

Presenting Your Case

After investigating the facts related to your proceeding during the **discovery** phase, you will have the opportunity to present your case to the CCB through **written testimony**. This testimony will explain why you think you should win the case and will include a party statement, evidence, and any witness statements. The CCB Officers will then use the testimony submitted by all parties to help make their decision.



Chapter at a Glance

- **The Basics of Written Testimony**
- **Opening Written Testimony**
- **Response Written Testimony**
- **Reply Written Testimony**
- **Tips for Written Testimony**

Why You Need This Information

This chapter provides an overview of how parties build and present their cases to the CCB in standard-track cases. Somewhat different procedures apply in **smaller claims** proceedings.

Quick Summary of Presenting Your Case

Parties submit written testimony to the CCB in phases:

- First, the party making a claim or counterclaim will file **opening testimony** by the date designated in the scheduling order.
- Then, the party responding to the claim or counterclaim will file **response testimony**.
- Finally, the party making the claim or counterclaim will have the option to file **reply testimony**.

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

Once reply testimony is filed, you cannot submit further testimony (including evidence) unless the CCB specifically requests it or gives you permission to file it. Make sure you include all the information, evidence, and arguments you want the CCB to consider in your opening, response, and reply written testimony.

HOW DID YOU GET HERE?

Your CCB proceeding has completed the discovery process and is at the end of the [active phase](#). The parties have investigated the facts related to the issues in the proceeding through discovery. After a post-discovery conference is held, you will prepare written testimony to present your case to the CCB.

WHAT HAPPENS NEXT?

After all testimony is filed, the CCB will review the testimony and decide whether or not to hold a [hearing](#) to further discuss the issues and evidence with the parties. The CCB will then issue a final determination.

The Basics of Written Testimony

There are certain things you need to know to file your written testimony before the CCB.

What Is Written Testimony?

The primary way you present your case to the CCB is by filing written testimony. Written testimony consists of four parts:

1. a **party statement** describing your position on the claims, defenses, and any counterclaims, as well as the facts and any law you want to present to support your position;
2. your documentary **evidence**, along with an **evidence list** that identifies and briefly describes each piece of evidence you're submitting;
3. optional **witness statements** from people with personal knowledge about the facts in the proceeding; and
4. a **certification** that the information in your written testimony is accurate and truthful. This certification requirement is satisfied by filing your written testimony on eCCB, which prompts you to confirm a similar statement before you are able to file.

You must upload all written testimony to eCCB by choosing the appropriate drop-down options from the eCCB area for filing documents.

Calculating Deadlines

Each phase of the written testimony has a specific deadline, and you should keep in mind that if there are counterclaims in your proceeding, you might be filing written testimony during each phase.

- Opening testimony is due by the date listed in the scheduling order.
- Response testimony is due within **forty-five days** of *the date the opening testimony is filed*. Therefore, if the opening testimony is filed early, the response testimony is due forty-five days from the opening testimony filing date, not forty-five days from when the opening testimony was due.
- Reply testimony (optional) is due within **twenty-one days** of *the date the response testimony is filed*.

Example 1: Lucia brings a noninfringement claim against Mimi. Mimi doesn't bring any counterclaims. Under the scheduling order, opening testimony is due September 10.

Phase 1, Opening: Lucia files her opening testimony, which focuses on her noninfringement claim, a few days early on September 1. Mimi, as the respondent, should not file opening written testimony.

Phase 2, Response: Mimi files her response testimony on the due date, October 16—forty-five days after September 1, because the response time is calculated from Lucia's filing date (not from the date in the scheduling order, September 10). Mimi's response testimony focuses on addressing Lucia's noninfringement claim, including any defenses she has to the noninfringement claim. Lucia should not file response testimony.

Phase 3, Reply: Lucia may choose to file reply testimony. If she chooses to, the reply testimony will be due on November 6 (twenty-one days after Mimi filed her response testimony).

Example 2: Delilah brings an infringement claim against Mario. Mario then brings a misrepresentation counterclaim against Delilah. Under the scheduling order, opening testimony is due May 1.

Phase 1, Opening: Both Delilah and Mario file opening testimony on May 1. Delilah's opening testimony focuses on her infringement claim. Mario's testimony focuses on his misrepresentation counterclaim.

