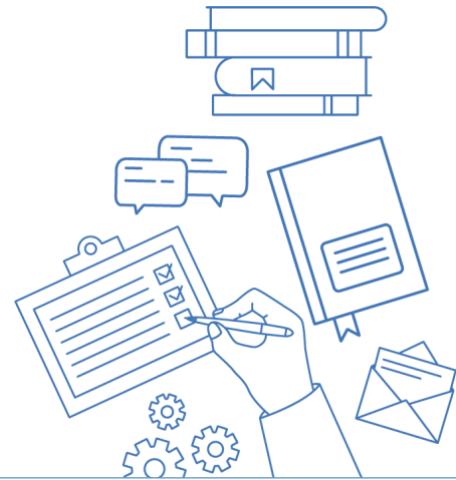


CCB HANDBOOK

Settlement

The CCB is available to facilitate voluntary agreements, called settlements, between the parties to resolve all or part of their dispute. If the parties reach a resolution at any point, the parties may ask the CCB to include some or all of the settlement terms in the final determination.



Chapter at a Glance

- **Settlement of Disputes before the CCB**
- **How do I request a Settlement Conference?**
- **Settlement Conference Procedures**
- **Preparing the Settlement Agreement and Dismissing the Proceeding**

Why You Need This Information

You may wish to settle your dispute with another party before a final determination is made, which can offer many advantages. For instance, settlement discussions can lead to a resolution that is faster and less expensive than continuing through all of the phases of a CCB proceeding and waiting for a final determination. Settling a case may also be better for all parties than a final determination because the parties can put whatever terms they want into a **settlement agreement**, including terms beyond the CCB’s jurisdiction, such as requirements to act or refrain from continuing the infringement or specifying the method and timing of settlement payments. This chapter will help you understand what a settlement means and how to go about engaging and successfully participating in the settlement process.

WHEN CAN SETTLEMENT TAKE PLACE?

Parties in a CCB proceeding may settle the dispute without assistance at any time; however, the CCB will also facilitate voluntary settlement conferences if the parties wish to do so.

Parties should not feel as if they need to wait for the CCB to get involved in settlement discussions to speak to each other and attempt to get to a resolution. Parties can construct their own settlement, and it can have as few or as many terms as they wish. If the parties reach a settlement on their own, they should inform the CCB that they have reached a settlement and jointly wish to end, or dismiss, the case. They can also inform the CCB if they want any terms of the settlement to be specifically put into an order by the CCB. For further information about how to jointly dismiss a proceeding and request that the terms of the settlement to be specifically ordered by the CCB, see the “[Preparing the Settlement Agreement and Dismissing the Proceeding](#)” section of this chapter.

While the parties may engage in their own settlement discussions, they may feel more comfortable engaging in settlement discussions facilitated by the CCB. The CCB will discuss settlement at various points during the active phase of the proceeding set forth below.

- **Pre-discovery conference:** After the respondent has filed the response to the claim, the presiding Copyright Claims Officer will ask each party at the pre-discovery conference whether they have considered settlement. This is an opportunity to consider setting up a separate conference to discuss resolving the dispute after you hear each party's claims and defenses but before the parties are required to exchange documents and information related to the claims, defenses, and any counterclaims, in the **discovery** phase.
- **Post-discovery conference:** After the parties have completed discovery, the Copyright Claims Officer will schedule a conference to check in with the parties before each party presents its case through written statements and supporting evidence. This is an opportunity to consider setting up a separate conference to discuss resolving the dispute after gathering documents and information from each party and before you have to do the work of formally presenting your case to the CCB.
- **By request:** A settlement conference may be scheduled by the CCB or at the request of some or all of the parties at any point in an active proceeding. Parties can request or respond to a request for a settlement conference by following the instructions below.

Settlement of Disputes before the CCB

If you choose to take part in CCB-facilitated settlement discussions, a Copyright Claims Officer different from the one handling the day-to-day aspects of the proceeding will be assigned to assist you in such discussions at a settlement conference. Settlement conferences are designed to be an informal, collaborative, problem-solving process, where the parties can share information (either confidentially or not) with the Officer handling the conference or the other parties in the dispute.

If a settlement is not reached at the settlement conference, the Officer assigned to guide the settlement conference will likely not take part in making the final determination, as discussed in more detail below. In a "smaller" claim proceeding presided over by only one Officer, a different Officer will likely guide the settlement conference. If the dispute is resolved among some or all of the parties, the parties will typically sign a **settlement agreement**, which is a legally binding contract between the parties describing how the parties resolved part or all of the dispute. The terms can be kept confidential among the parties or the parties can jointly request that some or all of the terms be made part of an order issued by the CCB.

