



## COPYRIGHT CLAIMS BOARD

### CCB STANDARD REQUESTS TO PRODUCE DOCUMENTS

# Documents to Be Produced by Parties Defending Against an Infringement Claim

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 defending against an allegation of copyright infringement in a CCB proceeding**, whether an infringement *claim* or *counterclaim* has been brought against you, or you have brought 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, provided by the CCB, 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 Defending Against an Allegation of Infringement (or a Party Claiming Noninfringement) Must Produce

These are the CCB's standard document requests to a party defending against an allegation of copyright infringement (including parties who have brought a claim for a declaration of noninfringement). 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 likely to use in support of your claims, counterclaims, or defenses.
2. All documents you are going to use or are likely to use to disprove the other party's/parties' allegation of infringement and damages or harm.
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. Copies showing all versions of your work(s) that allegedly infringes the claimant's(s')/ counterclaimant's(s') work(s).
6. All documents and communications (with anyone) referring or related to the other party's(ies') allegedly infringed work(s), or your use of their work(s) alleged in this proceeding.
7. Documents related to the creation of your work, including documents showing or negating your rights to use the allegedly infringing material or showing or negating your original creation of the allegedly infringing material.
8. If you attempted to register the work(s) of yours that the other party(ies) allege infringes their work, documents related to the registration, application for registration or denial of registration of your work(s).
9. Documents related to your right to use the other party's(ies') allegedly infringed work(s) or the elements of your work(s) that the other party's/parties' alleges amounts to infringement.
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 agreements or licenses with any of the parties in this proceeding about the work(s) at issue in this proceeding.
12. Documents sufficient to show where you published your work(s) that the other party(ies) alleges is an infringement.
13. Documents showing your **access** to the other party's/parties' allegedly infringed work(s).
14. All takedown notices or counter-notices you have sent to any **online service provider** (examples: YouTube, Facebook) about the alleged infringement(s) at issue in this proceeding.
15. If you have brought a claim for a declaration of noninfringement, all documents showing that there is a genuine legal dispute between you and the other party/parties.
16. If you are responding to an infringement claim or counterclaim, documents sufficient to show:
  - a. the revenues and profits including, for example royalties that you received that were directly related to the sale, licensing, or use of the allegedly infringing material(s).

- b. the deductible expenses, such as the cost of producing the allegedly infringing material(s) directly related to that sale, licensing, or use, and
  - c. the elements of profit for that sale, licensing, or use that result from factors **other** than the other party's/parties' copyrighted work(s), such as from the aspects of your work(s) not included in the work(s) of the other party(ies).
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# Certification of Discovery Responses

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

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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.

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**Signature**

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**Date**

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# Glossary

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- **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.
- **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.
- **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.