

# Unsuitability

There are some claims the CCB is not permitted to handle. Reasons for this are generally due to limits of scope, information, or time. Depending on these issues, the CCB may dismiss such claims as unsuitable. This chapter identifies the main problems that make claims and counterclaims unsuitable and discusses how to raise or respond to the issue of unsuitability



## Chapter at a Glance

- **Grounds for Unsuitability**
- **Procedures for a Determination of Unsuitability**
- **Renewing a Claim or Counterclaim Dismissed as Unsuitable**

## Why You Need This Information

If you are a claimant or counterclaimant, you need to know when the CCB might find a claim or counterclaim “unsuitable” for determination and what happens when it does. If you are a respondent or counterclaim respondent and you believe the claim or counterclaim against you is not suitable for CCB proceedings, knowing what the CCB finds unsuitable will help you decide whether to raise the issue and request that the CCB dismiss the claim or counterclaim. If the respondent or counterclaim respondent does raise the issue to dismiss your claim or counterclaim, information in this chapter can help you respond. While the “Where You Are” box to your right highlights the Compliance Review stage, the unsuitability of a claim or counterclaim can be raised by the CCB or a party at any time.

### 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

## Quick Summary of Topics

- A claim or counterclaim may be dismissed as unsuitable if:
  - a “**necessary party**” is not included as a participant in the proceeding;
  - an essential witness, evidence, or expert testimony will be missing given that the CCB does not have the power to compel third parties to testify or produce documents;
  - the CCB has issued a temporary stay on new filings;

- it would require the determination of an issue of law or fact that exceeds the CCB’s competence to determine; or
- the CCB concludes for some other reason that the claim is not suitable for determination by the CCB.
- A respondent or counterclaim respondent who believes that the claim or counterclaim is unsuitable can request dismissal. The CCB may also determine that a claim or counterclaim is unsuitable without a party’s request.
- If the CCB determines that your claim or counterclaim is unsuitable, it will give you a preliminary ruling on unsuitability, and you can request that the CCB reconsider that decision.

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Unsuitable claims and counterclaims cannot be heard by the CCB. The CCB decides the unsuitability issue on a case-by-case basis.

The [Grounds for Unsuitability](#) section of this chapter discusses reasons why a claim or counterclaim may be found unsuitable for the CCB. The [Procedures for a Determination of Unsuitability](#) section discusses the procedures for making and challenging a finding of unsuitability.

## HOW DID YOU GET HERE?

You are considering filing a claim or counterclaim and want to avoid having it dismissed as unsuitable, or you are a respondent or counterclaim respondent and want to know how to raise the unsuitability issue. Or, the unsuitability issue has been raised, and you want to find out more about it. The CCB can decide at any time in a proceeding that a claim or counterclaim is unsuitable, starting at the time it is filed. When claims and counterclaims are filed, the CCB reviews them to see, among other things, if they are unsuitable. Participants can also file requests to dismiss a claim or counterclaim based on unsuitability. If the CCB determines that a claim or counterclaim is unsuitable, it issues an order stating that it intends to dismiss the claim or counterclaim **without prejudice**. This should not be confused with the other reasons for why a claim or counterclaim may not pass [compliance](#) review: if the CCB intends to dismiss your claim or counterclaim on unsuitability grounds, it will clearly say so.

## WHAT HAPPENS NEXT?

If the CCB determines that your claim or counterclaim is unsuitable and issues an order stating that it *intends* to dismiss, you have thirty days to file a request that the CCB reconsider its determination. If the proceeding is active, the respondent or counterclaim respondent then has thirty days to file a response, after which the CCB will make its final decision about whether to dismiss.

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# Grounds for Unsuitability

The CCB may decide that a claim or counterclaim is not appropriate for the CCB to consider. The law provides the following examples, although the CCB has the ability to decide a claim or counterclaim is unsuitable for the CCB for reasons outside this list as well:

- the failure to **join** a necessary party;
- the lack of an essential witness, evidence, or expert testimony given that the CCB does not have the power to compel third parties to testify or produce documents; or

- the CCB has placed a temporary hold on all proceedings or your claim or counterclaim involves the determination of a relevant issue of law or fact that is outside the subject matter competence of the Copyright Claims Board.

## Lack of a Necessary Party

The CCB can't handle a claim when someone who absolutely needs to be named as a party is not included in the proceeding.

A person or entity may be considered so necessary to the proceeding that the case is unsuitable for the CCB without them as a party if:

- the relief the claimant or counterclaimant is seeking would have to come from some person or business *other* than the respondent or counterclaim respondent.

**Note: A claim is not unsuitable simply because there are other people or entities who may also have committed the violation alleged.**

- without the person or entity as a party, the CCB cannot issue a ruling that fully resolves the claim between the existing named parties.
- someone other than the respondent has such a strong interest in the subject of the proceeding that the CCB's determination could make it harder to protect that other person's or organization's interest.
- the claimant or the respondent has obligations to some other person or business that might duplicate or be inconsistent with a CCB determination.

## Missing Evidence and Witnesses

The CCB won't handle a claim when an indispensable witness, evidence, or expert testimony is not available at the proceeding.

Participants may seek to use **fact witnesses**, documents, or **expert witnesses** to try to prove their claims or defenses, but the CCB cannot compel them to testify or provide evidence. A claim is unsuitable if the CCB cannot fairly decide it without testimony from a witness or other evidence the CCB knows will not be available because the participants cannot get the testimony or evidence from the third party voluntarily, and cannot get it from anywhere else.

