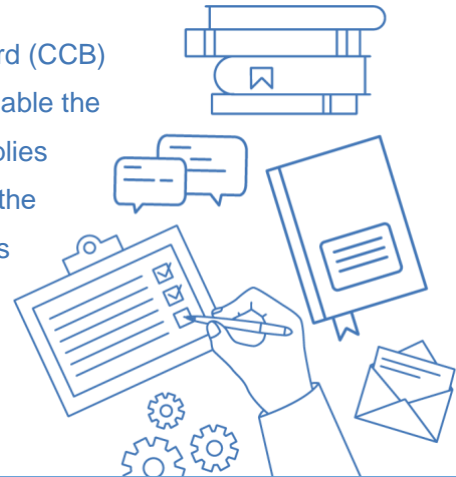


# Compliance Review

When a claim or counterclaim is filed, the Copyright Claims Board (CCB) reviews it to make sure that it provides enough information to enable the respondent or counterclaim respondent to answer it, and it complies with the Copyright Act and the CCB's regulations. This is called the Compliance Review stage. This chapter describes what happens during this stage, identifies the issues that could make a claim or counterclaim fail compliance review, and explains the steps to take if the claim or counterclaim does not pass review.



## Chapter at a Glance

- **Compliance Review Basics**
- **Compliance Issues**
- **Less Common Situations**

## Why You Need This Information

Knowing the issues that could make a claim or counterclaim fail compliance review will help you present your claim or counterclaim properly, so that it can proceed without delay or dismissal.

## Quick Summary of Compliance Review

- During compliance review, a CCB staff attorney reviews your claim or counterclaim to see if it complies with all legal requirements and provides enough information to enable the respondent or counterclaim respondent to answer it.
- If your claim is compliant, you will be notified and be able to serve it on the respondent. In the case of a counterclaim, you and the other parties will be notified, and the counterclaim respondent will be given a chance to respond.
- If the staff attorney finds that your claim or counterclaim is not compliant, you will be given two opportunities to amend it to fix the problem. If you don't fix it, the CCB may dismiss all of your claims or counterclaims.

### 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 claimant:** You have chosen to file a claim with the CCB. The first step, after you file your claim through the **eCCB** online claim form, is for the CCB to check that it complies with relevant laws and regulations and gives enough information for the respondent to understand your claim and to respond.

**If you are a respondent who has filed a counterclaim with your response:** Counterclaims go through the same compliance process as claims. So, if you have chosen to file a counterclaim, the CCB will check that it complies with relevant laws and regulations and gives enough information for the counterclaim respondent to respond.

## How do you give your claim or counterclaim the best chance of passing compliance review?

To pass compliance review, your claim or counterclaim must meet the following criteria:

- Include all the information required in the eCCB claim form, including a detailed enough “statement of material facts” (a written description of the key facts that support your claim or counterclaim) so that the other side can understand what you are claiming and how to respond. The eCCB system will walk you through various questions to help with this.
- Be the kind of claim or counterclaim the CCB can hear:
  - A claim or counterclaim for **copyright infringement**, a request for a **declaration** that your activity does not amount to copyright infringement, or a claim or counterclaim for **misrepresentation** in a takedown notice or counter-notice under the DMCA (section 512 of the Copyright Act).
  - Also, a counterclaim based on an agreement, where the agreement pertains to the same facts as an infringement claim brought by the claimant, if the agreement could affect the relief awarded to the claimant.
- Not seek monetary amounts outside the remedies that the CCB is able to award.
- Be filed by parties who have the right to file it, known as a “real parties in interest.”

The claim or counterclaim will not pass compliance review in the following circumstances:

- If, in a claim, you attempt to sue a respondent (whether an individual or a company) that does not reside in the United States. eCCB will not allow you to enter a foreign address for a respondent. Any attempt to circumvent eCCB’s restrictions (such as entering a fake United States address) may result in the CCB issuing a finding of bad faith against you.
- If there is a flaw that is obvious from the face of the claim or counterclaim itself. Examples include:
  - Being based on conduct that took place too long ago, so it is clearly outside the **statute of limitations**.
  - Your issue is not actually based in copyright, but contract. This can be because you gave permission for respondent to use your work in the way respondent used your work, but respondent didn’t pay you the agreed upon fee.
- If it is based on a work for which the registration has been refused by the Copyright Office.
- If the named claimant is not the legal or beneficial owner of the copyright rights in the work at issue. If there is a conflict between the named claimant and the named registrant on the

copyright registration/application for copyright, you may need to explain why the named claimant is correct.

