

Starting a Noninfringement Claim

If someone accused you of unlawfully using, or intending to use, their work without permission, you can request a CCB declaration that you did not commit or will not be committing **copyright infringement** through your actions by bringing a claim for a declaration of noninfringement (a “noninfringement claim”) 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 a claim for a declaration of noninfringement. There are separate chapters for preparing an [infringement claim](#) and a [misrepresentation claim](#).

Chapter at a Glance

- **What Is a Noninfringement Claim?**
- **Questions to Ask Yourself Before You Bring a Noninfringement Claim**
- **How to Submit Your Claim**
- **Less Common Situations**
 - **Refiled Claims**
 - **Claims Against a Library or Archives**

Why You Need This Information

This chapter describes the steps to take to raise a claim for a declaration of noninfringement before the CCB. When you fill out your claim form, you will need to identify the person or entity that accused you of infringement, the facts surrounding your activities that led them to accuse you of infringement, and why you believe your activities do not amount to infringement. This chapter can guide you through explaining the facts and circumstances of your case in **eCCB** to help establish your 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 bringing a noninfringement claim before the CCB, someone accused you of infringing their copyright or asserted that your planned actions will infringe their copyright, and you want the CCB to declare that you did not or will not infringe their copyright. This chapter explains what you need to prove for a noninfringement claim and how you can bring noninfringement claims before the CCB.

HOW DO YOU START A NONINFRINGEMENT CLAIM?

To bring a noninfringement 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,
- a detailed description of your dispute with the respondent,
- a detailed description of why you believe no infringement has occurred or will occur, and
- 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).

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, meaning 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 a noninfringement claim. Information on the other kinds of claims is available in the chapters on [Starting an Infringement 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 Noninfringement Claim?

A noninfringement claim is brought when someone accuses you of copyright infringement because you have engaged or are planning to engage in activities they believe violate one or more of their exclusive rights under copyright law, and you are worried they will bring an infringement claim or lawsuit against you. A noninfringement claim is a request that the CCB issue a determination that your actions or potential actions *do not* infringe their rights in that work.

To bring a noninfringement claim, **you must show that there is a genuine dispute** between you and the respondent over whether your alleged unlawful use of the respondent's work is an infringement of copyright.

- You can show a genuine dispute exists if the respondent told you that you have committed copyright infringement of their work.
- You can show a genuine dispute exists if the respondent made accusations that have interfered with the way you're using their work or plan to use their work.

Example: The respondent told you not to move forward with your plans to use their work, or told someone else not to do business with you, because what you are doing infringes their copyright.

- You cannot ask for a declaration of noninfringement if the respondent doesn't know about your plans or activity with their work, and you are just worried that they might find out and bring a claim against you. If that's the case, there isn't yet a dispute between you and the respondent about whether your use is or isn't copyright infringement.

A Few Key Points to Keep in Mind

- Usually, someone bringing a claim has the burden to prove their case. Here, you will need to show that there is a genuine dispute about whether your activity is infringing. But you don't need to prove that you didn't infringe the copyright. Instead, the person or business who accused you of infringement has to prove that you *did* infringe. You can read more about infringement claims and how copyright owners prove infringement in the [Starting an Infringement Claim](#) chapter.
- You can bring a noninfringement claim about your past, current, or planned future actions.
- You can bring a noninfringement claim even if the respondent accused you of infringement when talking to or communicating with someone else, not you personally.
- You can't get financial awards from the CCB for a noninfringement claim. If you win, you'll get a determination saying your specific actions at issue in the case aren't copyright infringement.
- Neither you nor the respondent needs a copyright registration for you to bring a noninfringement claim before the CCB.
- If you bring a noninfringement claim, the respondent may choose to bring a claim of infringement, called a counterclaim, against you in the same proceeding. You can find more information about counterclaims in the [Counterclaims](#) chapter. If the respondent does not bring a counterclaim, the respondent may choose to bring a separate claim for infringement in federal court or before the CCB.

Questions to Ask Yourself Before You Bring a Noninfringement Claim

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

Can you show that the question of copyright infringement is in dispute?