Why Should I Consider Settlement?

Resolving your dispute through settlement has advantages over continuing through all phases of a CCB proceeding, including the following:

- **Control.** Parties have more say in deciding how they wish to settle their dispute. Parties may feel a greater sense of satisfaction at the end of the process as they retain a significant degree of control throughout and ultimately determine the outcome. Most settlement discussions are more about negotiating a resolution and less about nuanced legal argument. At the end of a successful settlement process, the parties can put the terms of their resolution in an agreement so each party knows what their rights and obligations are under the settlement.

- **Flexibility of remedy.** Parties can agree to settlement terms containing provisions the CCB cannot offer. While the CCB has the ability to grant monetary relief through its final determinations, it can only order a respondent to stop or modify certain activities if the respondent agrees, and it cannot order other relief unless the parties ask for such an order as part of a settlement. The outcomes in a settlement can be more diverse and creative. Because the parties ultimately decide the terms of settlement, the outcome can be adapted to meet their needs by creating a new working relationship between the parties; agreeing to make settlement payments in installments; or requiring other actions to stop, start, or change the activities at issue in the proceeding.
- **Speed and cost.** Settlement can be a faster way to resolve disputes and is less costly than going through an entire CCB proceeding or formal litigation. If you have engaged an attorney to represent you before the CCB, your legal fees and other costs will typically be lower if you settle the matter. The earlier in the proceeding that the parties settle, the more they will save in time and cost.
- **Less stress and time away from business and personal matters.** Although CCB proceedings are designed to be less burdensome on the parties, participating in all phases of the proceeding does require a time commitment by all parties. Settlement may relieve the stress some parties may feel going through this process and allow them more time to focus on other activities
- **Confidentiality.** While all CCB final determinations will be available on eCCB for anyone to review, a settlement agreement can be made confidential so that the terms of that agreement are not disclosed to anyone. By participating through all phases of a proceeding, parties may have to disclose information they would rather keep private. For example, if a party proceeds with discovery, they may have to disclose financial records to the other party, and evidence presented with party statements will be available to the public. Confidentiality extends to the settlement conference as well; communications during and related to the settlement conference are confidential and will not be disclosed to the other Copyright Claims Officers if the dispute is not resolved.
- **If you are owed money, settlement offers you the ability to be paid quicker.** If a party voluntarily agrees to financial provisions requiring them to pay money to another party, they may be more likely to pay the amount due quickly and without trying to avoid making the payment.

Key Features of Settlement Conferences before the CCB

A settlement conference in a CCB proceeding will involve all parties who agree to participate and one Officer. The settlement conference will be formally scheduled and appear in the docket of the proceeding. All settlement conferences are conducted virtually.

To start, the Officer holding the settlement conference will explain the ground rules and procedures. Throughout the conference, the Officer will facilitate conversation between the parties with the goal of defining the scope of the issues in dispute, identifying areas of agreement, and assisting the parties with generating options for settlement. To accomplish these goals, the Officer will likely have each side briefly state their position and ask questions about the procedure. The Officer may have each side move to a private, virtual “breakout” room where the Officer will speak with each side separately. There may be several of these “breakout” conferences with each side, and some sessions may be longer than others. The Officer will keep statements made by a party in one of these private sessions confidential unless the party asks for the statements to be communicated to the other parties. Finally, the Officer will likely bring all of the parties together again to conclude the conference whether or not the parties have reached a settlement.

The Officer will not require the parties to reach a settlement during the conference. Settlement discussions may be ongoing, and additional virtual or telephone conferences may be held as needed. The parties may also decide to continue settlement discussions among themselves after the conference.

A settlement conference may accomplish other goals in addition to reaching an agreement that resolves the dispute. The conference may clarify the areas of disagreement with the parties or establish whether a party will agree to stop certain activity if found liable in a final determination.

NARROWING THE ISSUES

A settlement conference can help the parties narrow specific issues raised in the proceeding's claims, counterclaims, and defenses. Settlement discussions can identify areas where parties may agree on certain facts or circumstances surrounding the claims and, with the help of the Officer, allow the parties to resolve specific claims or counterclaims in the proceeding. Even if the settlement conference does not result in a settlement of the entire dispute, particular issues may be eliminated and the remaining claims will move forward.

***Example:** Cleo filed copyright infringement and misrepresentation claims against Ethan for using of some of her photographs on a photo-sharing website. During a post-discovery settlement conference, Ethan and Cleo discuss the circumstances surrounding the alleged infringement of the photos. During that discussion, Ethan and Cleo agree to settle the copyright infringement claim for \$3,000. However, they still do not agree whether Ethan made a misrepresentation to the photo-sharing website. Ethan and Cleo can settle the copyright infringement dispute, ask the board to dismiss that claim, and continue with the misrepresentation claim before the Board.*

How Do I Request a Settlement Conference?