- The CCB or a court has already made a final determination about the same dispute and between the same parties.
- Your claim puts you over the limit on the number of CCB proceedings that you or your legal counsel are allowed to file in a twelve-month period.

The [Compliance Issues](#) section of this chapter describes each of these requirements.

There are additional requirements to pass compliance review for claims against certain types of entities:

- *Libraries and archives.* Claims cannot proceed against a library or archives on the CCB's library and archives blanket "[opt out](#)" list unless you can show that the library or archives is not eligible to be included on that list.
- *Online service providers.* If your claim or counterclaim alleges copyright infringement against an online service provider based not on their own infringing actions, but on hosting copyrighted material that someone else posted, you must certify that you gave the service provider notice of the infringement and that it failed to remove or disable access to the material after receiving the notice.

The [Less Common Situations](#) section of this chapter describes each of these requirements.

## What Happens Next?

If you filed a claim and the staff attorney finds that **it is compliant**, you will be notified and instructed to proceed with [service](#) of the claim on the respondents within ninety days. **You must file a proof of service (or completed waiver of service form) within those ninety days to avoid your claim being dismissed without prejudice.**

If you filed a counterclaim and the staff attorney finds that **it is compliant**, the CCB will notify all participants and direct the claimant to submit a response to your counterclaim within thirty days.

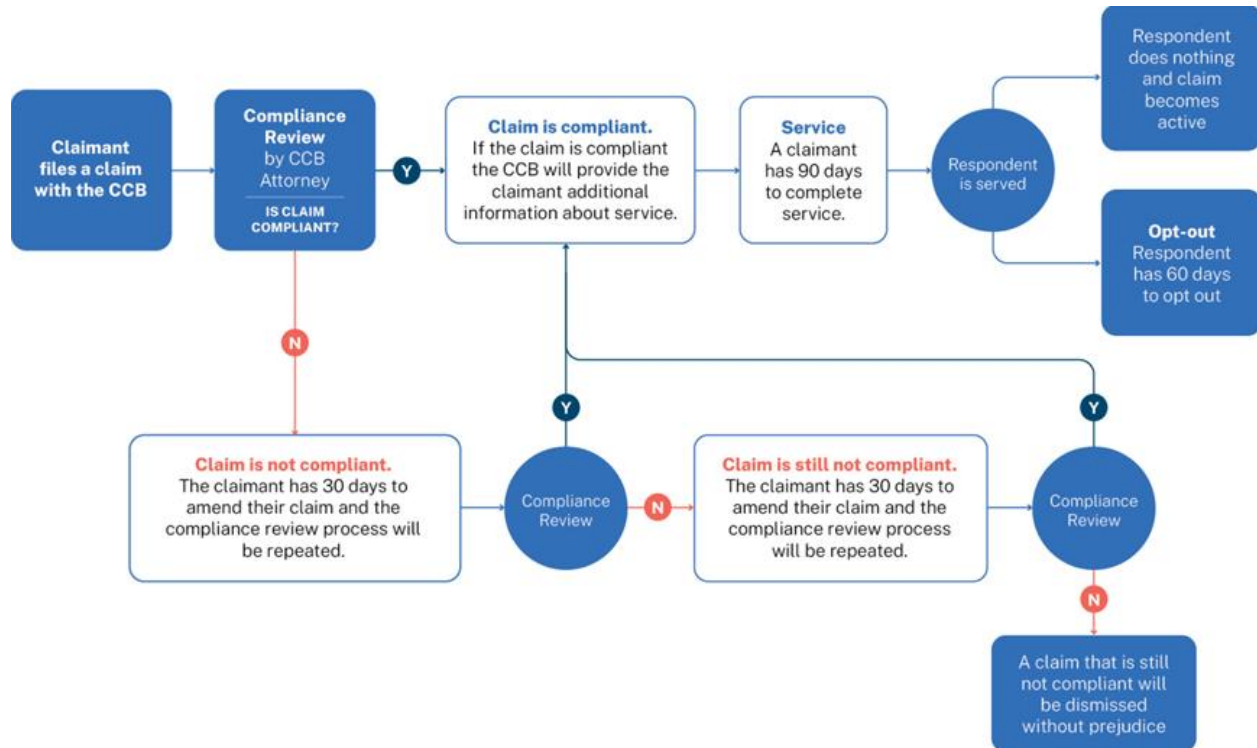
If the staff attorney finds that any of your **claims or counterclaims is not compliant**, you will be given two opportunities to fix any problems. For each time, the CCB will notify you and identify the issues that you need to fix, giving you thirty days to file an amended claim or counterclaim. If you don't file an amended version within thirty days, your claims or counterclaims will be dismissed without prejudice. If you file an amended version within thirty days, the compliance review process starts over.