Phase 2, Response: Both Delilah and Mario have response testimony due June 15 (forty-five days after May 1—Delilah's and Mario's due dates could be different if they filed opening testimony on different days). Delilah's response focuses on addressing Mario's misrepresentation counterclaim rather than providing more details on her infringement claim. Mario's response focuses on addressing Delilah's infringement claim rather than providing more details on his misrepresentation counterclaim.

Delilah files her response testimony on June 15. Mario decides to file his early on June 1.

Phase 3, Reply: Delilah's optional reply testimony is due June 22 (twenty-one days after June 1), but Mario's optional reply testimony isn't due until July 6 (twenty-one days after June 15). If Delilah decides to file reply testimony, it should focus on her original infringement claim rather than on Mario's misrepresentation counterclaim. Mario's optional reply should focus on his misrepresentation counterclaim rather than on Delilah's infringement claim.

What's Included in Written Testimony?

Written testimony for all phases consists of four parts: a party statement, evidence, optional witness statements, and a certification (as noted above, you do not need to include a separate certification if you file in eCCB). What you include in each part may differ depending on what phase you are in. You can learn more about the details for each phase of written testimony below. Each part of the opening testimony will be uploaded separately as specified below.

Opening Written Testimony

Claimants or counterclaimants file opening testimony on eCCB by the date listed in the scheduling order. As with all written testimony, the opening testimony consists of four parts: a party statement, evidence, optional witness statements, and certification (as noted above, you do not need to include a separate certification if you file in eCCB).

Party Statement

Your opening testimony must include a party statement that describes your position on the key facts related to your claim or counterclaim and the damages you are seeking (if any). You can also include your position with respect to the law, meaning you give an explanation as to why, if the CCB applies the law to the facts in your case, you think you should win (including by citing relevant cases you are aware of), but you aren't required to do so. It won't be held against you if you don't discuss the law in your party statement.

If you do not submit a witness statement from yourself (which you are highly encouraged to do, see below), be sure to include in your party statement a separate section with an account of all of the facts of your case for which you have personal knowledge. The Board cannot rule in your favor unless you have presented evidence (including the facts that you properly set forth with your written testimony) that proves all the elements of your claim.

You will upload your party statement as a typed document to eCCB. It is not a fillable form. You will need to create your own document and upload it to eCCB. When you are logged in to eCCB, you will navigate to the correct docket for your case. You will click on "File a document," select "Direct Party Statement" from the drop-down menu for document types, and upload your document.

Your statement must be

- typed,
- double-spaced (except for headings, footnotes, and block quotes, which can be single-spaced),
- in twelve-point font (or larger), and
- no longer than twelve pages.

And it must include

- a title (such as "Opening Party Statement of Jane Doe"),
- the case name and docket number, and
- your signature (either typed or handwritten, typically at the end of the document).

You do not need to include a table of contents or a list of any **legal cases or other authorities** discussed in your statement. If you do decide to include a table of contents or list of authorities, it will not count toward your twelve-page limit.

When writing your party statement, keep in mind whether any of the evidence you're discussing has been marked confidential (by you or any other party) under a protective order. If so, you may need to **redact** it or file it **under seal**, or request that the document be treated as nonconfidential so that it can be filed publicly (if you are the only one that decided the document was confidential, you can decide that you wish to take away that confidential designation). You can learn more about this in the [Discovery](#) chapter.

If you are seeking damages for a copyright infringement claim or counterclaim, you should declare in your party statement which kind of damages you want: either (1) statutory damages or (2) actual damages and any profits the alleged infringer made from the infringement. Your statement should include how much you are seeking in monetary damages. This can be a short sentence, such as “I’m seeking statutory damages in the amount of \$15,000” or “I’m seeking actual damages and the profits of the respondent in the amount of \$5,000.” You can learn more about damages options for infringement in the [Starting an Infringement Claim](#) chapter. You may defer your decision or change your mind about which kind of damages you are seeking at any point up until the final determination is made by filing a statement using the fillable form on eCCB. From your eCCB dashboard, choose to file a “Statement as to Damages” and state your choice in the field.

