



COPYRIGHT CLAIMS BOARD

CCB STANDARD REQUESTS TO PRODUCE DOCUMENTS

Documents to Be Produced by Parties Asserting Infringement

During the **discovery** stage of a Copyright Claims Board (CCB) proceeding, the CCB directs participants to exchange—with each other but not the CCB—(1) answers to a standard set of questions issued by the CCB (“standard interrogatories”) and (2) documents identified in a set of standardized document requests issued by the CCB (“document requests”). **Each party must respond to the requests truthfully and provide the requested documents over which they have control.**

This information concerns the CCB’s standard set of document requests. The document requests as well as a certification you must sign, can be found after the rules described below. **Answer this set of document requests if you are asserting copyright infringement in a CCB proceeding,** whether you are raising an infringement *claim* or *counterclaim*, or you are responding to a claim or counterclaim for a declaration of noninfringement.

General Rules

To **produce** a document means providing it to the other parties during discovery. Documents that are covered by discovery requests are called **responsive** documents.

What Counts as a Document?

The term “document” should be read very broadly to cover many types of things and *any* piece of information whether in physical or electronic form, and even including objects. “Document” includes:

- Writings, such as books, articles, scripts, agreements, letters, emails, certificates, drawings, graphs, charts, photographs, sound or audiovisual recordings, lyrics, images, codes, and other data or data compilations and,
- Visual information, such as pictures, advertisements, and photographs.

Each party is expected to make a full production of the materials that they might use, that the other side might need to present their claims, counterclaims, or defenses, and that the CCB needs to fairly decide the issues raised in the claim. A **complete** production of documents must be made as long as that production can be easily accomplished by a layperson (a non-lawyer) without the need to hire a document collection or storage vendor.

How to Search for Responsive Documents

As a party in a CCB proceeding, you must make a reasonable investigation to adequately respond to discovery requests within the deadlines set by the CCB in the scheduling order. A reasonable investigation is a search for any responsive documents of any files in your possession or under your control, including the files of any of your agents, employees, representatives, or others acting on your behalf who you reasonably believe may have responsive documents.

Your obligation to conduct a reasonable search includes searching paper files as well as “electronically stored information” (“ESI”), such as emails and computer files. A reasonable search under the circumstances includes your ESI, and the ESI of your agents, employees, representatives, or others acting on your behalf who you reasonably believe may have responsive documents. However, you do not need to conduct a search for ESI beyond a manual search easily accomplished by a layperson. You do not need to conduct a search that would require the assistance of a third party, such as a vendor hired to collect or store documents.

How to Produce Your Responsive Documents to the Other Parties?

Unless the parties agree to other terms in writing:

- You must produce your responsive documents, and other evidence responsive to discovery requests, by email if their size and format makes such service reasonably possible.
- If you cannot reasonably produce such documents or other evidence by email, confer with the other parties to agree to other arrangements.
- If you cannot agree to other arrangements, send the documents or other evidence by mail.

Whenever you produce documents, you must include a certification to affirm that the produced documents are genuine and unaltered to the best of your knowledge.

To Whom You Should Produce Responsive Documents

Your production is effective (it counts) when you send it unless you learn that it did not reach the other party.

- If the party is **represented by a lawyer or other authorized representative**, you must send the documents to that lawyer or representative.
- If the party is **self-represented**, you must send the documents directly to that party.

Use the email address provided to you by the other party or representative. If none has been provided, use the email address provided in the claim, response, or in their eCCB user information unless the CCB orders you to serve the party directly. Documents should generally be provided by email unless the parties have agreed on another arrangement or the size or format of the documents makes that not practical.

Any documents produced and other responses to discovery requests **shall not be filed with the CCB at this time**. You should only file documents produced in discovery as part of *written testimony*, as needed as attachments to your other filings, or otherwise ordered by the CCB.

Confidential Communications

Any confidential communications with your legal counsel (including a lawyer, in-house counsel, or authorized law school representative) reflecting or seeking legal advice about the merits of the proceeding or other legal issue are considered **privileged** communications, which means that you do not have to produce them or record a log of them as part of the CCB proceeding. Other documents cannot be withheld as privileged unless the CCB grants a request to withhold additional documents.

Preserving Documents and Updating Your Production

You must preserve all documents relevant and significant to your case. Do not destroy or dispose of documents or other materials related to your claim or defense against a claim. This is true throughout the CCB proceeding. If you produce documents **and then you find other responsive documents, you must update your production by providing those documents to the other parties as soon as practical after you find them**.

Discovery Sanctions

If you do not comply with the discovery requests, the other party may raise the issue with the CCB. If the CCB orders you to comply but you remain noncompliant, it may ultimately impose **sanctions** on you. Those sanctions may include the CCB adopting an **adverse inference** against you about the facts related to the discovery you should have produced. The CCB may also consider any discovery sanctions as it considers awarding attorneys' fees and costs against you as part of a final determination. You can avoid these concerns by producing everything that is required.

