UNITED STATES COPYRIGHT OFFICE

# CASE Act Report

A REPORT OF THE REGISTER OF COPYRIGHTS

FEBRUARY 2026



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## EXECUTIVE SUMMARY

The Copyright Alternative in Small-Claims Enforcement Act of 2020 ("CASE Act") established the Copyright Claims Board ("CCB"), the first intellectual property small claims tribunal in the United States. The CCB is a pioneering forum in which parties may voluntarily seek resolution of certain copyright small claims. Almost three years after the CCB's first final determination, the Office is issuing this CASE Act Report ("Report") addressing its use and efficacy in resolving copyright claims and other topics prescribed by the CASE Act.[1]

The Office concludes that, overall, the CCB is working well. It has successfully resolved disputes and facilitated settlements in addition to serving as an impetus for private negotiations and licensing. It has excelled at providing assistance to the public and has engaged in extensive outreach to publicize its services. As a result, there has been steady and growing demand for the CCB's services since its launch, and a wide range of parties from around the country and the world have filed claims with respect to a variety of works. The CCB has now received over 1,700 claims. Its determinations have been praised as thoughtful and thorough, and it has made the copyright system more accessible by ensuring that a pathway to justice is available to many who were previously unable as a practical matter to enforce their rights.

In light of these successes, and based on the input received, there does not appear to be a need for fundamental structural reform. The Office does not recommend amendments to the statute to change the types of claims eligible to be asserted before the CCB, the types of works involved, the damages ceiling, or the methods for identifying and locating online infringers.

As with any new and unprecedented forum, however, there are certain aspects of CCB operations that can be improved. The CCB was intended to be particularly accessible for *pro se* parties and those with limited exposure to copyright law, and to resolve claims in a streamlined and efficient manner. Based on the experience of the past three years, we have determined that some of the statutorily mandated procedures have had the unintended effect of slowing down or unnecessarily complicating proceedings. In particular, many parties struggle with compliance and, in its current form, compliance review can be lengthy and taxes the CCB's limited resources. Service of process has also proven challenging for many claimants. These aspects of CCB

[1] Pub. L. No. 116-260, § 212(e), 134 Stat. 1182, 2199–2200 (2020).

proceedings, designed to safeguard due-process rights, would benefit from appropriate reform.

Section I of this Report provides background regarding the CASE Act and a description of the CCB's formation. Section II provides an overview of the CCB's administrative structure and the stages of CCB proceedings, including the initial phase, active phase, and default procedures. Section III addresses the topics specified for review by the CASE Act, as well as a few other areas where the Office sees opportunities for improvement.

Based on our review of the public comments and the experience of the Office and the Copyright Claims Officers ("CCOs") in administering the CCB, we recommend the following changes to the CASE Act:

*Speeding the Process*

- Give the CCB discretion to allow a claimant only one, rather than two, opportunities to amend a claim during compliance review where it is clear from the allegations that no cognizable claim can be stated.
- Permit additional service methods or streamline the current ones.
- Allow a single CCO to preside over and render determinations in standard proceedings, with a panel of three CCOs continuing to evaluate reconsideration requests.
- Permit respondents who choose to participate in a CCB proceeding to affirmatively waive the remainder of the opt-out period.

*Enhancing Use of CCB Resources*

- Permit the CCB to offer mediation outside the context of an active proceeding, and give the CCOs discretion to institute mandatory settlement conferences.
- Allow district courts to refer a case to the CCB for more limited purposes, such as settlement discussions, mediation, or preparation of a report and recommendation.

*Improving Remedies and Enforcement*

- Ease the process for CCB determinations to be enforced in federal court.
- Give the CCOs discretion in each case to determine whether actual or statutory damages are more appropriate.

- Allow prevailing parties to recover costs, and allow *pro se* parties in the event of bad-faith conduct to recover either a multiple of costs or a flat fee.

The Copyright Office would be pleased to assist Congress in formulating statutory amendments to accomplish these proposed changes. Meanwhile we will take forward work to address the areas we have identified for improvement through regulatory mechanisms and enhanced communication with CCB parties and the general public.

# I. INTRODUCTION

In December 2020, Congress passed the Copyright Alternative in Small-Claims Enforcement Act of 2020 ("CASE Act") establishing the Copyright Claims Board ("CCB"), the nation's first intellectual property small claims tribunal. The CCB is a voluntary, alternative forum to federal court for copyright-related disputes involving relatively low damages awards.[2] It is housed within the Copyright Office ("Office") and is staffed by copyright experts. While the CCB is available to anyone, it is intended specifically to be accessible for those unable to pursue their claims in federal court, such as *pro se* parties and others "with little formal exposure to copyright laws."[3]

The CASE Act was the result of years of deliberation and preparation by Congress, the Office, and stakeholders. As early as 2011, then-Chairman of the House Judiciary Committee, Lamar Smith, recognized that the cost, complexity, and time commitment of federal court litigation often served as a barrier for copyright owners pursuing infringement claims of relatively lower monetary value[4] and requested that the Office conduct a study and propose potential solutions.[5]

From 2011 to 2013, the Office undertook a comprehensive study of copyright small claims.[6] We issued four notices of inquiry, solicited dozens of comments from a broad range of stakeholders, and held multiple days of public hearings.[7]

In September 2013, the Office published *Copyright Small Claims* ("Copyright

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[2] 17 U.S.C. § 1501–1511; H.R. REP. NO. 116-252, at 17 (2019).

[3] H.R. REP. NO. 116-252, at 17.

[4] *See* Letter from Rep. Lamar Smith, Chairman, H. Comm. on the Judiciary, to Maria A. Pallante, Reg. of Copyrights and Dir., U.S. Copyright Office, at 1 (Oct. 11, 2011) (recognizing concerns "that the costs of obtaining counsel and maintaining an action in federal court effectively precluded many authors whose works were clearly infringed from being able to vindicate their rights and deter continuing violations").

[5] *See id.*; *see also* Orphan Works Act of 2006, H.R. 5439, 109th Cong. § 4 (2006) (requiring Copyright Office to conduct study of "remedies for copyright infringement claims seeking limited amounts of monetary relief, including consideration of alternatives to disputes currently heard in the United States district courts").

[6] U.S. COPYRIGHT OFFICE, COPYRIGHT SMALL CLAIMS 6–7 (2013) ("Copyright Small Claims Report"), https://www.copyright.gov/docs/smallclaims/usco-smallcopyrightclaims.pdf.

[7] *Id.* George Washington University Law School also sponsored a roundtable on intellectual property small claims courts during this time. *Id.*

Small Claims Report"), which recommended the creation of a copyright small claims tribunal.[8] The Copyright Small Claims Report contained a discussion draft of a potential bill establishing such a tribunal.[9] This discussion draft became the basis for the CASE Act, which passed seven years later.

The CASE Act tasked the Office with building a functioning tribunal within a maximum of eighteen months.[10] In March 2021, the Office initiated this work by publishing a notice of inquiry soliciting public comments.[11] Over the next fifteen months, the Office issued five notices of proposed rulemaking[12] and six final rules[13] concerning the initiation and conduct of CCB proceedings. We solicited and considered hundreds of comments from the public. Since the CCB launched in 2022, the Office has monitored its operations and made regulatory modifications as needed.[14]

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[8] *Id.*

[9] *Id.* at 133–61.

[10] Pub. L. No, 116-260, § 212(d), 134 Stat. at 2199; *see also* Copyright Claims Board ("CCB"): Initiation of Proceedings and Related Procedures, 86 Fed. Reg. 53897 (Sept. 29, 2021) ("Congress directed that the CCB begin operations by December 27, 2021, though the Register may for good cause extend that deadline by not more than 180 days.").

[11] *See* Copyright Alternative in Small-Claims Enforcement ("CASE") Act Regulations, 86 Fed. Reg. 16156 (Mar. 26, 2021).

[12] *See* Copyright Alternative in Small-Claims Enforcement ("CASE") Act Regulations: Expedited Registration and FOIA, 86 Fed. Reg. 21990 (Apr. 26, 2021); Small Claims Procedures for Library and Archives Opt-Outs and Class Actions, 86 Fed. Reg. 49273 (Sept. 2, 2021); 86 Fed. Reg. 53897; CCB: Active Proceedings and Evidence, 86 Fed. Reg. 69890 (Dec. 8, 2021); CCB: Representation by Law Students and of Business Entities, 86 Fed. Reg. 74394 (Dec. 30, 2021).

[13] CASE Act Regulations: Expedited Registration and FOIA, 86 Fed. Reg. 46119 (Aug. 18, 2021) (corrected 87 Fed. Reg. 24056 (Apr. 22, 2022)); CCB: Initiating of Proceedings and Related Procedures—Designation of Agents for Service of Process, 87 Fed. Reg. 12861 (Mar. 8, 2022); Small Claims Procedures for Library and Archives Opt-Outs and Class Actions, 87 Fed. Reg. 13171 (Mar. 9, 2022); CCB: Initiating of Proceedings and Related Procedures, 87 Fed. Reg. 16989 (Mar. 25, 2022) (corrected 87 Fed. Reg. 24056); CCB: Law Student and Business Entity Representation, 87 Fed. Reg. 20707 (Apr. 8, 2022); CCB: Active Proceedings and Evidence, 87 Fed. Reg. 30060 (May 17, 2022) (corrected 87 Fed. Reg. 36060 (June 15, 2022)).

[14] *See* CCB: District Court Referrals; Proof of Service Forms; Default Proceedings; Law Student Representation, 88 Fed. Reg. 42294 (July 31, 2023); CCB: Agreement-Based Counterclaims, 88 Fed. Reg. 48380 (July 27, 2023); CCB: Final Determination Certification, 89 Fed. Reg. 80743 (Oct. 4, 2024).

The Office also hired the Copyright Claims Officers ("CCOs"), Copyright Claims Attorneys ("CCAs"), and staff for the CCB and, with support from the Library of Congress's Office of the Chief Information Officer, built a standalone CCB website and an electronic filing and case management system ("eCCB"). After the necessary protocols, rules, and infrastructure were established, including virtual hearing facilities and physical office space, the CCB launched on June 16, 2022.[15]

The CCB is now in its fourth year of serving small copyright claims litigants. During this time, it has received over 1,700 claims from all over the United States and around the world.

Recognizing that "with any unprecedented program, it is difficult to predict all of the contingencies that might arise once it becomes operational," the Copyright Small Claims Report recommended that the Office issue a report to Congress after the CCB's first three years of operation.[16] Consistent with this recommendation, the CASE Act requires the Register of Copyrights to conduct a study within three years of the CCB's first determination ("CASE Act Report" or "Report"), which occurred on February 15, 2023.[17] The study is to address the following topics:

1. The use and efficacy of the CCB in resolving copyright claims, including the number of proceedings the CCB could reasonably administer.
2. Whether adjustments to the authority of the CCB are necessary or advisable, including with respect to (1) eligible claims, such as claims under section 1202 of Title 17, United States Code; and (2) works and applicable damages limitations.
3. Whether greater allowance should be made to permit awards of attorneys' fees and costs to prevailing parties, including potential limitations on such awards.

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[15] The CASE Act directed the CCB to begin operations within a year of its enactment, but the Register exercised her statutory authority to extend that deadline by 180 days. Pub. L. No. 116-260, § 212(d), 134 Stat. at 2199. As a result of these experiences, the Office has developed substantial expertise concerning the work required to stand up a small claims tribunal, which has been shared with other government entities. *See* JEREMY S. GRABOYES ET AL., ADMIN. CONFERENCE OF THE U.S.: OFFICE OF THE CHAIR, PATENT SMALL CLAIMS (2023).