If you want the CCB to hold a hearing in the proceeding, you can request it in your party statement, and you must briefly describe why you think there should be a hearing. This isn’t your only opportunity to request a hearing. You can also include a request for a hearing in your reply party statement, if you choose to file it, or through a fillable form on eCCB as long as you submit it no later than seven days after the deadline for the reply testimony. Note that a hearing will not happen in every proceeding. The CCB Officers will decide whether or not to hold a hearing, and they may decide to do so even without a request. To learn more about hearings, see the [Hearings](#) chapter.

Evidence

Another part of your written testimony is providing the evidence you are relying on to support your claim or counterclaim. You can refer to this evidence in your party statement to demonstrate the point that you are making. You can only include, however, evidence that you provided to the other party or that the other party provided to you during discovery or as part of a claim, counterclaim, or response. In limited circumstances, the CCB may give you permission to include evidence that has not already been provided to all parties, but only if there is a good reason to do so.

Your evidence must be accompanied by a list identifying and describing each piece of evidence you are submitting. This list must include a brief description of the piece of evidence and how it relates to your claim or counterclaim.

You will upload your evidence to eCCB along with your evidence list. When you are logged in to eCCB, you will navigate to the docket for your proceeding. You will click on “File a document,” select the document type called “Evidence,” and then upload your evidence list and attach your evidence to that filing either as one clearly labeled file or as separate clearly labeled files.

If there is a protective order in your proceeding, keep in mind whether any evidence you want to file as part of your testimony has been marked confidential. If so, you must either file it **under seal** or **redact** it, or request that the document be treated as non-confidential so that it can be filed publicly (if you are the only one that decided the document was confidential, you can decide that you wish to take away that confidential designation). You can learn more about this in the [Discovery](#) chapter.

Witness Statements

You can provide your own witness statement setting forth the facts for which you have personal knowledge. Additionally, if there is someone else who has relevant knowledge about the facts in your proceeding, you can ask them for a witness statement to file as part of your written testimony. Witness statements are *optional*, although you will likely want to provide at least your own witness statement. Witness statements are also *voluntary*. It is the witness’s choice whether to agree to provide one or not, and the CCB cannot force a witness to prepare, sign, or submit a statement.

Witness statements should include a detailed description of the facts and circumstances that the witness knows directly. They should not include any facts or information that they did not directly experience or have firsthand knowledge about. *A witness statement cannot include any legal argument.*

Any witness statement you file must meet the following requirements:

- **It must be sworn under penalty of perjury.** In the witness statement, the witness must swear that everything in the statement is true and correct to the best of their knowledge under **penalty of perjury**, which means they understand that they could be subject to penalties if they know anything in their witness statement is false. This statement typically comes at the end of the witness statement and can take the following form: “I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.” It must be followed by the witness’s electronic or handwritten signature.
- **It must be organized into numbered paragraphs.** You should present your witness statement in separate numbered paragraphs. This makes it easy for the parties and the CCB Officers to refer to different portions of the witness statement.
- **It must be uploaded to eCCB.** Upload your witness statement to eCCB as its own separate document—it is not a fillable form on eCCB. When you are logged in to eCCB, you will navigate to the docket for your proceeding. You will click on “File a document,” select the document type called “Witness Statement,” and then attach the document.

Certification

Before you submit your testimony, a statement will appear in eCCB confirming that by submitting your documents you are certifying that all of the written information in your written testimony is accurate and truthful.

Response Written Testimony

Respondents or counterclaim respondents file response testimony on eCCB within forty-five days of the date the opening testimony *is filed*. As with all written testimony, the response testimony consists of four parts: party statement, evidence, optional witness statements, and certification (as noted above, you do not need to submit a separate certification if you file in eCCB).

Party Statement

Your response testimony must include a party statement describing your position on the key facts related to the claim or counterclaim you’re responding to and any damages the other party is seeking as well as any defenses you may have. You can also include your position with respect to the law, meaning you give an explanation as to why, if the CCB applies the law to the facts in your case, you think you should win (including by citing relevant cases you are aware of), but you aren’t required to do so. It won’t be held against you if you don’t discuss the law in your party statement. If you disagree with anything—factual or legal—in the other party’s opening testimony, this is your opportunity to explain why you disagree. You can refer to the evidence that you upload in eCCB to demonstrate the point you are making.