If your **amended claim or counterclaim is found compliant**, it moves forward as discussed above. But if the staff attorney finds that **it is still not compliant**, the CCB will again notify you, identify the remaining or new issues, and give you another thirty days to file a second amended claim or counterclaim. Again, if you don't file a second amended claim or counterclaim within thirty days, your claims or counterclaims will be dismissed; if you do, the compliance review process repeats one last time.

If your **second amended claim or counterclaim is found compliant**, it now moves forward. If not, is the staff attorney will refer it to one of the Copyright Claims Officers. If the Officer confirms that your second amended claim or counterclaim is not compliant, the **entirety** of your claims or counterclaims will be dismissed without prejudice.

# Compliance Review Basics

This flowchart shows the steps of compliance review for a claim before the CCB.



Compliance review for *counterclaims* follows the same basic steps shown above, with three opportunities to submit a compliant counterclaim. But there are a few important differences:

- A counterclaim is served *before* the CCB reviews it for compliance, because it is served automatically through eCCB with the response to the claim.
- When the CCB notifies the parties that the counterclaim is compliant, the claimant's time to respond starts on the date of the CCB's notification, because it was already served.
- There is no sixty-day opt-out period, because claimants cannot opt out of counterclaims (since they already chose to appear before the CCB).
- Other important differences are discussed in the [Compliance Issues](#) section below.

# Compliance Issues

*This section describes the requirements that all claims and counterclaims must satisfy to pass compliance review.*

The CCB has legal authority to hear and decide limited types of claims and counterclaims. Permitted claims and counterclaims and examples of not permitted claims and counterclaims are listed in this chart and discussed below.

## THE CCB CAN HEAR:

- Copyright infringement claims and counterclaims.
- Claims and counterclaims seeking a [declaration of noninfringement](#).
- Claims and counterclaims about misrepresentation in a DMCA takedown notice or counter-notice.
- Counterclaims about an agreement that could affect the amount of damages available to the claimant on an infringement claim.

## THE CCB CANNOT HEAR:

- Any kind of copyright claim or counterclaim not listed in the column to the left.
- Non-copyright claims and counterclaims, such as trademark, right of publicity, patent, and other business disputes.
- Claims and counterclaims already pending before or decided by a court or the CCB.
- Claims and counterclaims brought by or against the federal government or a state government.
- Claims against a person or entity residing outside the United States (counterclaims are available against such persons or entities that brought a claim before the CCB).
- Claims and counterclaims missing a necessary party.
- Claims and counterclaims where an essential witness or evidence will be unavailable due to the CCB's streamlined proceedings.
- New claims that would result in a party or their counsel going over the number allowed to be brought in a twelve-month period.
- New claims if the CCB has put new proceedings on hold due to the volume of claims the CCB is currently handling.

## Permitted Claims and Counterclaims

The CCB is only authorized to resolve certain types of copyright disputes. Only three particular kinds of claims are permitted before the CCB:

- claims of [copyright infringement](#);
- claims seeking a [declaration](#) that your activity is not infringement; and,
- claims about [misrepresentation](#) in connection with a takedown notice or counter-notice under the [DMCA](#).

The same three types of claims can be brought as counterclaims, as long as they come from the same facts and circumstances as the claim. A fourth type of counterclaim is also permitted—one that arises under an agreement, where the agreement pertains to the same facts and circumstances of the claimant’s infringement claim and could affect the relief awarded to the claimant. Information about each of these types of counterclaims is available in the [Counterclaims](#) chapter of this Handbook.

The CCB cannot hear a claim or counterclaim that is not one of these types. The staff attorney who conducts your compliance review will notify you if your claim or counterclaim is not eligible. The CCB may in its discretion decide that your claim still passes compliance review even though it has extraneous statements that allude to issues outside the permitted claims and counterclaims or permitted remedies. However, that should **not** be taken as an indication that the CCB approves you bringing a claim or counterclaim other than those listed above or that the CCB will award remedies beyond what it is allowed to by law.