At any point in the active phase, some or all of the parties can request a conference with a Copyright Claims Officer to facilitate settlement discussions. There are two ways to request a settlement conference: (1) by filing a written request on eCCB or (2) orally at any Board conference.

Requesting a Conference on eCCB

Requesting a settlement conference is simple. You can ask for one at any conference (which will be set for a later date) or you can submit a request using the fillable form on eCCB, which may also include a request to pause or “**stay**” the proceedings while settlement discussions are ongoing. Granting a request for a stay is at the Board’s discretion.

A request for a settlement conference is limited to 4,000 characters and should include

- a brief statement requesting the settlement conference;
- a list of the any other parties that have agreed to join the discussion; and
- a request to stay the proceeding (if desired), which may or may not be granted.

To file the request, click the “File in existing case” button and select the proceeding. Then select “Request for Settlement Conference” from the drop-down menu. Other parties will be notified of the request through eCCB.

Responding to a Request for a Conference on eCCB

Any party that has not joined the request can submit a response to that request within seven days of the filing. If you decide to file a response, it must be no more than 4,000 characters and should detail whether you agree or disagree with the request.

To file the response, click the “File in existing case” button and select the proceeding. Then select “Response to Request for Settlement Conference” from the drop-down menu. Other parties will be notified of the response through eCCB.

Settlement Conference Procedures

You will need to gather any information you believe is relevant to possible resolution of the dispute. Keep an open mind while preparing for the conference. While there may be factors that limit your willingness to agree to a particular outcome, determining a “bottom line” before the conference may hamper your ability to benefit from the conference.

Preparing for the Conference

In preparation for the conference, you should carefully consider what is important to you in the dispute and how the issues are relevant to a potential resolution of the claim. You may want to consider the following:

- What factors beyond the parties’ control contributed to the dispute?
- Assuming anything is possible, what would you like to discuss at the settlement conference? What do you think the other parties want to discuss?
- What practical concerns do you have about settlement?
- What other concerns are relevant to your thinking about settlement?
- How would it benefit you to have the dispute over? What would a fair resolution look like to you?
- What is the risk that your claim or defense may be unsuccessful, and what would the consequences be?
- If you do not settle, what are the drawbacks in terms of time, cost, and disruption of your business or personal life?

Position Statement

Each party participating in the conference *must* submit a **position statement** to the Officer handling the settlement conference via email **at least three calendar days prior to the scheduled settlement conference**. The position statement should be emailed to filings@ccb.gov and is not filed on eCCB.

The position 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 five pages.

The position statement must also not include more than twenty pages of exhibits, unless you get permission from the Officer in advance. If you believe you need to add additional pages of text or exhibits, you must ask permission from the Officer holding the settlement conference. If your dispute involves an agreement or contract, the contract will not be counted toward your page limit. To the extent any exhibits were already filed with the claim or response, you can save some of your twenty-page exhibit limit by referring to the already-filed exhibits.

The statement should also include

- a brief overview of the facts and contentions;
- the relief sought, including the amount of damages (if any) or why you believe there were no or limited damages;
- an explanation of the extent of the alleged wrongful conduct or an explanation of why the conduct was not wrongful. You should also note whether the conduct has stopped or is continuing; and
- any prior attempts at resolution, including any offers or counteroffers made to the other party.

You may also decide to include the initial offer of settlement you are willing to make.

You will email your position statement to the Officer holding the settlement conference at filings@ccb.gov. **Do not upload your position statement to eCCB because it is meant to be confidential and not shared with the public.** Your position statement will not be shared with the other parties unless you agree, so do not copy the other parties unless there is an agreement to do so.

Role of the Officer Holding the Conference

The Officer holding the conference will not be the same Officer that handles the day-to-day aspects of your proceeding. The Officer holding the conference may assist the parties by identifying the issues, exploring their respective interests, and developing and evaluating possible options for settlement. The Officer has no power to render a decision or require a settlement. However, the Officer can assist the parties to clarify their interests and identify areas of agreement

The Officer holding the settlement conference will likely not be involved as a decision-maker in the **final determination**. If the other two Officers fail to agree on the final determination in a standard track proceeding (as opposed to a **smaller claims** proceeding where only one Officer decides a case), only then will the Officer who held the conference participate as a tiebreaker so that the Board can issue a final determination.