If you do not submit a witness statement from yourself (which you are highly encouraged to do, see below), be sure to include in your party statement a separate section with an account of all of the facts of the case for which you have personal knowledge. The Board cannot rule in your favor unless you have

presented evidence (including the facts that you properly set forth with your written testimony) that proves all the elements of your defense.

You will upload your response party statement as a typed document to eCCB. It is not a fillable form. You will need to create your own document and upload it to eCCB. When you are logged in to eCCB, you will navigate to the docket for your proceeding. You will click on “File a document,” select the document type called “Response Party Statement,” and then upload your document.

The statement must be

- typed,
- double-spaced (except for headings, footnotes, and block quotes, which can be single-spaced),
- in twelve-point font (or larger), and
- no longer than twelve pages.

And it must include

- a title (such as “Response Party Statement of Bill Williams”),
- the case name and docket number, and
- your signature (either typed or handwritten, typically at the end of the document).

You don’t need to include a table of contents or a list of any **legal cases or other authorities** you discussed in your statement. If you do decide to include a table of contents or list of authorities, it won’t count toward your twelve-page limit.

When you’re writing your party statement, you should keep in mind whether any of the evidence you’re discussing has been marked confidential (by you or any other party) under a protective order. If so, you may need to **redact** it or file it **under seal**, or request that the document be treated as nonconfidential so that it can be filed publicly (if you are the only one that decided the document was confidential, you can decide that you wish to take away that confidential designation). You can learn more about this in the [Discovery](#) chapter.

When you’re a respondent to a claim or counterclaim of infringement or misrepresentation, you can also declare whether you would voluntarily agree to a CCB order requiring you to stop or change any unlawful activity should the CCB ultimately reach a determination in favor of the other party. **This is optional.** If you’re a respondent to a claim or counterclaim of infringement, the CCB may also consider it in deciding the amount of damages awarded against you **if you are found liable.** The CCB *will not* consider this statement when deciding whether to issue a determination in your favor or the other party’s favor. This is your last opportunity to include this kind of statement, unless the CCB decides to hold a hearing. If there is a hearing, you can make this statement to the CCB during the hearing. Note that hearings won’t be held in every proceeding, even if requested, so it’s a good idea to include the statement in your party statement if you want to do so.

If you want the CCB to hold a hearing in the proceeding, you can request it in your party statement, and you must briefly describe why you think there should be a hearing. This isn’t your only opportunity to request a hearing: you can also file a request for a hearing through a fillable form on eCCB as long as it’s submitted no later than seven days following the deadline for the reply testimony. Note that a hearing will not take place in every proceeding. The CCB Officers will decide whether or not to hold a hearing, and their decision might not be based on a request. To learn more about hearings, see the [Hearings](#) chapter.

Evidence and Witness Statements

Your written testimony must include the evidence and witness statements you're relying on to respond to the claim or counterclaim or in support of your defenses. You should follow the same instructions in the Opening Written Testimony section above for submitting evidence and optional witness statements in support of your defenses.

Certification

Before you submit your testimony, a statement will appear in eCCB confirming that by submitting your documents you are certifying that all of the written information in your written testimony is accurate and truthful.

Reply Written Testimony

If you have brought a claim or counterclaim, you may file reply testimony on eCCB no later than twenty-one days after the date the response testimony is filed. Reply testimony is *optional*.

As with all written testimony, the reply testimony consists of four parts: a party statement, evidence, optional witness statements, and certification (as noted above, you do not need to include a separate certification if you file in eCCB). **However, there are additional restrictions on the content of reply testimony.** Specifically, reply testimony must be limited to refuting (rebutting) or addressing the information and arguments in the response testimony.

Party Statement

If you choose to file reply testimony, your party statement should follow the same requirements described [above](#), except that

- The statement must be limited to rebutting or addressing the response testimony. You can't include new arguments or information in support of your claim or counterclaim that aren't addressing the response testimony.