[16] Copyright Small Claims Report at 132.

[17] Pub. L. No. 116-260, § 212(e), 134 Stat. at 2199–2200.

4. Potential mechanisms to assist copyright owners with small claims in ascertaining the identity and location of unknown online infringers.
5. Whether the CCB should be expanded to offer mediation or other nonbinding alternative dispute resolution services to interested parties.
6. Such other matters as the Register of Copyrights believes may be pertinent concerning the CCB.[18]

The Office issued a Notice of Inquiry on March 10, 2025 ("NOI"), seeking public comment on these topics, along with additional questions about the CCB's use and efficacy.[19] In response, we received twenty-three comments from parties representing diverse interests, though commenters did not address all topics set forth in the NOI.[20] The Office also consulted extensively with the CCB's staff to obtain their views. In this Report, we draw on commenters' responses and the CCB's helpful input and expertise, as well as our own experience working with the CCB.[21]

Overall, we conclude that the CCB has been quite successful. It has served effectively as a pioneering forum for copyright disputes of relatively low economic value and delivered results by resolving disputes, facilitating settlements, and assisting members of the public. Its determinations have been praised as thorough, fair, and balanced. It has provided a recourse for many who otherwise would be unable to enforce their rights, which has, in turn, enhanced the value of their copyrights and

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[18] *Id.*

[19] CASE Act Study, 90 Fed. Reg. 11625, 11627 (Mar. 10, 2025).

[20] Comments received in response to the Office's Notice of Inquiry are available at https://www.copyright.gov/policy/CASE-study/. References to the public comments are by party name (abbreviated where appropriate), followed by "Initial Comments" or "Reply Comments." While the Office received nearly two dozen comments, it received only one from an actual party in a CCB proceeding. *See* Kristina McGowan Initial Comments. As the Office continues to monitor and evaluate the CCB, we will explore ways to increase CCB parties' participation in the future.

[21] We do not, however, analyze or opine on the merits of specific proceedings. Although some comments reference specific proceedings or outcomes, the CASE Act contemplates that the CCB will reach its determinations independently and does not ask the Office to engage in review of substantive decisions in this study. 17 U.S.C. § 1503(b)(1) ("The Copyright Claims Board shall render the determinations of the Board in individual proceedings independently on the basis of the records in the proceedings before it and in accordance with the provisions of this title, judicial precedent, and applicable regulations of the Register of Copyrights."); *see also* Copyright Small Claims Report at 135–36 (recommending "[i]ndependence in [d]eterminations" language be included in statute).

public confidence in the effectiveness of the copyright system. However, as with any new and unprecedented tribunal, it is inevitable that there are areas for improvement. These primarily relate to the complexities and delays inherent in aspects of CCB proceedings, notably compliance review and service of process. Some improvements in these areas may be made by the Office through the CCB's regulations, internal policies and procedures, and materials and resources offered to the public. Others would require statutory amendment.

# II. OVERVIEW OF CCB OPERATIONS

## *A. Functions and Structure of the CCB*

The CCB is a tribunal for certain copyright-related claims seeking no more than $30,000 in damages.[22] It is housed within the Copyright Office, with proceedings conducted virtually,[23] enabling parties to participate regardless of their physical location.[24]

The CASE Act empowers the CCB to render determinations with respect to: (1) infringement claims,[25] (2) claims seeking a declaration of noninfringement,[26] and (3) misrepresentation claims in connection with a takedown notice or counternotice under the Digital Millennium Copyright Act (the "DMCA").[27] CCB determinations may include a monetary damages award,[28] but the CCB cannot issue injunctive relief.[29] A final determination may, however, include a requirement that a party ceases certain conduct where it has agreed to do so.[30]

Participation in a CCB proceeding is voluntary for both the claimant (the party who brings the claim) and the respondent (the party against whom a claim is brought).[31] The claimant has the choice to bring its claim either in the CCB or in federal court.[32] The

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[22] 17 U.S.C. § 1504(e)(1)(A). With respect to infringement claims, the CCB may award either actual damages or statutory damages, within the statute's damages limitations. *Id.* § 1504(e)(1).

[23] *Id.* §§ 1502(a), 1506(c).

[24] Though persons or entities located outside the United States can bring claims in the CCB, claims other than counterclaims cannot be asserted against any person or entity who resides outside the United States. *See id.* § 1504(d).

[25] *Id.* § 1504(c)(1).

[26] *Id.* § 1504(c)(2).

[27] *Id.* § 1504(c)(3); *see also id.* § 512(f). The CCB may also hear specific types of counterclaims that arise out of the same transaction or occurrence as the claim. *Id.* § 1504(c)(4).

[28] *Id.* § 1504(e)(1).

[29] *See id.* § 1504(e).

[30] *Id.* § 1504(e)(2). The agreement must also be reflected in the proceeding's record. *Id.* § 1504(e)(2)(B).

[31] *Id.* § 1504(a).

[32] *Id.*

respondent has sixty days after proper service of the notice and the claim to decide whether to participate in the proceeding or to opt out.[33] If it chooses to opt out, the proceeding is dismissed without prejudice,[34] and the claimant still has the option to pursue the claim in federal court.

The CCB consists of three CCOs who are appointed to renewable, staggered six-year terms.[35] Their duties include ensuring that claims and defenses are properly asserted and appropriate for the CCB's resolution, managing proceedings, rendering determinations, and facilitating settlement.[36]

Three CCAs also support the CCB's work, each of whom has at least three years of copyright experience.[37] Their duties include supporting CCOs with the CCB's operations and assisting members of the public in understanding its procedures and requirements.[38] Additionally, the CCB employs a Paralegal Specialist and a Program Specialist.

### *B. Overview of CCB Proceedings*

A CCB proceeding begins with an "initial phase," which includes the filing of a claim, review of that claim for statutory and regulatory compliance ("compliance review"), service, and the opt-out period. Next is the proceeding's "active phase," which begins when the opt-out period concludes, and involves discovery, party submissions to the CCB, any hearing, and the final determination.

#### 1. Initial Phase

To commence a CCB proceeding, the CASE Act requires a claimant to file a claim and submit the first of two filing fees.[39] The claim generally must be submitted using an

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[33] *Id.* § 1506(i).

[34] *Id.*

[35] *Id.* § 1502(b)(1), (b)(5).

[36] *Id.* § 1503(a)(1).

[37] *Id.* § 1502(b)(2), (b)(3)(B).

[38] *Id.* § 1503(a)(2).

[39] *Id.* § 1506(e)(3). The CCB's regulations established a two-tiered fee system, in which claimants submit a first filing fee when submitting their claim and a second fee only if and when the proceeding enters the

electronic form available through eCCB.[40] This form requires information about the type of claim asserted (infringement, noninfringement, or misrepresentation), contact information for the claimant (and its representative, if applicable) and the respondent, specific information concerning the nature of the claim, a description of the harm suffered and any relief sought, and a signed certification.[41] Throughout the form, claimants enter information in fillable text boxes or select predetermined responses in drop-down and multiple-choice fields. They may also provide supplemental documents that "play[] a significant role in setting forth the facts of the claim," such as copies of their work or the allegedly infringing work.[42]

The claim then undergoes compliance review,[43] to determine whether it complies with the CASE Act and regulations.[44] During compliance review, the CCB ensures that the claim asserts permissible causes of action and remedies and is within the CCB's jurisdiction.[45] It also determines whether the claim should be dismissed because it is unsuitable for the CCB's resolution[46] or because the allegations "clearly do not state a claim upon which relief can be granted."[47]

If the CCB finds that the claim is noncompliant, it will issue a "noncompliance order" that notifies the claimant of the claim's deficiencies and provides two

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"active phase." 37 C.F.R. § 201.3(g); *see also id.* § 222.7(a)(1) (discussing payment of the second filing fee); *see infra* Part II.B.2.

[40] *See* 37 C.F.R. § 222.2(b).

[41] *See id.* § 222.2(c)–(f); *see also* 17 U.S.C. § 1506(e)(1) (requiring claim to be accompanied by "a statement of material facts in support of the claim").

[42] 37 C.F.R. § 222.2(d).

[43] 17 U.S.C. § 1506(f)(1).

[44] *Id.* § 1506(f)(1); 37 C.F.R. § 224.1.

[45] *See* 37 C.F.R. § 224.1(a). The CCB may not hear claims against federal or state government entities, claims against persons or entities residing outside the United States, or claims that have already been adjudicated or are currently pending before a court, unless that court has granted a stay so that the CCB can hear the claim. *See* 17 U.S.C. § 1504(d).

[46] *See* 37 C.F.R. § 224.2(a). Under the CASE Act, the CCB may dismiss a claim if it concludes that the claim "is unsuitable for [its] determination." 17 U.S.C. § 1506(f)(3).

[47] *See* 37 C.F.R. § 224.1(b)(3).

opportunities, each lasting thirty days, to file an amended claim that addresses the deficiencies.[48] Each amended claim will undergo an additional compliance review.[49]

If the claimant is unable to file a compliant claim during this process, or fails to timely file, the claim will be dismissed without prejudice.[50]

If the CCB determines that a claim or amended claim is compliant, it will notify the claimant and direct it to proceed with service on the respondent of the notice of the proceeding and a copy of the claim.[51]

The CASE Act permits service to be effected by various methods, depending on whether a respondent is an individual[52] or a corporation, partnership, or unincorporated association (collectively, a "business entity"). Business entities may designate a service agent in the CCB's Designated Service Agent Directory; if they have done so, service must be made on that designated service agent.[53] For individuals and business entities that have not designated a service agent, service may be effected "by complying with State law for serving a summons in an action brought in courts of general jurisdiction in the State where service is made," in addition to the other

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[48] 17 U.S.C. § 1506(f)(1)(B); 37 C.F.R. § 224.1(c)(2).

[49] 17 U.S.C. § 1506(f)(1)(B); 37 C.F.R. § 224.1(c)(2).

[50] 17 U.S.C. § 1506(f)(1)(B); 37 C.F.R. § 224.1(d).

[51] 17 U.S.C. § 1506(f)(1), (g); 37 C.F.R. § 222.5(b)(1). The notice "set[s] forth the nature of the Copyright Claims Board and proceeding, the right of the respondent to opt out, and the consequences of opting out and not opting out," along with a "prominent statement" concerning the consequences of failing to timely opt out. 17 U.S.C. § 1506(g)(1).

[52] Claimants may serve individual respondents by "delivering a copy of the notice and claim to the individual personally," "leaving a copy of the notice and claim at the individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there," or "delivering a copy of the notice and claim to an agent designated by the respondent to receive service of process or, if not so designated, an agent authorized by appointment or by law to receive service of process." 17 U.S.C. § 1506(g)(4).

[53] 17 U.S.C. § 1506(g)(5)(A); 37 C.F.R. § 222.5(b)(2)(ii). When a business entity has not designated a service agent, service may be completed by "delivering a copy of the notice and claim to an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process in an action brought in courts of general jurisdiction in the State where service is made and, if the agent is one authorized by statute and the statute so requires, by also mailing a copy of the notice and claim to the respondent." 17 U.S.C. § 1506(g)(5)(A)(ii).

methods specified by the CASE Act.[54] A claimant may also request that a respondent waive personal service by following certain requirements.[55] The available service methods largely mirror those set forth in the Federal Rules of Civil Procedure.[56]

Once the respondent receives notice of the claim, it may choose to opt out of the CCB proceeding within sixty days.[57] If a respondent submits an opt-out notice within the required time period,[58] the proceeding must be dismissed without prejudice.[59]

### 2. Active Phase

If a respondent does not opt out within the sixty-day period, the claim enters the active phase.[60] In this phase, parties exchange information and evidence and make their case to the CCB. The CCB will then issue a final determination on the merits, unless the parties settle first.