WHAT TO EXPECT

- All settlement conferences will be held virtually. Make sure you have the appropriate technology to participate in the Zoom meeting. If it is not possible for you to participate online, ensure you are able to dial in via the conference phone number provided. Please check the audio and video capabilities of your computer or phone well before the conference's scheduled time. If you have any questions prior to the conference or trouble connecting during the scheduled time, immediately contact us at asktheboard@ccb.gov, and staff will help you get connected.
- You will receive a notification from the Board which will include the date and time of your conference. Check your calendar and review the date and time of your conference. Does the date and time work for your schedule? Have you considered your time zone? You may request that the CCB reschedule the conference by email at asktheboard@ccb.gov. Please note that the CCB

may not be able to accommodate your request. If you have an emergency and cannot attend the conference, please notify the CCB as soon as possible.

- You can expect the Officer to facilitate or lead a thoughtful detailed exploration of the facts and circumstances in the case. The Officer will have reviewed the claim, the response, and each party's position statement as well as any exhibits attached to those documents. The Officer will ask questions about each party's interests and positions, often in private discussions with each party.
- Please remember that, as a CCB participant, you are expected to uphold certain standards of conduct, such as treating others with utmost respect and being ethical and truthful in CCB appearances and submissions. The parties should listen carefully to what the other side and the Officer are saying and not interrupt. All parties will be given a chance to express their views and respond to the statements of the other side.

Preparing the Settlement Agreement and Dismissing the Proceeding

What Is a Settlement Agreement and How Is it Drafted?

If the settlement conference is successful and some or all of the disputed claims and counterclaims are resolved—or the parties resolve their dispute on their own—the parties will enter into a binding contract which sets forth all of the terms of the settlement. For example, the respondent may agree to pay the claimant a certain amount of money to end the dispute, or the respondent may agree to stop the allegedly infringing conduct. The parties may also agree to additional terms, such as those guiding the method of payment or addressing the infringing activities.

The Officer who conducted the settlement conference can prepare a list of the agreed-to terms and provide general information about how to incorporate those terms into a settlement agreement. The parties will then go about drafting a simple agreement based on those terms. There may be times, with the consent of the parties, when the Officer drafts something for the parties to sign or the parties agree to have the settlement terms be part of a final order from the Board.

What Happens Next?

If the parties draft a settlement agreement on their own based on their agreed-to terms after a settlement conference, the parties should then jointly request that the CCB dismiss some or all of the claims or counterclaims after the agreement is signed by all parties to the settlement. Upon such a request, the CCB will dismiss the claims or counterclaims covered by the agreement **with prejudice** unless the parties to the settlement have requested that the dismissal be **without prejudice**.

If the parties did not reach a settlement, the proceeding will continue according the scheduling order that was issued unless the dates have been revised.

What If a Settlement Is Reached Where No Settlement Conference Was Held?

When the parties reach a settlement without the assistance of an Officer, they should alert the Board about a settlement agreement by filing a notice of settlement and joint request for dismissal on eCCB. To file the notice, click the "File in existing case" button and select the proceeding. Then select "Notice of

Settlement and Joint Request for Dismissal” from the drop-down menu. You can then inform the CCB in the box provided that you have settled and want to dismiss the case, along with any other information you wish to share. The CCB will then dismiss the claims or counterclaims covered by the agreement **with prejudice** unless the parties to the settlement have requested that the dismissal be **without prejudice**.

Adoption in Final Determination

If the parties have settled either with or without the assistance of an Officer, they can request that the CCB adopt some or all of the terms of the settlement in a final determination. The CCB may issue a final determination incorporating such terms unless the Board finds them clearly unreasonable. The incorporation of such terms in a final determination may assist with future enforcement of the terms should one party fail to live up to its obligations. If a party reneges on its obligations in a final determination or settlement agreement, the other party may seek enforcement through a federal district court.

***Example:** XYZ Inc. and Patricia have settled their copyright infringement dispute and agreed that XYZ Inc. will stop selling prints that copy Patricia’s artwork and pay her \$2,000. The parties can keep those terms private or can ask the CCB to incorporate those terms in a final determination.*

Don’t see your situation in this chapter? Get in touch! Email asktheboard@ccb.gov.

Glossary

- **Discovery:** The process by which the parties exchange information and documents relevant to the issues in a case.
- **Final determination:** The CCB's ruling regarding who actually wins the case, with any awards, and with the CCB's reasons for its findings.
- **Position statement:** A document written by each party and submitted prior to a settlement conference explaining that party's side of the case, which may include the party's proposal for settlement and a brief summary of prior settlement negotiations.
- **Settlement agreement:** A legally binding contract between the parties that sets forth the resolution of all or part of a dispute.
- **Stay:** A temporary pause in the proceedings.
- **With prejudice:** The claim cannot be filed again.
- **Without prejudice:** The claim can be filed again in the future.