***Example:** In the opening testimony for your noninfringement claim, you focused exclusively on how your work is not at all similar to the respondent's work. The respondent then used their response testimony to argue that your work is similar to their work. In your reply testimony, you cannot introduce an entirely new argument that you also did not have access to the respondent's work. Instead, you must focus your reply testimony on addressing the respondent's arguments in the response testimony that your work is similar to their work.*

- Your reply statement cannot be longer than **seven pages**. It also must meet all the formatting requirements described [above](#).

You will upload your reply party statement as a typed document to eCCB. It is not a fillable form. You will need to create your own document and upload it to eCCB. When you are logged in to eCCB, you will navigate to the docket for your proceeding. You will click on "File a document," select the document type called "Reply Party Statement," and then upload your document.

If you want the CCB to hold a hearing in the proceeding, you can include a request for a hearing as part of your reply party statement (and the CCB can decide whether to grant it or not). If you already included a request for a hearing in your opening testimony, you do not have to request it again.

Evidence

If you choose to file reply testimony, the evidence (with the accompanying evidence list) you submit will follow the same requirements described in the [Evidence](#) section above, except that

- You can only include evidence that is required to contradict or rebut the specific evidence filed by the other party as part of their response testimony.

***Example:** If you made an infringement claim and the respondent raised a fair use defense in their response testimony and included evidence that suggested they only used their work for nonprofit educational purposes, you could include evidence in your testimony that contradicts that evidence by showing they actually used the work for commercial purposes. (To learn more about the fair use defense, see the [Responding to an Infringement Claim](#) chapter.) You can't, however, include an email showing the respondent asking permission to license your work if it doesn't have anything to do with responding to or addressing the respondent's evidence in their testimony.*

- You can't include any evidence you already filed as part of your opening testimony. The evidence you filed as part of your opening testimony is already part of the proceeding. You can still refer to any of that evidence in your reply party statement if it is relevant to the point you are making.

Witness Statements

If you choose to file reply testimony, you may include witness statements. As with the opening testimony, witness statements are optional. If you submit any witness statements, they must meet the same requirements described [above](#), except that

- The witness statement should not repeat facts included in an earlier statement you filed for that witness as part of your opening testimony. Any witness statements you filed as part of your opening testimony are already part of the proceeding. You can still refer to them in your reply party statement if they are relevant to the point you are making.
- The witness statement must be limited to contradicting or rebutting specific evidence included in the other party's response testimony, whether related to their party statement, evidence, or witness statements.

***Example:** If you made an infringement claim and the respondent argued in their response testimony that they had never seen your work before, you could submit a witness statement from the person who provided a copy of your work to the respondent. On the other hand, if the respondent didn't dispute that they had access to your work in their response testimony and instead used their entire response to argue that they didn't profit from your work, you wouldn't be allowed to submit this specific witness statement as part of your reply testimony because it doesn't contradict or rebut anything in the response testimony.*

Certification

Before you submit your testimony, a statement will appear in eCCB confirming that by submitting your documents you are certifying that all of the written information in your written testimony is accurate and truthful.

Tips for Preparing Written Testimony

This section provides some tips for preparing written testimony. These are not requirements, and you won't be penalized if you do not follow them. However, these tips may help you put together a more persuasive and stronger case.

- **Focus on the elements of the claim.** When you're preparing your written testimony, it's a good idea to check what elements you need to prove to be successful in your claim or counterclaim. If you're a respondent or counterclaim respondent, focus on what the other party needs to prove to be successful or what's relevant to your defenses. Keep these in mind when you're writing your party statement as well as gathering your evidence and any witness statements.

For example, if you're making an infringement claim, you'll need to prove that the other party had access to your work and that their work is substantially similar to yours. You can learn more about the elements you need to prove for each type of claim in the chapters on [Starting an Infringement Claim](#), [Starting a Noninfringement Claim](#), and [Starting a Misrepresentation Claim](#). The same idea also applies to defenses. You can learn more about what you need to prove for common defenses in the chapters on [Responding to an Infringement Claim](#), [Responding to a Noninfringement Claim](#), and [Responding to a Misrepresentation Claim](#).