The active phase has two "tracks": a "standard" track and a "smaller claims" track, with the latter intended to be a more streamlined alternative.

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[54] 17 U.S.C. § 1506(g)(4)(A), (5)(A)(i).

[55] *Id.* § 1506(g)(6); 37 C.F.R. § 222.5(c). A respondent who chooses to waive service still has the right to opt out of the proceeding, and if they choose to waive service and do not opt out, they will receive an additional thirty days to file a response to the claim. 17 U.S.C. § 1506(g)(7).

[56] *See* FED. R. CIV. P. 4. Regardless of the service method used, service of CCB claims may only be effected within the United States. 17 U.S.C. § 1506(g)(9). A claimant must file proof of service with the CCB within ninety days of the notice of compliance and within seven days of service. *See id.* § 1506(g); 37 C.F.R. § 222.5(b)(3)(i), (c)(5). Within twenty days of the filing of the proof of service, the CCB issues a separate notice to the respondent to notify them of the pending proceeding (provided that the respondent has not yet opted out). 37 C.F.R. § 222.4(b); *see also* 17 U.S.C. § 1506(h). As with the notice that accompanies service of the claim, this notice "include[s] information concerning the respondent's right to opt out of the proceeding, the consequences of opting out and not opting out, and a prominent statement" of the consequences of failing to timely opt out, along with other information specified by the CCB's regulations. *See* 17 U.S.C. § 1506(h)(1); 37 C.F.R. § 222.4(a).

[57] 17 U.S.C. § 1506(i); 37 C.F.R. § 223.1(a), (e).

[58] The CCB may extend the sixty-day opt-out period in exceptional circumstances and in the interest of justice, upon written notice to the claimant. 17 U.S.C. § 1506(i); 37 C.F.R. § 223.1(f).

[59] 17 U.S.C. § 1506(i); 37 C.F.R. § 223.1(a).

[60] 17 U.S.C. § 1506(i); *see also* H.R. REP. NO. 116-252, at 32 (discussing the consequences of a respondent not opting out); S. REP. NO. 116-105, at 13 (2019) (same).

### a) Standard Proceedings

As the first step of the active phase, the CCB issues an order directing the claimant to pay a second filing fee[61] and requiring all parties to register for eCCB.[62] The CCB will then issue a scheduling order outlining key dates and deadlines.[63]

The first deadline in the scheduling order is the response to the claim, which provides the respondent the opportunity to dispute any facts in the claim, provide its version of events, and assert any defenses or counterclaims.[64]

One of the CCOs will then hold a virtual conference with the parties to start the limited discovery process.[65] In discovery, the parties will exchange information and documents relevant to the issues in the proceeding.[66] Discovery is circumscribed "[t]o ensure that the proceedings are streamlined and efficient."[67]

Discovery is typically conducted through the use of standard forms, which are available on the CCB's website.[68] These standard forms set forth the written questions each party must respond to and the documents it must furnish, based on the type of

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[61] The CCB has a two-tiered fee system, in which a claimant pays $40 when the claim is filed and a second filing fee $60 only if the proceeding goes active. 37 C.F.R. §§ 201.3(g), 222.7(a)(1).

[62] *Id*. § 222.7(a). The claimant who filed the claim will have registered for eCCB at the time of filing, but any other parties who have not yet registered for eCCB will be directed to do so at this point. Parties have fourteen days to complete these tasks. *Id*. If the claimant still has not paid the second filing fee fourteen days after the order, the CCB will issue a second notice providing an additional fourteen days to pay it. *Id*. § 222.7(c). If the second filing fee remains unpaid after the extended deadline, the proceeding will be dismissed without prejudice. *Id*.

[63] 17 U.S.C. § 1506(k).

[64] 37 C.F.R. § 222.9(e); *id.* § 222.8(b)(7). If the respondent asserts a counterclaim, it will go through compliance review, after which the original claimant will have thirty days to file a response. 17 U.S.C. § 1506(f)(2); 37 C.F.R. § 222.10.

[65] 17 U.S.C. § 1506(l); 37 C.F.R. § 222.11(b)(2).

[66] 17 U.S.C. § 1506(n); 37 C.F.R. § 222.11(b)(3)–(6). Discovery materials are generally exchanged between the parties via email and are not filed on eCCB, unless they are used as evidence in support of another filing, such as written testimony or in connection with a discovery dispute. 37 C.F.R. § 222.5(e).

[67] H.R. REP. NO. 116-252, at 17.

[68] *See* 37 C.F.R. §§ 225.1(a), 225.2(a), 225.3(a); *see also CCB Proceeding Phases*, CCB, https://ccb.gov/proceedings/ (last visited Feb. 9, 2025).

claim at issue.[69] Parties may request additional discovery, but such requests "must be narrowly tailored to the issues at hand" and "highly likely to lead to the production of information relevant to the core issues of the matter, and not result in an undue burden on the party responding to the request."[70]

After discovery is complete, a CCO will hold a virtual status conference.[71] After that, the parties will present their positions to the CCB in written testimony. The claimant's direct testimony will consist of a written statement that sets forth its position as to the key facts and damages, as well as any supporting position on the law,[72] along with any documentary evidence or witness statements.[73] Forty-five days later, the respondent will submit testimony, which similarly consists of a written statement and any documentary evidence or witness statements.[74] Twenty-one days after that, the claimant may file reply testimony, which "must be limited to addressing or rebutting specific evidence set forth in written response testimony" and also consists of a written statement and any documentary evidence or any witness statements.[75]

After the submission of written testimony, the CCB may decide to hold a virtual hearing with the parties "to receive oral presentations on issues of fact or law from

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[69] 37 C.F.R. §§ 225.2, 225.3.

[70] *Id.* § 225.4(a)(1). The CCB will only grant such a request "upon a showing of good cause," after balancing "the needs and circumstances of the case against the burden of additional discovery on any party, along with the amount in dispute and the overall goal of efficient resolution of the proceeding." *Id.* § 225.4(a)(2). In addition to requesting interrogatories or requests for production beyond those set forth in the standard forms, parties may request leave of the CCB to serve requests for admission or introduce expert witnesses. However, requests for admission are "disfavored" and will only be permitted "upon a showing of good cause." *Id.* § 225.4(c). While technically permitted, expert witnesses are limited to "exceptional cases," and their use is "highly disfavored"; requests for the use of expert witnesses will be "rarely granted." *Id.* § 225.4(b). Depositions are not permitted. *Id.* § 225.4(d). To date, no CCB proceeding has had an expert witness, and additional discovery is fairly uncommon.

[71] *Id.* § 225.1(c).

[72] Given that the CCB is intended for *pro se* parties and those with limited exposure to copyright law, there is no expectation that such parties engage in legal argument in their submissions to the CCB.

[73] 37 C.F.R. § 222.15(b).

[74] *Id.* §§ 225.4(b), 222.15(a)–(b).

[75] *Id.* § 222.15(c).

parties and witnesses to a proceeding, including oral testimony."[76]

As the final step in the active phase, the CCB issues a final determination in writing to "include an explanation of [its] factual and legal basis," and provide "a clear statement of all damages and other relief awarded."[77] A majority of the CCB must concur in the determination.[78] A party may challenge the determination in limited circumstances.[79] The CASE Act also provides a mechanism to confirm the relief ordered in federal court in the event that the losing party fails to comply.[80]

**b) Smaller Claims Proceedings**

The CASE Act directed the Register of Copyrights to establish regulations for a separate process for claims seeking no more than $5,000 in damages, to be heard by "not fewer than [one] Copyright Claims Officer."[81] The Senate Judiciary Committee described this as a "micro-claims process" that "was created in recognition that the Copyright Office might be able to expend less money and resources on even smaller

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[76] 17 U.S.C. § 1506(p); 37 C.F.R. § 222.16.

[77] 17 U.S.C. § 1506(t)(1)(B).

[78] *Id.* § 1506(t)(1)(A). A CCO who does not concur with the majority may append a dissenting statement to the determination. *Id.* § 1506(t)(2).

[79] Parties may request that the CCB reconsider its determination, but only if there was a "a clear error of law or fact material to the outcome, or a technical mistake." *See* 17 U.S.C. § 1506(w); 37 C.F.R. § 230.2. As of December 31, 2025, parties had filed requests for reconsideration in only five proceedings. If a party's request for reconsideration is denied, the party may then submit a request for review of the final determination by the Register of Copyrights. 17 U.S.C. § 1506(x); 37 C.F.R. § 231.1, 231.2. The Register's review is limited to whether the CCB abused its discretion in denying the reconsideration of the determination. 37 C.F.R. § 231.5. As of December 31, 2025, parties had filed requests for Register's review in two proceedings. A party may challenge a CCB determination in federal district court only in the specific circumstances identified in the CASE Act. A court may order a CCB determination to be vacated, modified, or corrected only if a party can show that (1) "the determination was issued as a result of fraud, corruption, misrepresentation, or other misconduct;" (2) "the Copyright Claims Board exceeded its authority or failed to render a final determination concerning the subject matter at issue;" or, (3) "[i]n the case of a default determination or determination based on a failure to prosecute, . . . it is established that the default or failure was due to excusable neglect." 17 U.S.C. § 1508(c)(1)(A)–(C).

[80] *See id.* § 1508(a).

[81] *Id.* § 1506(z).

claims."[82] The CCB's regulations accordingly set forth procedures for smaller claims that were intended to be more streamlined than standard proceedings and presided over by a single CCO.[83]

When filling out the claim form, a claimant can select this smaller claims track.[84] Smaller claims proceedings mirror standard proceedings up through the point of the filing of the response,[85] but then begin to diverge. In addition to being heard by a single CCO, smaller claims proceedings rely more on conferences and allow the presiding CCO to take a more active role in case management, and written submissions and discovery are more limited than in standard proceedings. In contrast to standard proceedings, the CCO is required to prepare proposed findings of fact prior to issuing a final determination.

After the respondent files the response, the CCO will hold an initial conference to discuss the nature of the claims and any defenses, and the possibility of settlement, as well as "whether additional documents and information beyond any materials attached to the claim and response are necessary to reach a determination," in lieu of more expansive discovery.[86] Any resulting discovery orders must be "narrowly tailor[ed]" to seek only information that is "highly likely to lead to the production of information relevant to the core issues of the matter and not result in an undue burden on any party."[87]

After the parties exchange discovery materials, the CCO will schedule a date for a merits conference, during which the parties will orally present their case and answer questions.[88] Unlike hearings in standard proceedings, the merits conference is mandatory. Fourteen days before the merits conference, each party must file the evidence it wishes to have considered, along with any other evidence requested by the

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[82] S. REP. NO. 116-105, at 8.

[83] 37 C.F.R. pt. 226.

[84] *Id.* § 226.2.

[85] *Id.* § 226.1.

[86] *Id.* § 226.4(c)(2).

[87] *Id.*

[88] *Id.* § 226.4(d)(4).