## Excluded Claims and Counterclaims

Certain claims and counterclaims are “excluded” from CCB proceedings, which means they cannot be heard by the CCB, even if they are the types of claims that are normally eligible. A claim or counterclaim is excluded if, for example, it

- was already finally decided by a court with proper jurisdiction, which means a court already reached a final decision on the same claim or counterclaim;
- is currently pending before a court with proper jurisdiction, unless that court has granted a stay to allow your claim or counterclaim to proceed before the CCB;
- is raised by, or against, any federal or state government entity;
- is raised against a person or entity residing outside of the United States, unless that person or entity is the claimant that initiated the CCB proceeding;
- is a claim or counterclaim for infringement of a work where the claimant or counterclaimant is not the legal or beneficial owner of the copyright rights in the work; or
- is a claim or counterclaim for infringement of a work where the claimant or counterclaimant did not register the copyright or apply for registration in the copyright before filing the claim or counterclaim.

The staff attorney who reviews your claim or counterclaim will check to see if it is excluded based on what you present in the claim and notify you when the compliance review is complete.

## Unsuitable Claims and Counterclaims

Similar to “excluded” claims and counterclaims, a claim or counterclaim may be “unsuitable” for the CCB to hear, even if it is otherwise eligible. For example, a claim or counterclaim may be unsuitable in the following situations:

- It is missing “a necessary party.” This means a person or business has not been named as a party to the proceeding even though its participation as an actual party (not a witness) is absolutely necessary to reach a final determination and provide relief.
- A witness, evidence, or expert testimony *essential* to resolving the dispute will not be available because of limitations in the CCB’s procedures. (Note that witness testimony is typically given to the CCB by a declaration or statement from that witness after the discovery period, which must be obtained voluntarily; the CCB does not have a way to require a non-party to testify or to produce evidence.)
- The CCB has put all new proceedings on a temporary hold because it does not have the capacity to handle more. (If this has occurred, the CCB’s electronic filing system will not normally let you file a claim, so this issue should be taken care of before compliance review.)
- In the unlikely instance where the CCB determines that the claim or counterclaim is beyond its subject matter competence.

The CCB can decide that a case is unsuitable for CCB proceedings during the compliance review process, but also has authority to make that decision later in the case as more information becomes available.

If the CCB determines that your claim or counterclaim is unsuitable and that it is not possible to make it suitable, it will issue an order stating that it intends to dismiss the claims or counterclaims without prejudice. However, within thirty days of that order, you may request that the CCB not issue a final ruling that your claim or counterclaim is “unsuitable,” and the other parties have thirty days from your request to respond. The CCB will then make a final decision on whether to dismiss.

More information on unsuitability is available in the [Unsuitability](#) chapter in this Handbook.

## Permissible Remedies

The CCB is only able to grant certain remedies or types of relief. If you request remedies that are not in the CCB’s power to grant, especially monetary remedies outside of the CCB caps, the CCB may decide in its discretion that your claim or counterclaim does not pass compliance review.



| Remedies the CCB can grant   | Remedies the CCB cannot grant   |
|--|---|
| <ul style="list-style-type: none"> <li>• Up to \$30,000 in a standard CCB proceeding and up to \$5,000 in a smaller claims track proceeding.</li> <li>• Up to \$15,000 in <b>statutory damages</b> for each work infringed that was timely registered and up to \$7,500 in statutory damages for each work infringed that was not <b>timely registered</b>.</li> <li>• A written declaration that particular conduct is not an infringement of copyright.</li> <li>• A requirement that the other participant must stop the activity you accuse them of doing, but only if they agree to the requirement.</li> </ul> | <ul style="list-style-type: none"> <li>• Monetary damages greater than the limits listed in column to the left.</li> <li>• Any amount of monetary damages based on a claim requesting a declaration of noninfringement.</li> <li>• A requirement that the other participant must stop or change activity, unless the other participant agrees to such a requirement if found liable on your claim.</li> <li>• Remedies not directly related to your claim, such as damages for emotional distress.</li> </ul> |

Information about the types of damages available in CCB proceedings is available in the [Starting an Infringement Claim](#) chapter of this Handbook and in the [Counterclaims](#) chapter. **Your claim or counterclaim does not have to say exactly how much you want to be awarded in damages, but if you give a specific amount, it cannot be more than the maximum allowed.**

## Real Party in Interest

All claimants or counterclaimants must be a “real party in interest,” which means that you must have the legal right to raise your claim or counterclaim. You cannot file a claim or counterclaim to protect the interests of some other person or entity if you have no direct stake in the outcome.