***Example:** Many of the key documents relevant to the proceedings are held solely by a third party, which has said that they are not willing to produce them voluntarily. The CCB is unable to compel a third party to provide documents. As such, the CCB may decide that the case is unsuitable.*

***Example:** Aiden is responding to a copyright infringement claim and is using a defense that he had a license. Neither Aiden nor the claimant, Bronzini, has a copy of the license. The only person known to have a copy, Cal, is not answering emails. The CCB may decide that this evidence is essential to decide the case, and since it is unavailable, the CCB may find the case is unsuitable.*

Any case dismissed due to unsuitability will be dismissed without prejudice, meaning it could be brought again, including in federal court, where witnesses can be compelled to testify and provide documents. It might even be brought again before the CCB if, for example, a witness becomes available to testify.

## Limitations on Number of Claims

In the event that the overall number of pending proceedings overwhelms the CCB's capacity, the CCB may impose a temporary, six-month stay on the filing of claims. It is conceivable but highly unlikely that in such a case, the CCB might dismiss some pending proceedings without prejudice.

## Procedures for a Determination of Unsuitability

Either the CCB or a participant may raise the issue of unsuitability at any point. When the CCB believes that a claim is unsuitable, it will give the claimant the opportunity to explain why the claim should continue before it dismisses the claim.

### CCB Independently Raises Unsuitability

The CCB can decide that a claim or counterclaim is unsuitable at any time in a CCB proceeding, including

- during compliance review, or
- during the **active phase** of the proceeding.

When a CCB staff attorney reviews your claim or counterclaim during compliance review, they can determine that it is unsuitable and recommend that it be dismissed. If the Copyright Claims Officers agree with the CCB staff attorney's recommendation, or if the Copyright Claims Officers independently determine that a claim or counterclaim is unsuitable at any point, the CCB will issue an order explaining that it intends to dismiss your claim or counterclaim without prejudice.

If you disagree with the order, you may request that the CCB reconsider its preliminary decision to dismiss the claim due to unsuitability. Information about a request to reconsider a finding of unsuitability is available in the [Order to Dismiss and Request to Reconsider](#) section below in this chapter.

### A Party Raises Unsuitability

Parties can also raise the issue of unsuitability by requesting that the CCB dismiss a claim or counterclaim as unsuitable.

If you believe a claim or counterclaim raised against you is unsuitable for the CCB to determine, you can file a request for the CCB to dismiss it. In your request, you should explain *in detail* why you believe the claim or counterclaim is unsuitable. You must submit your request through **eCCB**. More information about eCCB is available in the [eCCB](#) chapter. Your request is limited to 10,000 characters, not including any attachments. Note that most reasons for finding a case unsuitable are uncommon, so you should think carefully about whether your case truly fits one of the reasons for a finding of unsuitability.

If a party requests that your claim or counterclaim be dismissed as unsuitable, you can submit a response to that request within fourteen days, explaining why the claim or counterclaim is suitable and should be allowed to go forward. The response will also be submitted through eCCB and is limited to 10,000 characters.

## Order to Dismiss and Request to Reconsider

If the CCB decides to dismiss your claim or counterclaim because it is unsuitable, it will issue an order stating it intends to dismiss. Within thirty days of this order, you can submit a request asking the CCB to reconsider that preliminary decision. The other party can submit a response to your request for reconsideration within thirty days. This process is separate from the procedures for a request to reconsider a **final determination** of the CCB.

A request to reconsider a finding of unsuitability, and a response to such a request, must:

- be uploaded to eCCB (by clicking on the “File a document” button on the dashboard or from the docket page in [eCCB](#));
- **be no more than seven pages long;**
- include a title (such as “Request to Reconsider Dismissing the Claim as Unsuitable” or “Response to Request to Reconsider Dismissing the Claim as Unsuitable”);
- have a caption at the top of the first page stating the names of the parties and the proceeding number, such as Jones v. Williams, 22-CCB-0123, and noting that it is for the Copyright Claims Board;
- be typed in twelve-point type or larger;
- be double-spaced, except for headings, footnotes, or block quotations, which can be single-spaced; and
- include a typed or handwritten signature of the party, or their representative, who submits it.

After the response, or after the thirty days for a response passes if no response is filed, the CCB will make a final decision on whether to dismiss for unsuitability, which will either dismiss the claim or counterclaim or let it continue.

## Renewing a Claim or Counterclaim Dismissed as Unsuitable

If your CCB claim or counterclaim is dismissed because it is unsuitable, that may not mean your dispute is over. You can still bring it in federal court. You may also be able to bring it before the CCB again in certain circumstances.

Examples:

- You didn’t include a necessary party. You must include that party if you file a new CCB claim with the same facts and circumstances.
- An essential witness or evidence was unavailable. In that case, you may be able to refile it before the CCB if that witness or evidence becomes available.

# Glossary

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- **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.
- **eCCB:** The CCB's electronic filing and case management system.
- **Expert witness:** A person qualified by knowledge, skill, experience, training, or education to give testimony about a technical issue.
- **Fact witness:** A witness who knows firsthand about the evidence involved in the claim.
- **Final determination:** The CCB's ruling regarding who actually wins the case, with any awards, and with the CCB's reasons for its findings.
- **Join:** To include a person or organization as an actual party in the proceeding.
- **Necessary party:** A person or entity that absolutely needs to be included as a party in the proceeding because their interests will be directly affected by the outcome of the proceeding, or whose absence might create a substantial risk that an existing party would incur multiple or inconsistent obligations.
- **Without prejudice:** The claim can be filed again in the future.