CCO.[89] Each party also has the option of submitting a written statement and witness statements.[90]

After the merits conference, the CCO prepares proposed findings of fact,[91] and each party may submit a response within twenty-one days.[92] As in standard proceedings, the active phase ends in a final determination issued by the CCO.[93] A final determination issued in these smaller claims proceedings "shall have the same effect as a determination issued by the entire Copyright Claims Board."[94]

**c) Default Procedures**

During the active phase, a respondent who has not opted out and subsequently fails to meet a filing deadline or other requirement without justifiable cause is at risk of defaulting.[95] By design, the CCB's default procedures are more protective of respondents than those in federal court. While federal courts "generally limit themselves to evaluating the plaintiff's well-pleaded allegations and any materials attached to the complaint," the CASE Act requires the claimant to submit evidence beyond what was included in the pleadings, and mandates the CCB to "carefully scrutinize the available evidence, . . . and consider applicable affirmative defenses such as fair use, where warranted by the circumstances of the case."[96] Accordingly, "[r]elative to federal courts, the Copyright Claims Board has both more statutory authority and a greater obligation to scrutinize the merits of a claim."[97]

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[89] *Id.* § 226.4(d)(2).

[90] *Id.*

[91] *Id.* § 226.4(e).

[92] *Id.* § 226.4(e)(1).

[93] *Id.* § 226.4(f).

[94] 17 U.S.C. § 1506(z). These determinations may similarly be challenged before the CCB, the Register, and federal court in limited circumstances, *see id.* §§ 1506(w), 1506(x), 1508(c)(1); 37 C.F.R. §§ 230.2, 231.1, 231.2, or enforced in federal court where necessary. *See* 17 U.S.C. § 1508(a).

[95] *See* 17 U.S.C. § 1506(y); 37 C.F.R. § 227.1. The CCB has similar procedures for instances where a claimant fails to prosecute a claim by missing a deadline or other requirement without justifiable cause. *See* 17 U.S.C. § 1506(v)(2); 37 C.F.R. § 228.2.

[96] H.R. REP. NO. 116-252, at 24–25.

[97] *Id.*

If a respondent fails to meet a deadline or other requirement, the CCB will issue a notice to the respondent through eCCB, by mail, and to all known email addresses, providing thirty days to cure the missed deadline or requirement.[98] If the respondent cures the deficiency, the proceeding will resume.[99]

If the respondent does not cure the deficiency, the CCB will direct the claimant to submit written direct testimony in support of its claim.[100] In evaluating the claimant's submissions, the CCB must "consider whether the respondent or counterclaim respondent has a meritorious defense."[101] If it determines that the respondent has a meritorious defense, or the claimant otherwise has not sufficiently supported its claim, the claim may be dismissed without prejudice.[102]

On the other hand, if the evidence supports the claim, the CCB will issue written notice, along with a proposed default determination, to the respondent at all of its known mailing and email addresses.[103] The respondent then has thirty days to respond.[104] After considering any evidence from the respondent and any response to

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[98] 37 C.F.R. § 227.1(b). If the respondent still has not cured the issue after fifteen days, the CCB will issue a second notice reminding the respondent of the thirty-day deadline. *Id.*

[99] *Id.* § 227.1(c). If the respondent does not cure the deficiency but submits a response indicating an intent to reengage with the proceeding, the CCB has the discretion to provide the respondent with additional time to cure the deficiency. *Id.*

[100] 17 U.S.C. § 1506(u)(1); 37 C.F.R. § 227.2(a); *see also supra* Part II.B.2.a. The CCB may also request additional evidence from the claimant that is within their possession. 37 C.F.R. § 227.2(b); 17 U.S.C. § 1506(u)(1) (providing that CCB may consider claimant's evidence "and any other requested submissions from the claimant" in support of default).

[101] 37 C.F.R. § 227.3.

[102] *Id.*; *see also* 17 U.S.C. § 1506(u)(1) (stating that CCB "shall determine whether the materials so submitted are sufficient to support a finding in favor of the claimant under applicable law"). Prior to dismissal, the CCB will issue a proposed dismissal order, and the claimant will have thirty days to submit a response. 37 C.F.R. § 227.3(a)(2). The CCB will then either maintain the proposed order or amend it. *Id.*

[103] 17 U.S.C. § 1506(u)(2); 37 C.F.R. § 227.3.

[104] 37 C.F.R. § 227.3(c); *id.* § 227.4(a). The response generally must take the form of written testimony, but the CCB also has discretion to provide a respondent with additional time if it indicates an intent to submit evidence in response to the proposed default determination. *Id.* § 227.4(a). The CCB may also hold a hearing at its discretion. *Id.* § 227.4(c).

that evidence from the claimant, the CCB will issue a final determination.[105]

A default determination is subject to challenge in some scenarios. A respondent may request that a default determination be vacated, and the CCB may grant such a request if it is in the interests of justice.[106] Otherwise, the respondent's recourse is to challenge the default determination in federal district court to the extent permitted by the CASE Act, such as if the default determination was issued due to excusable neglect by the defaulting party.[107]

[105] 17 U.S.C. § 1506(u)(3)–(4); 37 C.F.R. §§ 227.4(b)–(c), 227.5. If the respondent submits a response, the resulting determination is considered a final determination rather than a default determination. 17 U.S.C. § 1506(u)(3). Otherwise, the resulting determination is a default determination. *Id.* § 1506(u)(4).

[106] 17 U.S.C. § 1506(u)(4); 37 C.F.R. § 227.4(c).

[107] 17 U.S.C. §§ 1506(u)(4), 1508(c)(1).

# III. ANALYSIS AND EVALUATION

In the CASE Act, Congress directed the Office to study five specific topics: the CCB's use and efficacy, whether the CCB's authority should be adjusted, whether prevailing parties should receive awards of attorneys' fees and costs, the possibility of additional mechanisms to assist with identifying and locating unknown online infringers, and whether the CCB should be expanded to offer mediation or other nonbinding alternative dispute resolution ("ADR") services.[108] Additionally, Congress invited the Register to address any other pertinent matters.[109]

## *A. The Use and Efficacy of the CCB*

The CASE Act directs the Office to study "[t]he use and efficacy of the Copyright Claims Board in resolving copyright claims,"[110] which involves an evaluation of the extent to which the CCB has been utilized and how effective it has been at achieving its purposes. The Office concludes that the CCB has been widely utilized by a variety of both claimants and respondents, and it has been effective in resolving copyright claims in a fair and thorough manner. Nevertheless, there are aspects of the CCB's operations that should be improved.

### 1. The Use of the CCB

Prior to the CCB's launch, it was difficult to predict how much a copyright small claims tribunal would be used.[111] While there appeared to be strong demand for such a tribunal, it was possible that claims would be limited or that respondents would opt out at a high rate, with few claims progressing to the active phase. The Office is pleased to report that this concern has not materialized; there has been significant demand for the CCB since its launch.[112]

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[108] Pub. L. No. 116-260, § 212(e), 134 Stat. at 2199–2200.

[109] *Id.*

[110] *Id.*

[111] *See* S. REP. NO. 116-105, at 7 ("[I]t is initially unknown how many potential claims will be brought before the Board, how many respondents will opt out, and how long on average the Board will take to hear a claim.").

[112] *See* Authors Guild Initial Comments at 1 ("[T]he widespread use of the CCB, even at this still-early stage of its operations, shows that it is filling a real need for those seeking a forum to resolve lower-dollar-value copyright disputes.").

To date, claimants have filed over 1,700 claims with the CCB. The claim rate has remained fairly steady over the first three years of operations: 487 claims were filed in the first year, 393 in the second year, and 462 in the third year. The CCB is currently on track to have its busiest year yet, with 340 claims filed between June 16, 2025 and December 31, 2025—a rate of 1.7 claims filed per day.[113] If this trend holds, the CCB will see over 600 claims in its fourth year.

As envisioned by Congress,[114] *pro se* claimants have widely utilized the CCB. As of December 31, 2025, approximately 66.6% of claimants were self-represented individuals. An additional 16.7% of claimants were represented by in-house counsel or an authorized business representative. Only 16.7% of claimants retained outside counsel. In contrast, respondents were less likely to appear *pro se*: 37.2% of respondents retained counsel, while 30.7% were self-represented individuals, with an additional 30.7% represented by in-house counsel or an authorized business representative. Law students have formally appeared on behalf of only six parties so far.

While copyright infringement is by far the most common cause of action, claimants have also asserted a substantial number of misrepresentation and noninfringement claims. As of December 31, 2025, claimants had filed 1,503 infringement claims, 67 noninfringement claims, and 301 misrepresentation claims.[115] The CCB has heard claims regarding the full range of copyrightable types of works. As of December 31, 2025, pictorial, graphic, and sculptural works were the most common type of work at issue (36%), followed by motion pictures and other audiovisual works (24%), literary works (13%), sound recordings (11%), musical works (5%), dramatic works (2%), and software (2%).[116] Claimants have hailed from all fifty states, the District of Columbia, and Puerto Rico, plus four dozen countries from around the world.

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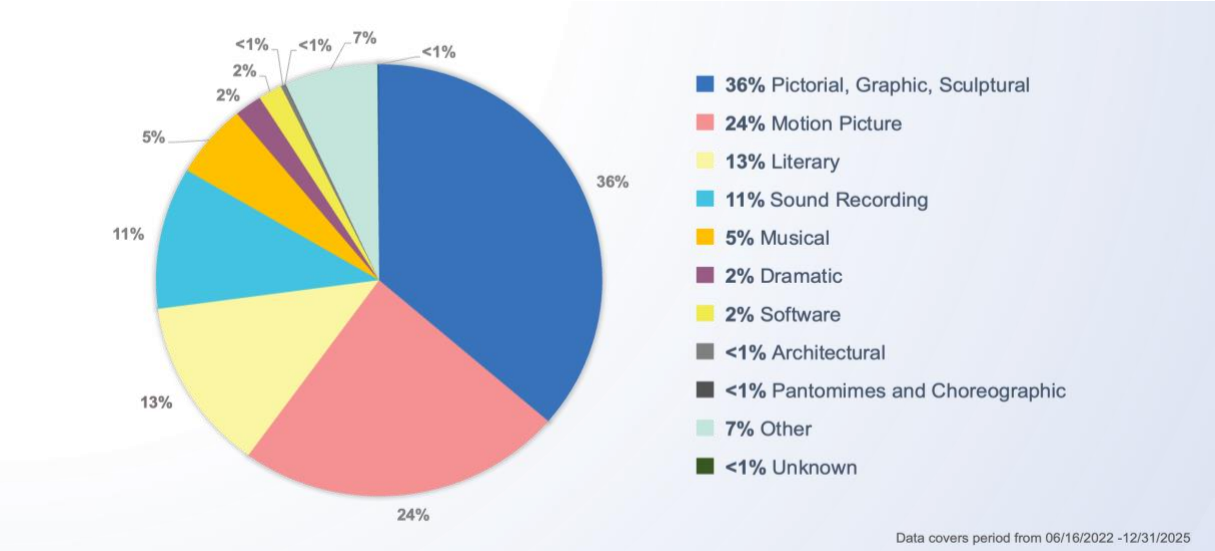
[113] 1.3 claims were filed per day in the CCB's first year, 1.1 claims per day in its second year, and 1.3 claims per day in its third year.

[114] *See* H.R. REP. NO. 116-252, at 17 ("The copyright small claims process the bill establishes is intended to be accessible especially for *pro se* parties and those with little prior formal exposure to copyright laws who cannot otherwise afford to have their claims and defenses heard in federal court.").

[115] In some proceedings, claimants assert multiple types of claims.

[116] Architectural works, pantomimes, and choreographic works were the least common types of works at issue in CCB claims, each making up less than one percent.