***Example:** If you discover someone using a copyrighted work online without permission, you can only raise an infringement claim if you have an ownership interest in that copyright or an **exclusive license** from its owner.*

Your claim or counterclaim will not pass compliance review if the staff attorney determines that you are not eligible to raise it.

## Statute of Limitations

A statute of limitations is a law that sets a time limit on when you can begin legal proceedings after the activity on which your claim is based has taken place. For CCB claims, the statute of limitations is three years. When the clock starts running depends on the specific facts of your claim. Because each act of copyright infringement is considered separately for purposes of the statute of limitations, a claim might still be permitted if the infringement continues, even if it started more than three years earlier.

***Example:** If an infringer started selling t-shirts with a copy of your artwork more than three years before you brought your claim, but continues to sell them up to or after the date on which you bring the claim, you can seek damages for the t-shirts sold within the prior three years.*



More information on the statute of limitations for claims and counterclaims in CCB proceedings is available in the [Starting an Infringement Claim](#) chapter of this Handbook.

If the facts stated in your claim indicate that the three-year statute of limitations period is over, the staff attorney will notify you that your claim is not compliant or request that you submit more information.

## Copyright Registration Refusal

You can only raise a copyright infringement claim or counterclaim before the CCB if the Copyright Office has registered the copyright of the work or works involved in the dispute, or an application to register the copyright has been submitted and is still pending. The CCB cannot consider your infringement claim or counterclaim if the Copyright Office has refused to register the copyright on your work.

Your infringement claim or counterclaim must include either:

- the registration number of the copyright certificate for the work or works in question, if the copyright application was approved and the copyright is registered; or
- the **service request number** (SR number) for a pending application, if the copyright is not yet registered.

The staff attorney who conducts your compliance review will use that information to confirm that you have a registered copyright or a pending application. If you do not include that information, the CCB will notify you that your infringement claim or counterclaim is not compliant.

## Description of Claim

You must include a written description of the key facts supporting your claim or counterclaim. You must include enough information about the facts and circumstances so the respondent or counterclaim respondent can understand the nature of the claim and respond to it—in other words, “the who, the what, the where, and the when.” If there is not enough factual information, a staff attorney will notify you that you need to revise your claim or counterclaim to provide more detail before it can proceed.

The staff attorney may find that your statement is not compliant if it does not discuss each element of your claim or counterclaim, or if it is obvious that you cannot prove one or more of them.

You have the ability to attach supplemental material to your claim. You should only attach *relevant* supplemental material. However, it may be helpful to attach key documents such as copies of your work and the allegedly infringing work for infringement claims or counterclaims or copies of the takedown notices or counter-notices at issue for misrepresentation claims or counterclaims.

## Failure to State a Claim

As part of compliance review, a staff attorney considers whether your allegations “clearly do not state a claim upon which relief may be granted”—in other words, if it is obvious based on the facts you presented that you do not have a valid claim or counterclaim.

**Example:** *If you submit a claim asserting that the respondent infringed the copyright in your personal name, a staff attorney will find that your allegations cannot go forward because a personal name is not eligible for copyright protection. See also the discussion of the [Description of Claim](#) above.*

**Example:** *If you submit a claim that makes clear that you and the respondent had an agreement and the respondent used your work in the way you agreed to, but did not pay you the agreed upon price,*

*then unless you can explain why, for example, there really was no agreement, the use was outside the scope of the agreement or the use continued after termination of the agreement, a staff attorney may find that your allegations cannot go forward because the CCB cannot hear contract claims.*

If a staff attorney determines that your allegations, as presented, clearly fail to state a claim upon which the CCB can grant relief, you will be notified and given opportunities to amend your claim or counterclaim.