If you raise a noninfringement claim, you'll need to prove there is a genuine dispute between you and the respondent about whether your activity is infringing. You can't just assume the copyright owner disagrees with your use of the work and will bring a lawsuit over it.

*Example: Paul Robert has a podcast in which he provides reviews of new music. In a recent episode, he reviews Alva Singer's new single "Pop Song" and includes clips from the single as part of his critique. Alva sends him a cease-and-desist letter, accusing him of copyright infringement and demanding he remove the clips from the episode wherever it is available. Paul believes his use of the "Pop Song" clips was **fair use**. He may bring a noninfringement claim against Alva to get a determination that his use of "Pop Song" in that episode was not copyright infringement because it was fair use.*

Can the respondent prove each element of copyright infringement?

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. To do that, the *respondent* must demonstrate:

- They own a **valid copyright** in the work or have been given an **exclusive license** over the rights at issue in the work, which means they have certain rights that only they can use. 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

- You **used one of their exclusive rights** in the work without permission. This is usually proven through two factors:
 - you had access to their work, meaning you had a reasonable opportunity to view or hear the work, and
 - your work is substantially similar to original elements of expression in their work.

If the respondent has claimed that you engaged in any of those acts without permission, and you know or believe the claim is not true, you should explain in detail when filing your claim. If you never had access to their work, then you should make that clear in your claim. You can even describe why it is unlikely that you could have had access to the work (for instance, if you have no relationship with the respondent and their work is not publicly available). Similarly, you should mention any ways in which your work is not substantially similar to the original elements in the work they say you infringed—for example, if your work is very different from the respondent’s work or the two works only have **unoriginal or unprotected aspects in common** (such as the use of a fact or a basic and common idea).

Do you have any valid defenses to copyright infringement?

Even if you engaged or plan to engage, without the respondent’s permission, in any acts that fall within the exclusive rights listed above, it may not be a copyright infringement if you have a legitimate legal reason why that use is allowed. Information about some of the most common defenses to copyright infringement claims is available in the [Responding to an Infringement Claim](#) chapter.

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

No monetary demand can be made for a noninfringement claim. If noninfringement is your only claim or if you are filing other claims as well, but 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.

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:

- the copyrighted work

Examples: the respondent’s photograph, the respondent’s painting

- your allegedly infringing work
Examples: a screenshot of the respondent's photograph used on your website, your painting that the respondent accuses of infringement
- 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
Example: a notice the respondent sent to a video streaming site asking it to remove a video that you posted, your counter-notice asking the service provider to restore the work
- communications or agreements that show you had permission to use the work
- communications that relate to the respondent's knowledge of your work
- documents that show you created your work independently or before the respondent's work was created
- documents that show the respondent doesn't have rights in the work
- any other material that supports your claim

TIP: You must preserve all evidence that you have of the noninfringement including the copyrighted work and your allegedly infringing work. If the works are online, you should make copies of them before they are taken down. Even if you do not submit these materials with your claim, you will need them as evidence to prove your case later in the proceedings.

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 Your Claim

You file your CCB claim by submitting an online claim form. This section reviews key issues to consider and gives you information to prepare for filing a CCB noninfringement claim..

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, that is 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 a noninfringement claim, choose the second option. If you have infringement 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. There is no monetary claim associated with a declaration of noninfringement, but if you also have infringement or misrepresentation claims, you should only choose the smaller claims option 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 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, or phone:** 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 Noninfringement Section

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

- Work(s) respondent says you have infringed (the "Works" section), and
- Allegedly infringing 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 THE RESPONDENT SAYS YOU INFRINGED

Click the "Work(s) respondent says you have infringed" tab to open and complete this section of the claim form. It will prompt you to provide important information about each work that the respondent claims you have infringed or will infringe.

For each work that is part of your noninfringement claim, select the "Add work" button and enter the information in the pop-up screen. You need to provide information in four categories for each work that the respondent argues you infringed:

- the title of the work, if known;
- the party accusing you of infringement;

- copyright registration information, if you have it; and
- the type of work, if known.

Provide the information to the best of your knowledge. Each of these categories is discussed below.