In sum, a diverse group of claimants have made use of the CCB to assert claims with respect to a broad range of works. In this respect, the CCB has been a marked success.[117]




The CCB has also seen a moderate rate of opt outs. Prior to its launch, it was unclear whether demand for the CCB would be undercut by a high opt-out rate.[118] This has not come to pass. As of December 31, 2025, 181 respondents had filed opt-out notices, and 152 proceedings were dismissed because all respondents had opted out—

[117] Authors Alliance argued that the overall number of copyright claims in federal court has not decreased since the CCB launched, suggesting that the CCB has not been an effective alternative. *See* Authors Alliance Initial Comments at 4. Copyright Alliance responded to this argument by pointing out that the number of claims in federal court is not indicative of a deficiency with the CCB, explaining that the purpose of the CCB is instead to offer an alternative solution to federal court; parties that traditionally would have pursued their claims in federal court are likely to continue doing so, whereas parties who would not have the resources to pursue claims in federal court now have a forum. Copyright Alliance Reply Comments at 2–3; *see also* NPPA Reply Comments at 2. The Office agrees that the rate of copyright claims in federal court is not an informative metric for evaluating the utilization of the CCB because the purpose of the CCB is to provide an enforcement option for parties who would otherwise lack one, rather than to divert cases from federal court.

[118] *See* DMLA Initial Comments at 2 ("[W]e . . . are encouraged that the opt-out rate is far less than initially speculated before the CCB was launched."); SFWA Initial Comments at 3 ("Although in our initial comments on the CCB while it was being developed, we worried that opt-outs would be very common, but that hasn't been the case.").

translating to an opt-out rate of roughly one-third.[119] Both large corporations and individual respondents have declined to opt out, indicating that respondents of all sizes and levels of legal sophistication are open to appearing in this forum.

Concerns were also raised that the CCB would serve as a magnet for abusive or "trolling"[120] behavior.[121] In light of this, Congress expressed a "strong desire that the Register and Board work together to deter and appropriately sanction any bad faith behavior, especially copyright trolling."[122] Both the CASE Act and the CCB's regulations include detailed procedures to prevent and address bad-faith conduct.[123]

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[119] It is difficult to calculate an opt-out rate with precision. If the number of opt outs is compared against the number of claims that reached the active phase (*i.e.*, claims for which the CCB issued an order directing the claimant to pay the second filing fee), the opt-out rate is approximately 41%. However, this does not account for claims that were dismissed before the active phase, such as those that were settled between the parties. If the number of opt outs is compared to the number of claims that were deemed compliant and approved for service, while excluding claims that were dismissed due to a failure to file a valid proof of service, then the opt-out rate is approximately 32%. But similarly, this would not account for claims that were dismissed prior to service. It is also possible that some respondents were unaware of the proceeding against them due to improper service or did not take notice of the proceeding seriously due to lack of knowledge of the CCB. Such respondents may have ultimately defaulted rather than opting out. This would not be reflected in these calculations of the opt-out rate. *See infra* Part III.A.3(f).

[120] As Professor Matthew Sag notes, "[d]efining exactly what makes an individual or an organization a troll is inevitably controversial." Matthew Sag, *Copyright Trolling, an Empirical Study*, 100 IOWA L. REV. 1105, 1108 (2015) (citing Lemley & Melamed, *Missing the Forest For The Trolls*, 113 COLUM. L. REV. 2117 (2013)).

[121] *See, e.g.*, Elec. Frontier Found., Comments Submitted in Response to U.S. Copyright Office's Mar. 23, 2021, Notice of Inquiry at 3 (Apr. 26, 2021) (expressing concern "about the misuse of CCB proceedings to monetize litigation and threats of litigation to coerce cash settlements, as distinguished from monetizing creative work itself or deterring infringement"); Engine, Comments Submitted in Response to U.S. Copyright Office's Mar. 23, 2021, Notice of Inquiry at 10 (Apr. 26, 2021) (expressing concern that CCB would be an "attractive venue" for copyright trolls but cautioning that "there are other forms of potential abuse that the Office should understand, and seek to reduce, while trying to implement the CASE Act").

[122] S. REP. NO. 116-105, at 8.

[123] In CCB proceedings, "bad-faith conduct" occurs when "a party pursue[s] a claim, counterclaim, or defense for a harassing or other improper purpose, or without a reasonable basis in law or fact." 17 U.S.C. § 1506(y)(2); *see also* 37 C.F.R. § 220.1(c). Allegations of bad-faith conduct may be made by a party to a CCB proceeding or *sua sponte* by the CCB. 37 C.F.R. § 232.3(b). If the CCB finds that a party acted in bad faith, it may award the affected party's reasonable costs and attorneys' fees as part of its determination. 17 U.S.C. § 1506(y)(2). Furthermore, if the CCB finds that a party acted in bad faith more

These provisions appear to be effective, as use of the CCB for abusive or bad-faith purposes has not been significant.[124] To further deter abuse, the CCB's regulations limit the number of proceedings a claimant may initiate in any twelve-month period, as well as the number of proceedings attorneys and law firms may file on behalf of a claimant.[125] Where bad-faith conduct has occurred, the CCB has demonstrated that it is able to identify the behavior and take appropriate action.[126]

A few commenters suggested ways to further decrease the incidence of bad-faith conduct. These included requiring repeat offenders to complete a course about the CCB

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than once within a 12-month period, that party also will be barred from initiating proceedings before the CCB for a 12 month-period following that finding. *Id.* § 1506(y)(3). Any pending proceedings initiated by the party must be dismissed without prejudice, except where those proceedings are in the active phase, in which case the proceedings cannot be dismissed without the respondent's written consent. *Id.*

[124] *See* SFWA Initial Comments at 3 ("We . . . were concerned that scammers and opportunists would be using the CCB as a way to scare innocent people into paying settlements. As far as we can tell, by and large neither have happened."); Copyright Alliance Initial Comments at 12–13 ("Through the proceedings in the CCB's docket, we have seen that, despite CASE Act critics stating that the small claims court would unleash massive numbers of frivolous claims and misuse of the system by bad-faith actors, there is no doubt that their dire predictions have failed to come to fruition. The statutory and regulatory rules to address bad-faith actors have been working and no changes are needed at this time.").

[125] *See* 37 C.F.R. § 233.2. In any twelve-month period, claimants may not file more than thirty proceedings, attorneys may not file more than forty proceedings, and law firms may not file more than eighty proceedings. *Id.* § 233.2(a)(3). Two commenters took issue with these limits on attorneys and law firms. Joe Keeley took the position that these provisions were not aligned with the CASE Act and recommended that they be repealed. Joe Keeley Initial Comments at 1–3. NPPA similarly argued that "[a] better scenario would be allowing the market to develop in this practice area." NPPA Reply Comments at 2. Although the Office understands the concerns raised, we believe that the limitation is statutorily supported because it ensures the "timely and efficient" operation of the CCB, CCB: Active Proceedings and Evidence, 87 Fed. Reg. 30065 (May 17, 2022), as mandated by the CASE Act, which requires the Register to "provide for the efficient administration of the Copyright Claims Board, and for the ability of the Copyright Claims Board to timely complete proceedings instituted under this chapter, including by implementing mechanisms to prevent harassing or improper use of the Copyright Claims Board by any party.'' 17 U.S.C. § 1510(a)(1). The term "party" is defined in the CASE Act to include parties' attorneys. *See id.* § 1501(3). While the Office stated it would continue to evaluate the impact of the limitation and revisit the issues raised when similar arguments were raised during the implementation rulemakings, *see* 87 Fed. Reg. 30065, we have not yet encountered any basis to warrant a change. For example, since the CCB's launch, no attorney or law firm has come close to reaching the limitations imposed by the regulations.

[126] *See generally* 37 C.F.R. §§ 232.3, 232.4.

and copyright law; scaled penalties proportional to the level of bad-faith conduct; and "higher monetary penalties, or additional restrictions on filing future claims" for repeat offenders.[127] While some commenters favored lengthening or making permanent the ban for repeated bad-faith conduct, others thought this was unnecessary or premature.[128] Additionally, commenters encouraged the CCB to provide more information to the public on bad-faith conduct standards and statistics.[129] Given that multiple commenters praised the effectiveness of the current statutory and regulatory framework in combatting bad-faith conduct, and none mentioned any examples experienced during CCB proceedings, the Office believes it is unnecessary to make alterations to the framework at this time.

Despite its small staff and full docket, the CCB, with the support of the Office of Public Information and Education, has engaged in extensive public outreach. Members of the CCB and the Office have appeared on podcasts, given interviews to the press, and drafted articles and blog posts. They have publicized the availability of the CCB during speaking engagements, held webinars explaining its procedures, and met with stakeholders and other interested groups. The robust and growing demand for the CCB's services reflects the success of these efforts.

### 2. The Efficacy of the CCB

In evaluating the CCB's efficacy, we examine how effective it has been at achieving its statutory purpose, namely providing a voluntary forum for the resolution of copyright claims that is particularly accessible for *pro se* parties, using streamlined and fair procedures.[130]

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[127] *See* Michael Ravnitzky Initial Comments at 5; Jonathan Bailey Initial Comments at 6; AIPLA Initial Comments at 1.

[128] *Compare* AIPLA Initial Comments at 1–2; NYIPLA Initial Comments at 5, *with* Jonathan Bailey Initial Comments at 5; Michael Ravnitzky Initial Comments at 5.

[129] AIPLA Initial Comments at 2; NYIPLA Initial Comments at 5; Michael Ravnitzky Initial Comments at 5–6.

[130] H.R. REP. NO. 116-252, at 17 (describing CCB as a "voluntary" forum with "streamlined and efficient" procedures that is "intended to be accessible especially for *pro se* parties and those with little prior formal exposure to copyright laws who cannot otherwise afford to have their claims and defenses heard in federal court"); *see also* S. REP. NO. 116-105, at 1–2 (describing impetus behind CASE Act, including difficulty and expense of retaining counsel for enforcing lower value copyright claims in federal court); 17

### a) Resolution of Copyright Claims

As a preliminary matter, the CCB has produced successful outcomes for a number of parties. The CCB issued forty-three final determinations as of December 31, 2025, and it has received praise for their quality.[131] Determinations in contested proceedings have been relatively evenly split in favor of claimants and respondents.

While the number of total determinations may appear low, this figure in isolation is misleading. One reason is that the CCB has been notably successful at facilitating settlements. As of December 31, 2025, the CCB had held twenty-seven settlement conferences, and nearly two-thirds of these resulted in settlement agreements. In the same time period, 136 proceedings were resolved due to a known party settlement. Even where there was no CCB-facilitated settlement conference, the initiation of the proceeding likely provided the impetus for many of these settlements. Moreover, the settlement rate is presumably higher than these figures indicate, as over a hundred additional proceedings were voluntarily dismissed during this time period, with some dismissals likely due to a settlement.

Indeed, the CCB's existence as a potential resource has reportedly encouraged amicable resolutions even in the absence of a claim being filed.[132] Some parties may

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U.S.C. § 1510(a)(1) (directing that CCB's regulations "shall provide for the efficient administration of the Copyright Claims Board, and for the ability of the Copyright Claims Board to timely complete proceedings"); 17 U.S.C. § 1502(a) ("There is established in the Copyright Office the Copyright Claims Board, which shall serve as an alternative forum in which parties may voluntarily seek to resolve certain copyright claims regarding any category of copyrighted work, as provided in this chapter."); Sen. Durbin, Sen. Kennedy, & Rep. Jeffries, Comments Submitted in Response to U.S. Copyright Office's Mar. 23, 2021, Notice of Inquiry at 1 (Apr. 26, 2021) (directing the Office to establish CCB processes that are affordable, user-friendly, streamlined, and fair).