- **Create an outline.** Before you start writing your party statement or gathering evidence and witness statements, consider making an outline of all of the points you want to discuss. In the outline, you should focus on the elements you need to prove for each of your claims, counterclaims, or defenses. Then, list what you have in terms of evidence and possible witness statements that prove each of the elements necessary for each claim, counterclaim, or defense in the proceeding.

For example, if you have an infringement claim, create an outline that lists how you will show (1) your ownership of the work at issue, (2) how the respondent would have gained access to the work, (3) how the works are substantially similar, and (4) what damages you are seeking. Under the first element, you might list documents, such as the copyright registration for the work that shows your ownership. Or, if you are an **exclusive licensee** of the rights at issue, list an agreement that shows that you are an exclusive licensee or a witness statement from the actual owner giving you rights as an exclusive licensee. You would then continue to list points and evidence that support the other elements and the damages you are seeking. If you are a respondent, you would do the same thing to counter those elements or to prove your defenses. Once finished, you can then easily organize your statement, your evidence, and the statements of any witnesses in order.

- **Pay attention to damages.** As stated earlier, if you have an infringement claim, you will have to choose between (1) actual damages (and any profits the alleged infringer gained because of the infringement) or (2) statutory damages. If you are seeking actual damages, including any profits of the infringer, you will need to prove any amounts you request. For example, you may want to submit prior licenses for the work at issue or similar works you have licensed to show what you would have received if the work was properly licensed. If you are seeking statutory damages, the Board will determine an amount within a statutory range based on what it thinks is fair given the case's circumstances. *Even if you are choosing statutory damages*, you should submit evidence of actual damages, to the extent any evidence exists, because the Board may use that evidence to establish statutory damages. Statutory damages above the statutory minimum often have some relationship to actual damages. If you are defending against an infringement claim, you may want to submit evidence to show that actual damages were minimal, regardless of the type of damages requested by the claimant. You also may want to tell the Board why you think evidence submitted by the claimant is not adequate to show actual damages.

- **Include citations.** In your party statement, it may be helpful to refer to evidence or to information in witness statements so the CCB and the other parties can easily find what you're referring to. Every piece of evidence will be numbered on the evidence lists that are filed with written testimony, and you can use these numbers to refer to the evidence.

***Example:** You are making a misrepresentation claim. The fourth document on your evidence list is the takedown notice that included a misrepresentation. The fifth document on your evidence list is an email that shows the respondent knew they made a misrepresentation in their takedown notice. Your party statement could say something like, "In Document 4, the respondent claimed that he was the copyright owner of the work. Document 5 shows that the respondent knew he was not actually the copyright owner of the work. That shows that the respondent knew the takedown notice included a misrepresentation."*

Similarly, you can use the paragraph numbers in the witness statements to draw attention to specific aspects of the statement.

***Example:** In paragraph 4 of her witness statement, Norma says she gave the respondent a copy of my work.*

- **Be selective.** It's often more effective to choose the best evidence needed to prove your point rather than including everything. As a general rule of thumb, if you are not referencing the evidence in your party statement, it may not be worth including.
- **Read your written testimony again before submitting it.** It may be helpful to read over all the parts of your written testimony together before you file it to make sure it is organized, addresses all the elements of each claim or defense, and includes all the evidence you need to prove each of the elements. Review it critically to see if your statement needs editing or fails to refer to an important piece of evidence. Try to strengthen weaknesses, further support your statement, and correct typos.

Glossary

- **Citations:** The location of the material being discussed or quoted that provides the reader with enough specificity to refer to the original document.
- **Exclusive licensee:** A licensee is a person whom a copyright owner allows, through an agreement, to have certain rights to use their work. A licensee is exclusive when the copyright owner agrees that they will only give those rights to that licensee.
- **Legal cases and authorities:** Opinions and decisions written by judges or tribunals, as well as laws and other legal texts used to support a party's position.
- **Penalty of perjury:** A verification that you recognize you may be subject to penalties if what you say is not true.
- **Redact:** To block out or remove particular pieces of information.
- **Under seal:** Filing documents with the CCB with restricted or private document access so that the general public may not view the content.
- **Written testimony:** The combination of witness statements, evidence, and a party statement containing an explanation of why the party thinks it should win the case.