Title of the Work

You first will be asked to provide the title of the work if you know it. This information can be found in the work's copyright registration certificate or the application to register the copyright. You may also find this information in the [public catalog](#) on the Copyright Office's website, which has information on works registered for copyright from 1978 to the present. The respondent may also have given you the title of the work in a communication accusing you of infringement, or you may know of it some other way, such as if the work is well known.

If you do not know the title of the work that the respondent says you infringed, write "Unknown."

Party Accusing You of Infringement

Next you will be asked to identify who said you infringed their copyright. List the respondents who accused you of infringement.

If there are several respondents, name the ones that accused you of infringing this particular work. The correct answer may simply be naming the respondent or all of the respondents, but it might not be.

Example: If a lawyer representing three different authors sent you a letter accusing you of infringing the copyright of separate works by each author, demanding that you stop using their copyrighted works, and you bring your noninfringement claim against all three authors, then for each work that you include in the noninfringement section, you should list only the author of that particular work.

Copyright Registration Information

You will be asked if the Copyright Office has registered the copyright for the respondent's work. If you do not know, select "Unknown."

If you know the copyright is registered, select "Yes." Fields will appear for you to enter the copyright registration number and effective date, if you know them. You might find this information in the [public catalog](#) on the Copyright Office's website, which has information on works registered for copyright from 1978 to the present. You may also find the information on the respondent's copyright registration certificate, if you have access to a copy.

If you are entering a 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 know the work has not been registered, select "No." A field will appear where you can enter a "service request number" (SR number), which is the Copyright Office's registration application number. If you know that a copyright registration has been applied for and you know the SR number you should

enter it. It begins with “SR” followed by a ten- or eleven-digit number. If you do not know of a pending application to register the copyright, or if you do not know the SR number, leave the field blank.

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

Choose the type of work you believe fits the respondent’s work. If the work does not fit any of the categories listed, select “Other” from the drop-down menu. If you don’t know the kind of work the respondent accuses you of infringing, or which category it fits in, select “Unknown.” If you select “Other” or “Unknown,” provide a brief description of the work in the “Describe the work” field, to the extent you know it.

Even if you select one of the listed categories of works, you should provide more detail in the “Describe the work” field. A specific and detailed description of the work can help the CCB and the respondent better understand your claim.

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,” “marble sculpture,” or “photograph of three men in red hats.”

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

ALLEGEDLY INFRINGING ACTIVITIES

Click the “Allegedly infringing activities” tab to open and complete that section of the claim form. For each work that you identified in the previous section, you will provide information about the specific activities the respondent claims that you did or will do to infringe the copyright. You will need to provide eight categories of information:

- which of the copyright owner’s rights you are alleged to have infringed,
- whether the allegedly infringing activities are still going on,
- when the allegedly infringing activities began and ended,

- a description of the allegedly infringing activities,
- where the activities happened,
- any other persons or organizations involved in the activities,
- a description of the dispute over your activities, including why you need a declaration of noninfringement, and
- a description of why you believe no infringement occurred.

Each of these categories is discussed in more detail below.

Respondent's Allegedly Infringed Rights

To ask for a declaration of noninfringement, you need to have been allegedly infringing or are allegedly going to infringe one of the copyright owner's or exclusive licensee's six exclusive rights without their permission. You should also be able to say that your activities were not or will not be (for future activities) infringements. Examples of these activities appear in the [Starting an Infringement Claim](#) chapter.

First, you will be asked to identify which of the claimant's rights as a copyright owner are allegedly involved. As noted [above](#), owning a copyright gives the copyright owner certain exclusive rights. These are the six exclusive rights of a copyright owner:

1. To **reproduce the work**. This is the right to make copies of the work.
2. To **create a derivative work**. This is the right to prepare works based on the work or adapted from the work.
3. To **distribute copies of the work**. This is the right to distribute the work to the public, in copies or in phonorecords (physical or digital objects that contain sound recordings), by sale or other transfer of ownership, or by rental, lease, or lending.
4. To **publicly display the work**. This is the right to make a public display of certain types of work: literary, musical, dramatic, or choreographic works; pantomimes; pictorial, graphic, or sculptural works; and the individual images of a motion picture or other audiovisual work.
5. To **publicly perform the work**. This is the right to make a public performance of certain types of work: literary, musical, dramatic, or choreographic work; pantomimes; and motion pictures and other audiovisual works.
6. To **publicly perform the work through a digital audio transmission**. This is the right to make a public performance of a sound recording by using a digital audio transmission.