## Less Common Situations

Special rules apply to compliance review in certain unique situations, which are discussed in more detail below:

- claims against libraries and archives that are on the CCB's opt out list,
- filing the same claim against a respondent who has opted out,
- claims and counterclaims that have already been part of a final determination by the CCB or a court,
- claims filed by claimants and lawyers who have filed more proceedings in a year than permitted under the CCB's rules, and
- claims by those who have engaged in repeated bad-faith conduct and have been barred from filing new claims.

## Libraries and Archives Opt-Out List

*If you are raising a claim against a library or archives, first check the [opt-out list](#) on the CCB's website. If the library or archives is on that list, your claim will not pass compliance review unless you can show that it is not eligible for the list.*

Libraries and archives have a specific rule allowing them to file a “preemptive” (or “blanket”) opt-out and choose in advance, before a claim is brought, to opt out of all CCB proceedings filed against them.

The CCB maintains a list of libraries and archives that have filed a blanket Opt-Out Form on its [website](#). You should check that list before you file a claim against a library or archives to make sure that it has not already opted out. If you file a claim against a library or archives that is on the opt-out list, it will be dismissed. While you can then sue the library or archives in federal court, you will lose your nonrefundable \$40 CCB filing fee.

When you file a claim against a library or archives, a staff attorney will check the opt-out list as part of compliance review. If the library or archives is on the opt-out list, your claim will be considered not compliant, unless your statement of material facts explains why it is not eligible. If you have provided sufficient facts, the library or archives will be given an opportunity to respond and a determination will be made either to (1) remove the library or archives from the opt-out list and permit your claim to go forward or (2) dismiss the claim against the library or archives and keep it on the list. For more information on the libraries and archives opt-out list and the opt-out procedure for respondents in general, see the [Opting Out](#) chapter of this Handbook.

## Filing the Same Claim Against a Respondent Who Has Opted Out

When a claim is served on a respondent, the respondent has sixty days to opt out of the proceeding if the respondent chooses to do so. Once a respondent opts out of a proceeding, the claimant may not thereafter file a claim covering in substance the same acts and same theories of recovery against the same respondent unless the claimant can demonstrate that the respondent affirmatively has agreed to that filing. If a claimant tries to make such a claim, it will not pass compliance review and will be dismissed.

## Final Determination

*During compliance review, a staff attorney may find your claim or counterclaim involves the same specific activity or activities as in a previous proceeding between the same parties. If the CCB or a court has already heard and decided your claim in a final determination or otherwise “with prejudice,” you will be notified that the claim or counterclaim cannot be brought again.*

If you were a party to a CCB proceeding and you are not satisfied with the CCB’s final determination, you cannot seek a different result by submitting a new claim about the same activity or dispute. There are no “do-overs” after a final determination.

**Example:** *If the CCB makes a final determination that you infringed the copyright in an architectural drawing, you cannot come back to the CCB and file a claim seeking a declaration against the same parties that you did not infringe the same architectural drawing.*

## Too Many Proceedings or Bad-Faith Conduct

There are limits to how many claims a party, an attorney, or a law firm can file with the CCB in a single twelve-month period. (This limit does not apply to counterclaims.) Your claim is not compliant if you or your attorney (or their law firm) have exceeded these limits, or if you, your attorney, or authorized representative have engaged in repeated bad-faith conduct in CCB proceedings that subjected you or them to a temporary ban.

Under the CCB’s rules, a claimant can only file thirty proceedings in any twelve-month period. If you are filing on behalf of a business, that limit applies to all proceedings brought by you and your subsidiaries, parent companies, and affiliates. Attorneys can only file forty proceedings on behalf of claimants in a twelve-month period, and law firms can only file eighty proceedings on behalf of claimants in a twelve-month period. Any claim that goes over these limits is not compliant.

The CCB can also penalize parties and their attorneys or representatives for bad-faith conduct in CCB proceedings. That includes pursuing a claim, counterclaim, or defense without a reasonable basis, or for an improper purpose like harassing the other party. If the CCB finds that a party, attorney, or representative engaged in bad-faith conduct before the CCB more than once in a twelve-month period, the penalty can include a ban from filing or participating in another CCB proceeding for twelve months. Any new claim filed by that party, attorney, or representative during that period would be noncompliant.

Don’t see your situation in this chapter? Get in touch! Email [asktheboard@ccb.gov](mailto:asktheboard@ccb.gov).

# Glossary

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- **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.
- **Service Request Number:** The Copyright Office’s official term for the application number.
- **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.
- **Without prejudice:** The claim can be filed again in the future.