Documents that a Party Asserting Infringement Must Produce

These are the CCB's standard document requests to a party asserting infringement.

NOTE: "Work(s)" means the work(s) involved in this CCB proceeding.

You must produce to the other parties, by the deadline set by the CCB in the scheduling order, copies of:

1. All documents you are going to use or are likely to use in support of your claims or counterclaims (or defenses if you are responding to a claim for a declaration of noninfringement).
2. All documents you are going to use or are likely to use to disprove the other party's/parties' defenses (or their claims of noninfringement).
3. All other documents you are reasonably aware of that conflict with your claims, counterclaims, or defenses.
4. All documents you referred to in, or used when preparing, any of your responses to the CCB's *standard interrogatories*.
5. A copy of your work(s). This must match the copy of the work(s) you submitted to the Copyright Office when you applied for a copyright registration.
6. The copyright registration(s) for your work(s).
7. All correspondence with the Copyright Office regarding that/those registration(s).
8. Documents **sufficient to show** the other party's/parties' material that you allege is infringing is in fact infringing, if it is reasonably available to you.
9. If your work(s) is a **derivative work** (that is, you based your work(s) on a preexisting work),
 - a. documents sufficient to show the **preexisting work(s)** that you used and what **elements** of that/those work(s) you used and
 - b. documents sufficient to show your ownership of, or your rights to use those preexisting elements.
10. All communications with the other parties about the work(s) at issue in this proceeding or directly related to your claim or counterclaim of infringement.
11. All documents and communications (with anyone), referring to respondent(s)/counterclaim respondent(s) and their allegedly infringing work(s) or their use of your work(s).
12. All documents and communications (with anyone), referring to any permission you have given respondent(s)/counterclaim respondent(s) to use your work(s).
13. All agreements or licenses with any of the parties in this proceeding about the work(s) at issue in this proceeding.
14. Documents sufficient to show where you published your work(s).
15. Documents sufficient to show that the allegedly infringing party(ies) had the ability to **access** your work(s).
16. Documents showing or negating your ownership or rights in your work(s), including any agreements showing how you got ownership over the rights in your work(s) or showing you transferring, assigning or licensing any rights in your work(s) to others. This should include any employment or **work for hire** agreements related to your work(s).

17. Documents sufficient to show any damages or harm you suffered as a result of the alleged infringement, and any other documents you will use or are likely to use in support of a claim for monetary relief.
 18. Documents sufficient to show any royalties or payments you have received from anyone for the use of your work(s) at issue in this proceeding.
 19. Documents showing any attempts by you, before bringing the claim, to make the infringement stop or be “mitigated” (made less severe).
 20. All takedown notices or counter-notices you have sent to any **online service provider** (examples: YouTube, Facebook) about the alleged infringement at issue in this proceeding.
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Certification of Discovery Responses

Please include a signed copy of this form with your discovery responses

I, _____, certify that in an effort to adequately respond to the document requests, I have made a reasonable investigation of files in my possession or under my control, including the files of any of my agents, employees, representatives, or others acting on my behalf who I reasonably believe may have responsive documents. I further affirm that the produced documents are genuine and unaltered to the best of my knowledge.

Signature

Date

Glossary

- **Access:** Reasonable opportunity to view or hear the work at issue in the claim before the alleged infringement took place.
- **Adverse inference:** A negative conclusion that's drawn from silence or the failure to provide responsive information.
- **Discovery:** The process by which the parties exchange information and documents relevant to the issues in the case.
- **Derivative work:** A work based upon one or more preexisting works, such as a translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgment, condensation, or any other form in which a work may be recast, transformed, or adapted. A work consisting of editorial revisions, annotations, elaborations, or other modifications, which, as a whole, represent an original work of authorship, is a 'derivative work.
- **Elements:** Details or parts of a work. For example, specific lyrics, dialogue, or segments of a video.
- **Online Service Provider:** Online service providers include websites that host content uploaded by users, such as YouTube and Instagram, and search engines that direct users to particular websites, such as Google and Bing.
- **Pre-existing work:** A work a derivative work is based on.
- **Privileged:** Any confidential communications with legal counsel reflecting or seeking legal advice about the merits of a proceeding or other legal issue.
- **Produce:** To send to the other parties in the proceeding the results of a reasonable search of responsive records.
- **Responsive:** Documents that are requested for production in response to discovery requests.
- **Sanctions:** Penalties imposed by the CCB for misconduct during proceedings.
- **Sufficient to show:** Presenting information or material with enough detail and clarity that it satisfies the request.
- **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.