[131] *See, e.g.*, Jonathan Bailey, *3 New Copyright Claims Board Decisions*, PLAGIARISM TODAY (Feb. 15, 2024), https://www.plagiarismtoday.com/2024/02/15/3-new-copyright-claims-board-decisions/ ("[T]he CCB is doing an excellent job being a good steward of copyright. Its decisions, even if one disagrees, are well-researched and argued. They are taking their responsibilities seriously and their determinations are as thoughtful as any federal court opinion."); Tiffany Hu, *New Copyright Board Takes Slow But Steady Approach*, LAW360 (Apr. 3, 2023), https://www.law360.com/articles/1592500/new-copyright-board-takes-slow-but-steady-approach ("Practitioners seem to agree that the second determination was clear and well reasoned.").

[132] *See* Copyright Alliance Initial Comments at 4 ("[W]e have strong reason to believe that the existence of the CCB is promoting settlements or other private dispute resolutions, either without bringing a claim before the CCB or after filing a claim with the CCB."); Authors Guild Initial Comments at 1–2 ("[T]he

negotiate an agreement after cease-and-desist correspondence indicating an intent to file a CCB claim.[133] Moreover, the establishment of the CCB as an accessible forum in itself serves to motivate licensing. The legal possibility of enforcing rights outside of the federal court system, amplified by the CCB's education and outreach, fosters increased public understanding of and respect for copyright.[134] The criticisms by one commenter of CCB "payouts" to prevailing parties as cost ineffective in comparison with CCB's startup and operating costs,[135] fails to assign value to the CASE Act's public service mission, the positive impact of fostering settlements between parties, and the broader societal benefit of ensuring that copyright rights have meaning. As the Copyright Alliance stated in its comment, "the cost of running an important public benefit like the

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CCB has helped promote negotiation and settlement between parties. . . . More generally, the mere existence of the CCB undoubtedly has encouraged parties to find solutions to copyright disputes that previously would have gone unresolved when the only available forum was a costly federal court proceeding."); MPA Reply Comments at 2 ("The mere existence of a forum where relatively small-dollar claims can be resolved quickly and efficiently itself facilitates settlements on terms that provide fair compensation for copyright owners whose works are infringed. Prior to the establishment of the CCB, there was typically no realistic threat of litigating such small claims; now, with the CCB, there is."); NPPA Reply Comments at 2 ("The CASE Act also adds to the deterrent/settlement effect which likely cannot be measured. While many infringers ignore demand letters because the cost of federal court deters rights holders, the CCB provides additional leverage for victims of infringement and incentive for infringers to settle their cases.").

[133] *See* Copyright Alliance Initial Comments at 4 ("While we do not know the true extent of settlements and private dispute resolutions occurring before and after a CCB claim is filed, we have heard anecdotal evidence from many of our members (typically shared in confidence and with little details) that the mere presence of the CCB and the ability to bring a case before the CCB has led a third-party to respond where in the past they likely would not have, and that such responses have led to conversations that resulted in a settlement."); Melissa Eckhause Initial Comments at 2 ("[B]ased on my experience representing parties and my empirical research, the CCB's existence is promoting settlements or other private dispute resolutions. In three of the proceedings where the A&E Clinic was involved, the parties settled. . . . In another matter, the dispute was resolved after the opposing party learned that the A&E Clinic was prepared to file a claim before the CCB."); MPA Reply Comments at 2.

[134] *See* MPA Reply Comments at 2.

[135] Re:Create et al. Initial Comments at 1 ("[I]n the end the payouts to intended [CCB] beneficiaries over the course of the last two years (~$75,000) amount to barely more than 1% of the agency's budget for those years (~$5.4 million).").

CCB has no bearing on its true value."[136]

### b) Accessibility for *Pro Se* Parties

The CCB was "intended to be accessible especially for *pro se* parties and those with little prior formal exposure to copyright laws who cannot otherwise afford to have their claims and defenses heard in federal court."[137] This principle was used as a guidepost in the Office's implementation of the CASE Act.[138]

The CCB has gone to great lengths to assist *pro se* parties in navigating its procedures. The eCCB platform, recently updated and improved, is designed to be user-friendly, especially when compared to its federal court counterpart, PACER, which has been criticized for its cumbersome interface.[139] The CCB's website, *CCB.gov*, provides helpful, authoritative information to parties and the public, and the CCB is currently in the process of streamlining and improving its content. The CCB's Handbook presents detailed guidance on how to navigate each stage of proceedings. The CCB manages an email inbox, Ask the Board, which responds to parties' procedural inquiries. CCAs also are available to assist parties with the CCB's procedures and requirements.

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[136] Copyright Alliance Reply Comments at 8 ("At least one commentor suggested the CASE Act should be repealed because of how much it costs to run the CCB. Given the overwhelming feedback to the NOI was that many elements of the CCB work well, and many can also be improved, the cost of running an important public benefit like the CCB has no bearing on its true value, and the Copyright Office should not consider this suggestion.").

[137] H.R. REP. NO. 116-252, at 17.

[138] *See, e.g.*, 87 Fed. Reg. 16989, 16990 (recognizing that a "chief objective" of the CASE Act is to provide an accessible forum for *pro se* parties); 87 Fed. Reg. 30065, 30061 ("The Office anticipates that many CCB parties will appear *pro se* (*i.e.*, without an attorney). In establishing the procedures to govern CCB proceedings, the Office is always guided by the CASE Act's goal to improve access to justice in copyright disputes by providing a simpler, yet fair alternative to Federal litigation.").

[139] *See, e.g.*, *Public Records Belong to the Public*, N.Y. TIMES (Feb. 7, 2019), https://www.nytimes.com/2019/02/07/opinion/pacer-court-records.html (describing PACER as "a 30-year-old relic that remains unwieldy to use").

Many commenters lauded the CCB's current and ongoing efforts to assist parties.[140] The Copyright Alliance "commend[ed] the CCB staff for their hard work implementing the CCB and effectively and efficiently maintaining its operations—including everything from managing the dockets and conducting educational outreach to assisting claimants and respondents in understanding the complexities of copyright law and the CCB processes," emphasizing that these efforts "have not gone unnoticed by the copyright community."[141] The American Intellectual Property Law Association also applauded the Office's "substantial efforts to make the CCB accessible to self-represented individuals and small creators," and noted that "[t]he CCB's website, handbook, and video tutorials are important foundations."[142]

Nevertheless, it is apparent that some *pro se* parties still struggle with the process.[143] Commenters offered suggestions for additional resources and services that the CCB could provide, such as a "small claims advisor" to assist with service,[144] language services,[145] step-by-step guides and templates,[146] webinars and other

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[140] *See, e.g.*, Copyright Alliance Initial Comments at 2; MPA Reply Comments at 2; Authors Alliance Initial Comments at 1–2; AIPLA Initial Comments at 2.

[141] Copyright Alliance Initial Comments at 2.

[142] AIPLA Initial Comments at 2.

[143] *See* CCI Comments at 4 ("Most [claims] were dismissed early in the process due to compliance issues, service failures, or respondent opt-outs. This culling, along with self-represented individual artists making up a significant portion of claimants, raises important questions about how the system, as currently designed, could be improved.").

[144] *Id.* at 15.

[145] *Id.* at 14, 15; Michael Ravnitzky Initial Comments at 5.

[146] Michael Ravnitzky Initial Comments at 5 ("Providing step-by-step guides, templates, and an online portal can assist users in completing the necessary paperwork accurately."); NYIPLA Initial Comments at 6 (suggesting development of "user-friendly tools, such as click-through online 'wizards' and standardized physical forms, that would guide litigants through the enforcement process in federal court").

audiovisual aids,[147] examples of successful filings,[148] shorter guidance documents,[149] and a database of determinations sortable by subject matter.[150] Commenters also recommended ways to leverage and improve the CCB's existing resources, such as revising eCCB's claim form,[151] providing more visual aids,[152] publicizing the Handbook

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[147] Michael Ravnitzky Initial Comments at 5 ("Adding comprehensive and accessible educational resources, such as instructional videos, webinars, and interactive tutorials, can improve user understanding of the CCB process."); Copyright Alliance Initial Comments at 12 ("[T]he Copyright Office should host more public webinars to cover specific aspects or topics regarding the CCB process."); SFWA Initial Comments at 2 ("[I]t would be very helpful if the CCB conducted a special webinar covering how professional writers can and can't utilize the CCB in the context of a contractual relationship and how the line is drawn."); NPPA Reply Comments at 5 ("We support additional webinars and we think that it would be useful for the Copyright Office to partner with trade organizations like ours to present information specific to targeted memberships.").

[148] Jonathan Bailey Initial Comments at 4 ("[O]ne resource that would help self-represented parties is a collection of successful documents and filings. . . . Creating a curated library of good examples could significantly aid self-represented filers. Many simply do not know what is expected of them, and this could address that issue."); CCI Initial Comments at 15 ("[T]he Handbook could include screenshots of the eCCB claim form so that creators are better prepared when actually answering questions on eCCB. The Handbook could also provide visual examples of a few hypothetical claims, so that creators have reference points for the types and quantity of evidence to include in their filing."); Melissa Eckhause Initial Comments at 13 ("Providing sample claim forms would also be helpful, as suggested by some survey participants. The CCB should prepare multiple examples of completed claims. This would allow claimants to see the level of factual detail they are expected to provide.").

[149] Copyright Alliance Initial Comments at 12 ("Truncated one-pagers of certain CCB processes and topics covered in the Handbook would also be useful for CCB parties so they can digest the information better. This approach would be similar to how the Copyright Office maintains its informational Circulars while also separately maintaining its Compendium."); NPPA Reply Comments at 5 ("We agree with the commenters who suggested presenting resources like the handbook in small, easily digestible format, and in html in addition to pdf formats. We are grateful for the comprehensive guidance and don't think it should be removed. However, we agree that drop-down info webpages and truncated one-pagers that break topics down to smaller bites would be useful to someone who might be overwhelmed by the process.").

[150] Michael Ravnitzky Initial Comments at 9; NPPA Reply Comments at 5.

[151] Jonathan Bailey Initial Comments at 2; Copyright Alliance Initial Comments at 10–11; Melissa Eckhause Initial Comments at 9–12; NPPA Reply Comments at 4.

[152] CCI Initial Comments at 15; Melissa Eckhause Initial Comments at 12 ("[T]he absence of visuals, like pictures or flowcharts, makes the Handbook less approachable. Research demonstrates that integrating visuals can make self-help resources less intimidating and more user-friendly.").

more,[153] revising it to be less dense,[154] providing more data and statistics,[155] and removing legalese.[156]

The Office is committed to continuously improving and updating the CCB's materials and exploring what additional public information can be provided to assist parties, subject to available resources.[157] Recent changes to eCCB, discussed in more detail below, and planned improvements to *CCB.gov* are designed to help *pro se* parties more easily navigate the system. The CCB continues to explore other ways to improve resources, such as making examples (like a sample compliant claim) available to parties.

One commenter suggested that increasing access to *pro bono* legal representation would make the CCB more accessible.[158] Currently, the CCB has fourteen *pro bono* organizations and twenty-two law clinics listed in its *pro bono* directories.[159]

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[153] Copyright Alliance Initial Comments at 12 ("The CCB Handbook is a comprehensive guide for CCB parties. It is a fantastic tool, but we think it may not be used as often as it should. We suggest that the Office further publicize the Handbook."); *see also* Jonathan Bailey Initial Comments at 4 (stating that the CCB Handbook "is not easy to find").