A drop-down menu at the top of the Allegedly infringing activities section lists those six activities. Use the drop-down menu to identify which of those six things you were accused of doing. More than one right may be involved.

There is a seventh box in the drop-down menu for "Unknown." Check that box, and only that box, if you truly cannot tell which of the six identified rights the respondent believes you violated. You may check off more than one box if you were accused of infringing the copyright in more ways than one. However, you should only check the boxes that actually apply to the facts in your case.

Example: If you are a publisher that made and sold copies of a book by an author who subsequently has sent you an email accusing your company of infringement and threatening to file a lawsuit, you

might check the boxes for “Reproduce the work” and “Distribute copies of the work.” But unless your company was also accused of creating a derivative work, you should not check that box too.

Ongoing Activities

Next you will be asked if your allegedly infringing activities are ongoing. If the activities have continued up through the date you file the claim, select “Yes.” If your activities stopped earlier, select “No.” If your activities have not started yet, select “No.” Select “Unknown” if you do not know whether the activities continued through the date of the claim.

Answering “Yes” does not mean your activities are in fact infringing; it just means they continued up through the filing of the claim. For example, if your gallery is displaying a painting by the respondent, who claims that you are infringing the public display right in their painting, you would select “Yes” because the painting is still on display, even though you contend it is not infringing.

Dates of Allegedly Infringing Activities

The next section asks you for the dates your allegedly infringing activities began and ended.

If you don’t know the exact dates, approximate the month, year, or both to the best of your ability. 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. Be as accurate as you can.

Example: If your noninfringement claim is about a short story you posted on your website on January 1, 2020, and you took the story offline when you received an email from the respondent insisting that the story infringed her copyright on March 1, 2022, you would enter January 1, 2020, and March 1, 2022, as the start and end dates.

If you don’t know when your activities started, occurred, or ended, you can write “unknown” for the start date, end date, or both, if that is appropriate, but if you can give approximate dates and note that they are approximate, that will be helpful.

If you are bringing your noninfringement claim about activities you have not started yet, you can write “not started yet” in the date fields.

Describe the Allegedly Infringing Activities

Next is a field for you to describe the allegedly infringing activities. Describe what you did, or were going to do, that the respondent claimed was infringing.

If the respondent sent you a cease-and-desist letter or other communication asserting that your activities are infringing, or that your planned activities would be infringing, those activities are the ones at issue. Describe the activities that the claimant challenged in this field in as much detail as you can.

Your description in this field should flesh out your response to the first question in this section, about which of the [respondent’s rights](#) are allegedly involved. For example, if the respondent accused you of infringing the derivative work right in their book by making a motion picture based on the book, you should give details about exactly what (if anything) you did with the book.

Where the Allegedly Infringing Activities Occurred

In the next field, state where the allegedly infringing activities occurred, such as a physical place or online. Be as specific as possible based on the facts you know. For example, provide a street address if you know it, rather than just the city and state. If the alleged infringement was online, provide the specific website addresses. If you do not know where the alleged infringement occurred, enter “unknown.”

You may include more than one address or location.

Example: If the respondent, Alex Architect, accused your architecture firm of designing and building a high-rise office building that infringes on Alex’s design, you could include both your firm’s address and the address of the office building.

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

Example: If an artist accused your clothing company of selling T-shirts that feature one of their drawings without their permission in stores and through your website, you should include both your company’s physical address and store address, if they are different, as well as the website address.

Others Involved in the Allegedly Infringing Activities

Next is a field where you will list any other individuals or organizations involved in the allegedly infringing activities. Name each person or business that is alleged to have participated in the activities at issue besides yourself, if you know their names. If no one was involved but you, write “None.” If you do not know if anyone else was involved or their identities, write “Unknown.”

