takedown system to qualify for the safe harbors. They must take steps to quickly remove or disable access to the infringing material when a copyright owner notifies them about the infringement.

The notice of infringing material must

- identify the copyrighted work (or a representative list, if the notice covers several works infringed on a single website);
- identify the infringing material that the copyright owner wants the service provider to remove or disable access to;
- include information that can let the service provider find that material (such as a hyperlink);
- include contact information for the copyright owner, or for someone the owner authorized to send the notice; and
- contain a signed declaration that the information in the notice is accurate and the sender is authorized to act on behalf of the copyright owner.

HOW THE SECTION 512 SAFE HARBORS MAY AFFECT YOUR CLAIM

If your infringement claim is against an online service provider that cached, hosted, referred, or linked to infringing material, before the CCB can hear your claim, you must affirm that you sent the online service provider the takedown notice (as described above), and that the online service provider did not quickly remove or disable access to the infringing material after your notice.

In the infringement section of the claim form, you must answer four questions to affirm you have taken the necessary steps to raise an issue of infringement by the online service provider.

When you answer “yes” to a particular question, the next one will appear.

1. Are any of the respondents online service providers?
2. Are you bringing a claim against the online service provider due to their storage of, or referral or linking to, infringing material posted by others?

TIP: Selecting “No” may be appropriate, for example, if your claim is that the online service provider infringed your work directly, not because of material posted by others using its service. In that case, you would still be able to bring the infringement claim against the online service provider.

3. Did you send the online service provider a “takedown notice” as required by section 512 of the Copyright Act?

TIP: If you never sent a takedown notice, but your infringement claim against an online service provider is based on its activity related to infringing material posted by others, your claim will be found noncompliant. Consider whether you still want to proceed with an infringement claim against this respondent.

4. Did the online service provider fail to expeditiously remove or disable access to the material after you sent a takedown notice?

TIP: In the fillable “Describe the infringement” box in the infringement section of the claim form, you can provide further details about the infringing material, your takedown notice, and how and when the respondent responded to your notice.

Glossary

- **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.
- **Copyright infringement:** Copyright infringement occurs 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.
- **Designated service agent:** A specific person or entity that a corporation, partnership, or unincorporated association has designated to receive service of CCB claims.
- **Display a work publicly:** To display a work at a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered, or to transmit a display to the public, including when members of the public receive the display at the same place or at different places or at the same time or different times.
- **Designated service agent:** A specific person or entity that a corporation, partnership, or unincorporated association has designated to receive service of CCB claims.
- **DMCA:** Short for Digital Millennium Copyright Act, the part of the copyright law dealing with an online service provider’s duties regarding online content posted by others, among other matters.
- **Exclusive license:** A license is an agreement where the copyright owner allows someone else (a “licensee”) to have certain rights in their work. A licensee is exclusive when the copyright owner agrees that they will only give those rights to that licensee.
- **Exclusive rights:** The rights given to the copyright owner by the law. These include the right to make copies, distribute, publicly perform or display, or to make a “derivative work,” which is a work based on the original work.
- **Final determination:** The CCB’s ruling regarding who actually wins the case, with any awards, and with the CCB’s reasons for its findings.
- **Perform a work publicly:** To perform a work at a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered, or to transmit a performance to the public, including when members of the public receive the performance at the same place or at different places or at the same time or different times.
- **Pro bono:** Legal services without a charge for the attorney’s or law student’s time or work.
- **Statute of Limitations:** A law that sets a time limit for when you must begin legal proceedings.
- **Statutory damages:** An alternative to actual damages, allowing a successful claimant or counterclaimant to receive an award in an amount within a set range that the court or the CCB considers just.
- **Work for hire:** A work that has been created by an employee in the scope of their employment, or created (for certain types of works) based on a written agreement commissioning that work and stating that the work should be treated as a work made for hire.