[154] Melissa Eckhause Initial Comments at 12 ("[T]he CCB should revise the CCB Handbook and add additional resources. The CCB Handbook is a comprehensive resource that covers every stage of the CCB proceedings, and my students and I have found it to be very detailed and useful. However, it is also a dense and overwhelming wall of text.").

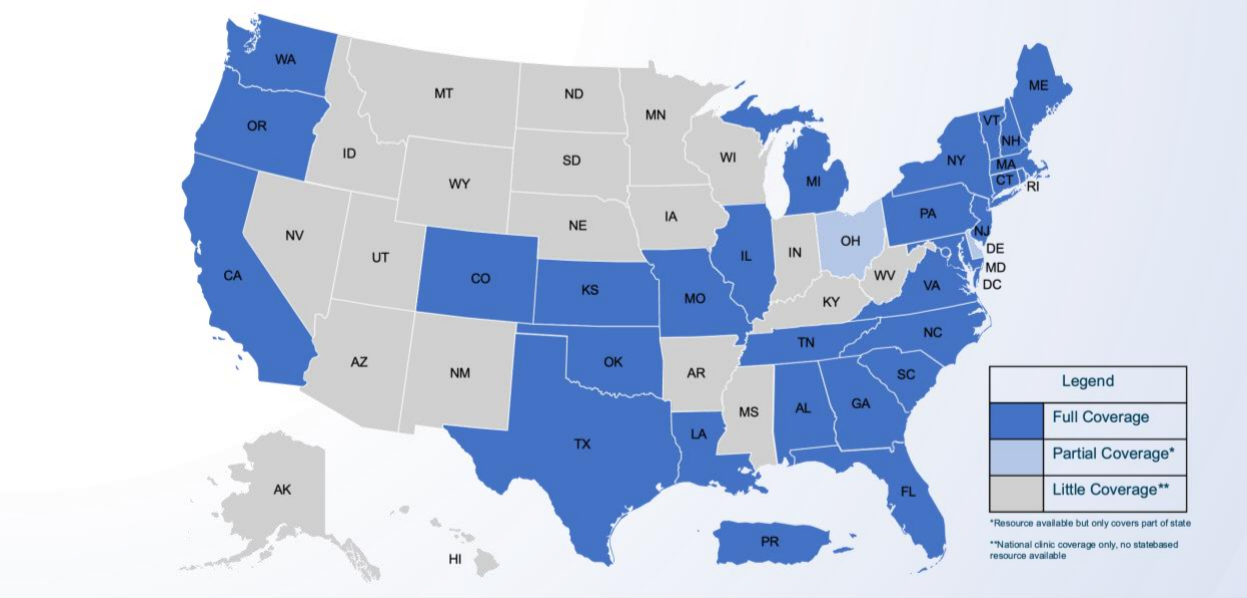
[155] Authors Alliance Initial Comments at 3–4; Copyright Alliance Initial Comments at 3.

[156] Michael Ravnitzky Initial Comments at 5 ("Clear, jargon-free communication and providing multilingual resources and translation services can help users with limited English proficiency. Ensuring that all communication from the CCB is understandable and accessible can enhance user experience."); Melissa Eckhause Initial Comments at 12 ("[T]he CCB should continue to work on the Handbook to eliminate legalese.").

[157] *See generally* U.S. COPYRIGHT OFFICE, STRATEGIC PLAN 2022–2026: FOSTERING CREATIVITY & ENRICHING CULTURE (2022), https://copyright.gov/reports/strategic-plan/USCO-strategic2022-2026.pdf (discussing the Office's initiatives, including "copyright for all" that aims to "[m]ake the copyright system as understandable and accessible to as many members of the public as possible").

[158] *See* Michael Ravnitzky Initial Comments at 5 ("Enhancing support for self-represented litigants through legal clinics, *pro bono* services, and on-site assistance can increase accessibility. Developing partnerships with law schools, legal aid organizations, and *pro bono* networks can ensure that users have access to the legal support they need.").

[159] *Pro Bono Assistance*, CCB, https://ccb.gov/pro-bono-assistance/ (last visited Feb. 9, 2026).




The CCB has engaged in comprehensive efforts to encourage *pro bono* organizations and law school clinics to assist parties and join its *pro bono* directories, such as engaging in direct outreach, writing multiple articles and blog posts, and giving dozens of live and virtual presentations to local and national bar associations, copyright organizations, and artist groups. This has resulted in a significant increase in the number of organizations included in the CCB's *pro bono* directories since its launch. Although, as of December 31, 2025, law students had only appeared formally on behalf of six parties in CCB proceedings, clinics and *pro bono* organizations have assisted parties in other ways, such as counseling them on whether they may have a claim and helping them with specific aspects of proceedings.

Having established a bench of law student and *pro bono* representation, the CCB is well-positioned to build on these resources. The CCB is focused on continuing to increase awareness of the availability of *pro bono* resources, incentivize institutional support and law student demand, help provide law clinic supervising attorneys with the requisite expertise, and find ways to reduce administrative burdens, as commenters have recommended.[160] In line with the Kernochan Center for Law, Media and the Arts'

[160] *See* Michael Ravnitzky Initial Comments at 8; Jacob Groszek Initial Comments at 1; Melissa Eckhause Initial Comments at 14.

suggestion,[161] it recently rolled out an update to eCCB that will permit parties to indicate an interest in *pro bono* representation. In the coming months, the CCB plans to update *CCB.gov* to direct parties to participating legal clinics, *pro bono* organizations, and interested bar associations in their jurisdictions.

The Office also recognizes that some of the accessibility issues CCB parties face stem from procedural complexities, as well as the nuances of copyright law.[162] Simplifying proceedings may enable more parties to navigate the system without relying on legal representation. In this way, efforts to streamline CCB proceedings and to make them more user friendly are interrelated.

#### c) Efficiency and Streamlined Procedures

Several commenters expressed concern about the length of CCB proceedings.[163] For example, Copyright Alliance reported that it "know[s] of creators who have been extremely frustrated with how much time it takes to move through each step of a CCB proceeding, particularly when claims reach the one-year mark with no major developments or determinations made in the proceeding. For these creators, the CCB process is so time consuming that they begin to question the value of bringing CCB claims at all."[164]

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[161] *See* Kernochan Center Initial Comments at 5–6 (suggesting claimants be given opportunity to express interest in *pro bono* representation at time of claim filing and that list of such claimants be circulated on regular basis to participating legal clinics).

[162] *See* ImageRights Initial Comments at 2 ("We urge the Copyright Office to continue investing in improvements that simplify the process, offer support for self-represented claimants, expand representation options, and ensure fair treatment of creators who often lack legal representation."); Michael Ravnitzky Initial Comments at 5 ("Clear, simplified forms and streamlined procedures can help users navigate the CCB more easily.").

[163] *See* Copyright Alliance Initial Comments at 9 ("By our estimates, the average time it takes for the CCB to issue a final determination in a standard CCB proceeding is about 1 year and 4 months. When the CASE Act was drafted and the CCB was first launched it was well understood that because of the newness of the CCB, during the first few years the proceedings would likely move more slowly. It is our hope that CCB final determination pendency will decrease over time."); Authors Alliance Initial Comments at 2–3 (noting that "the length of time that the CCB takes to resolve cases is improving, but it is still very slow" and "[h]aving cases linger for so long is not desirable for either claimants or respondents, nor does it comport with CCB's own goals").

[164] Copyright Alliance Reply Comments at 6.

As of December 31, 2025, the average length of a proceeding that resulted in a determination was 518 days, or approximately one year and five months. Contested proceedings averaged 615 days, or approximately one year and eight months, while default proceedings averaged 438 days, or approximately one year and three months.[165] While direct comparisons between CCB and federal court procedures are difficult, copyright cases in federal court took a median of 543 days to get to summary judgment and 832 days to get to trial.[166] Although the average contested proceeding in the CCB is considerably faster than trial in federal court, it is possible that a party could receive a resolution on summary judgment in federal court more quickly than a determination by the CCB. Taking steps to shorten CCB proceedings would further Congress's intentions and party expectations.[167]

The length of proceedings is largely a function of procedural requirements, including due-process safeguards, that are built into the CASE Act and the CCB's regulations. Compliance review may stretch to several months if a claimant makes multiple attempts to amend a claim, given that thirty days is provided for each attempt. Claimants also have ninety days to effect service, and *pro se* claimants may need most or all of that time to properly serve a respondent. Further, the opt-out period lasts for sixty days, even if a respondent is eager to participate.

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[165] The shortest contested proceeding was 408 days (approximately one year and one month), while the longest was 856 days—around two years and four months. These statistics omit *Oppenheimer v. Prutton*, No. 22-CCB-0045, which came to the CCB as a district court referral. *See* 37 C.F.R. § 235.1(b)(1) (permitting CCB to suspend or amend certain rules governing district court referrals "in the interests of justice, fairness, and efficiency").

[166] *See* LEX MACHINA, COPYRIGHT AND TRADEMARK LITIGATION REPORT 2021 21 (2021).

[167] The House Judiciary Committee instructed that the CASE Act "should be construed as a whole and in light of its purposes to establish an efficient, effective, and voluntary alternative forum where unsophisticated parties can meaningfully and predictably resolve their claims under the Copyright Act and with its associated defenses." H.R. REP. NO. 116-252, at 23. The CASE Act itself specifies that the CCB's regulations "shall provide for the efficient administration of the Copyright Claims Board, and for the ability of the Copyright Claims Board to timely complete proceedings." 17 U.S.C. § 1510(a)(1); *see also* H.R. REP. NO. 116-252, at 23 ("The Register of Copyrights should . . . tak[e] advantage of the grant of regulatory authority to create rules and procedures most appropriate to create an efficient dispute resolution forum that also affords due process protections."). The Senate Judiciary Committee believed that "[a]n initial goal of concluding claims deemed active within six months to one year from the date of initial filing to the Board's initial determination would be appropriate." S. REP. NO. 116-105, at 7.

As a result, the CASE Act and applicable regulatory provisions dictate a fairly lengthy time frame. Given statutory requirements, in even the best-case scenario when a claim is compliant on its first attempt and the claimant is able to effect service immediately, the initial phase would still last over sixty days. In practice, a claim that is compliant on its first submission will generally clear compliance review in around two weeks. After this, an experienced claimant, or one that is represented by counsel, may be able to file proof of service within a matter of days, thus beginning the opt-out period.[168] Given the mandatory sixty-day opt-out period,[169] this adds up to around three months.

Once a claim proceeds to the active phase, many of the applicable time periods are dictated by the CCB's regulations and internal policies.[170] The claimant has fourteen days to submit the second filing fee and the parties must register for eCCB.[171] After this, the CCB will issue its scheduling order, and then the respondent has thirty days to file a response to the claim.[172] In standard proceedings, the pre-discovery conference is scheduled to be within a week or two after the response is due,[173] and the CCB generally gives parties forty-five days to complete discovery.[174] A status conference is typically held a week or two after the discovery deadline. Thereafter, parties must submit their written testimony supporting their claims,[175] and the CCB normally requires parties to submit initial written testimony about a month and a half after the pre-discovery conference. The regulations provide that parties have forty-five days to file response written statements and then twenty-one days to file reply written statements.[176] While these time periods may vary depending on the complexity of the issues, the experience

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[168] 17 U.S.C. § 1506(g).