Description of the Dispute

Next is a field where you can describe, in your own words and in as much detail as you can, the facts of your dispute with the respondent over your allegedly infringing activities.

Describe how this issue came to be a dispute. Include a description of any threats to sue by the respondent or other communications with the respondent about your allegedly infringing activities. If the respondent sent you a cease-and-desist letter or told you to stop using the copyrighted work by email, phone, or other means, describe those communications. If you and the respondent had several communications about your activities, you should provide the dates of at least the earliest one and the most recent one before the claim was filed. If you have copies, you may quote from them, and you will be able to upload copies of important communications with your counterclaim.

TIP: Information about the dates of the dispute may be relevant to the statute of limitations, which is a law that sets a time limit for beginning a legal proceeding. For more information, see the [Responding to an Infringement Claim](#) chapter.

Include a description of why you need a declaration of noninfringement. You must give reasons why you believe there is an actual dispute about the declaration that you are seeking. The CCB will only consider a claim if it is genuinely in dispute between the parties, so your description should give reasons why this dispute is genuine, not just theoretical.

Examples: *There is a genuine dispute if you are using a copyrighted work and you receive a text message from the respondent asserting that you are infringing and demanding that you stop or they will take legal action. That threat of legal action poses a concrete, imminent injury to you, so you may seek a declaration of noninfringement to establish that you are not liable.*

However, if the respondent then removed the threat by sending you a promise not to pursue an infringement claim, there may no longer be a controversy for the CCB to resolve.

Likewise, if the person or business that asserts ownership of the copyrighted work has not threatened a copyright infringement claim or lawsuit, and has not done anything else to interfere with your use of the work, there is no substantial dispute between you that would justify the CCB deciding a claim for a declaration of noninfringement.

Description of Why You Believe No Infringement Occurred or Will Occur

Finally, provide a statement of the reasons why you believe no infringement occurred. Be specific about the facts that lead you to believe your activities did not infringe the respondent's copyright.

You might contend that no infringement occurred if, for instance:

- you have a valid defense to the respondent's accusations of infringement,
- you had permission to use the respondent's work,
- the parts of respondent's work you used are not protected by copyright law,
- you never had access to the respondent's work or you created your work independently,
- an exception or limitation in the copyright law allows for your use, or
- the respondent cannot establish that your actions amounted to infringement.

The [Responding to an Infringement Claim](#) chapter includes information about defenses, exceptions, and limitations that are often raised in copyright infringement cases.

Example: *If you believe your work is too different from the copyright-protected elements of the respondent's work to infringe, you should describe the differences between the two works.*

Include any relevant history or agreements between you and the respondent and discuss if you have a license or other agreement you believe gives you permission to use the respondent's work in the manner you used it. [You should also upload a copy to eCCB to accompany the claim](#). Provide a detailed explanation; it may be helpful to point out the specific clauses in the agreement that you believe apply.

Example: *You and the respondent collaborated to create a joint work. The relationship soured, and the respondent threatens to sue if you release it. If you believe that you are co-authors and that you both have the exclusive [rights of a copyright owner](#), including the right to distribute the work, your statement in this section should say so and discuss that history.*

When you have completed all of the fields in the Allegedly infringing 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 so be sure to save these documents. 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 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

Information about refileing a CCB claim against a party who has already opted out of the same claim is available in the **Refiled Claims** section of the [Starting an Infringement Claim](#) chapter.

Claims Against a Library or Archives

Information about claims against libraries and archives and their employees is available in the **Claims Against a Library or Archives** section of the [Starting an Infringement Claim](#) chapter.

Glossary

- **Active Phase:** When the respondent has not opted out, the portion of the proceeding starting from the end of the 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.
- **Discovery:** The process by which the parties exchange information and documents relevant to the issues in a case.
- **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.
- **eCCB:** The CCB's electronic filing and case management system.
- **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.
- **Fair use:** A legal doctrine that promotes freedom of expression by permitting the unlicensed use of copyright-protected works in certain circumstances. For more information, please visit copyright.gov.
- **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.