[169] *Id.* § 1506(i).

[170] *But see, e.g.*, *id.* § 1506(g)(7)(B), (l), (n), (p).

[171] 37 C.F.R. § 222.7(b).

[172] *Id.* § 222.8(a), (e), 222.11. An additional thirty days are added to the response time if a respondent waives service. 17 U.S.C. § 1506(g)(7)(B); 37 C.F.R. § 222.8(e).

[173] 17 U.S.C. § 1506(l); 37 C.F.R. §§ 222.11(b)(2), 225.1(c).

[174] 17 U.S.C. § 1506(n); 37 C.F.R. §§ 222.11(b)(3)–(6), 225.1(b).

[175] 17 U.S.C. § 1506(o); 37 C.F.R. §§ 222.11(b)(8), 222.15(a).

[176] 37 C.F.R. §§ 222.11(b)(8), 222.15(a).

levels of the parties, any discovery disputes, and any scheduling conflicts, if all runs smoothly, the soonest a proceeding can be ripe for final determination is around seven months after the proceeding enters the active phase. Taken with the time periods in the initial phase, the shortest timeframe for a proceeding to be ripe for determination is ten months.

The Office believes that several elements of the initial phase—particularly compliance review—could be further streamlined. The active phase could also be made more efficient in some respects. Although many of the time periods in the initial phase are mandated by the CASE Act, the Office has significant discretion in managing the active phase. We plan to address some of the sources of delay through regulatory changes, such as adjusting regulatory timeframes to provide more flexibility where possible, but statutory amendments would be necessary to address others.

### 3. Opportunities for Improvement

The Office has identified six main areas that hinder the CCB's use and efficacy: compliance review, service requirements, the conduct of the active phase, default procedures, determination enforcement, and the opt-out system.

#### a) Compliance Review

Currently, compliance review poses the biggest barrier to the CCB's ongoing success as a tribunal. Its current required process and implementation lengthen proceedings and entail significant expenditure of CCB and party resources. The Office believes that both statutory and regulatory modifications would improve compliance review, and we are exploring a range of other potential improvements, such as providing new helpful content in online and educational resources and further support to claimants in navigating the process. As described below, the CCB has made, and continues to make, operational and procedural changes and will explore offering additional resources and guidance.

As currently structured, compliance review is burdensome and time-consuming, diverting resources away from other tasks. The CCB estimates that as much as three-quarters of its time is spent on the initial review of claims and amended claims and writing noncompliance orders explaining claim deficiencies. This process allows claimants with potentially valid (but insufficiently pleaded) claims a meaningful opportunity to correct them. However, it also lengthens proceedings considerably, both

due to the time it takes the CCB to review claims and prepare detailed noncompliance orders and the time it takes claimants to file amended claims.[177]

A high proportion of claims are dismissed as noncompliant, despite multiple opportunities to amend.[178] As Authors Guild pointed out, this may be "an unsurprising result given the number of self-represented parties" that come before the CCB.[179] As of December 31, 2025, only 43% of all claims filed were found compliant, whether on the first try or after receiving one or two noncompliance orders. 63% of all claims received at least one noncompliance order or were dismissed as unsuitable due to noncompliance. 52% of claimants who received a noncompliance order attempted to address the deficiencies by filing an amended claim, and approximately 55% of those claimants were ultimately able to file a compliant claim. Of the claimants that received a noncompliance order, less than a third went on to successfully file a compliant claim.

Many claims receiving a noncompliance order were inappropriate for resolution by the CCB on their face. One commenter characterized the CCB as "drowning in frivolous claims."[180] The most obvious examples of inappropriate claims are claims outside the CCB's copyright subject matter, claims against foreign respondents or federal or state entities, and claims with incomplete or no registration applications, all of which are outside the CCB's jurisdiction. The unsuitability procedures set forth in the CASE Act, which permit the CCB to dismiss without prejudice claims that are

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[177] 17 U.S.C. § 1506(f)(1)(B); 37 C.F.R. § 224.1(c)(2) (providing claimant with two thirty-day opportunities to amend). As the process is currently structured, claimants may spend months preparing claims and engaging in multiple rounds of compliance review, all before knowing whether the respondents will opt out. *See generally* Kristina McGowan Initial Comments at 1–2.

[178] *See* Melissa Eckhause Initial Comments at 4 ("[D]uring the first year, almost 75% of *pro se* parties' initial claims were not compliant compared to about 31% of claims filed by attorneys. In over 50% of the *pro se* cases, the claim was dismissed because the claimant had failed to submit a compliant claim." (citations omitted)); Re:Create et al. Initial Comments at 2–3 ("After an initial ramp-up period, each month the Board seems to be dismissing approximately the same number of claims as it takes in; sometimes the Board dismisses more claims than it takes in . . . , and occasionally the filed claims surpass the dismissals, but the *gestalt* is clear: the CCB is mostly churning through non-compliant claims.").

[179] Authors Guild Initial Comments at 1.

[180] Re:Create et al. Initial Comments at 6.

unsuitable for its determination at any point in a proceeding, have allowed the CCB to efficiently handle many of these claims.[181]

In other cases, the facts alleged would make it impossible for the claimant to state a permissible claim, even if they satisfy the basic jurisdictional requirements. This includes claims involving a copyrighted work that are based on breach of contract claims rather than infringement, infringement claims where the claimant is not the legal or beneficial owner of the exclusive right at issue,[182] or claims where it is clear that the infringement occurred (and the claimant was aware of the infringement) well before the statute of limitations.[183]

Streamlining the compliance review process to minimize the time devoted to disposing of claims that fall into this category should be a priority. To that end, we recommend that the CASE Act be modified to give the CCB discretion to allow a claimant only one, rather than two, opportunities to amend where it is clear from the allegations that there can be no cognizable claim.[184] This could reduce the CCB's workload by limiting the amount of time it spends on plainly inappropriate claims.

Many commenters also made suggestions focused on improving the process for claimants who have potentially valid claims but fail to plead them sufficiently in the first instance. The CCB has taken many steps aimed at mitigating this issue: the CCB Handbook details the requirements for filing a compliant claim for each type of case and provides examples; additional educational material is available on *CCB.gov*; as discussed above, the CCB has formed partnerships with law clinics and public interest

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[181] *See* 17 U.S.C. § 1506(f)(3); 37 C.F.R. § 224.2.

[182] *See* 17 U.S.C. § 1504(c)(1) (permitting infringement claims "by the legal or beneficial owner of the exclusive right at the time of the infringement for which the claimant seeks damages").

[183] *See id.* § 1504(b) ("A proceeding may not be maintained before the Copyright Claims Board unless the proceeding is commenced . . . before the Copyright Claims Board not later than 3 years after the claim accrued.").

[184] Similar to this proposal, to improve proceeding resolution times, Authors Alliance recommended that the CCB limit the number of compliance opportunities provided to claimants who had previously filed claims. Authors Alliance Initial Comments at 3. The Office is not aware of evidence that processing amended claims from repeat claimants is a significant burden on the CCB, so that this proposal would meaningfully lessen its workload. We therefore do not recommend this change at this time. *See* Copyright Alliance Reply Comments at 4 (disagreeing with Authors Alliance's proposal given lack of evidence showing that repeat claimants abuse or misuse the compliance review process to "unnecessarily prolong" it).

organizations throughout the country that are available to provide additional support; CCB staff is available to answer questions by phone; and compliance orders carefully describe the problem with each claim and advise the claimant as to what, if any, changes would be necessary to fix it. Nevertheless, there is clearly a desire for more information and support.

In early 2026, the CCB modified its online claim form to better guide claimants in providing allegations specifying elements of their claims. For infringement claims, the eCCB form previously directed claimants to "describe the infringement," but did not follow up with more targeted questions. For instance, the form did not ask the claimant to explain how the respondent had access to its work or how the allegedly infringing material was similar to the claimant's work. The eCCB claim form now specifically requests information about substantial similarity and access to draw out facts that enable the CCB and respondent to better understand the claim.[185] The misrepresentation claim form has similarly been revised to request more specific information related to the elements of that claim. As implemented in eCCB, claimants are prevented from continuing when their answers to claim form questions reveal a clearly noncompliant claim. Many commenters had identified the prior claim form's lack of specificity as a significant issue with compliance review,[186] and both the CCB and

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[185] Some commenters asserted that failure to adequately allege the elements of copyright infringement, particularly substantial similarity and access, were the predominant reasons for findings of noncompliance. *See, e.g.*, Re:Create et al. Initial Comments at 3–4 (*citing Aggregate data about claims filed with the CCB* at Orders to Amend, BIBLIOBALONEY, https://bibliobaloney.github.io/#otas (last visited Feb. 9, 2026)); Authors Alliance Initial Comments at 5; Melissa Eckhause Initial Comments at 9–10. The Office has not independently confirmed these analyses.

[186] *See* Melissa Eckhause Initial Comments at 3 ("The main reason [compliance review is not functioning as intended] is that the mandatory claims form does not elicit the factual details from the claimant that are necessary to survive the compliance review."); Jonathan Bailey Initial Comments at 2 ("One of the most common issues that can trip up filers is the description of the infringement. The current infringement description is a simple textbox, and it can be difficult for a filer to know how to fill it out. . . . Break the 'Describe the Infringement' text box into separate elements. Rather than asking filers to describe the infringement, ask pointed questions such as 'How did the respondent find the work?' 'How is the work similar to yours?' Etc."); Copyright Alliance Initial Comments at 10–11 ("[T]he current form asks a claimant to 'Describe the infringement.' That question should be further broken down into specifically asking the claimant to describe facts needed for crucial elements of the claim like asking specifically how the respondent accessed the work in dispute and to describe the similarities between the infringing work and the claimant's work. Doing so should illicit [sic] the requisite information on the form instead of the CCAs having to conduct additional follow up with claimants during the compliance

the Office have long recognized this as a deficiency. We are optimistic that these changes will ease the filing process, especially for *pro se* claimants, and result in fewer noncompliance orders.

The Office is also cognizant that claimants, especially unrepresented claimants, may benefit from additional means of individual support.[187] The CCB continues to explore ways to present written information, including compliance orders and public facing instructions, in forms that are as accessible as possible; at the same time, some claimants may benefit from more personal forms of assistance. Some commenters suggested that the CCB or a pre-approved third party provide a mandatory information session for first-time CCB filers, such as a monthly webinar.[188] Having potential claimants talk with an attorney, staff member, or CCB *pro bono* partner before filing could allow them to more realistically assess their claims at the outset, prepare compliant claims or refrain from filing clearly noncompliant claims, avoid multiple rounds of noncompliance orders, and calibrate their expectations, such as with respect to remedies.[189] In the CCB's experience, potential claimants who get one-on-one counseling prior to filing are better able to prepare compliant claims and less likely to

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review process."); NPPA Reply Comments at 4 ("We agree with commenters who said that modifying the claim form to elicit better responses, especially on form entries like 'describe the infringement.' Requiring claimants to list basic individual facts that form a prima facie case, outlining what they are, as well as information that will need to be considered by the tribunal, is the type of prompt that should be extremely helpful.").

[187] *See* NPPA Reply Comments at 3 (suggesting CCB provide standardized checklists to assist with compliance review); Michael Ravnitzky Initial Comments at 2 (same).

[188] Copyright Alliance Initial Comments at 7–8 (suggesting that first-time claimants be required to "first participate in and complete a pre-filing information session" and that the Office "offer a monthly webinar or a pre-approved third party could do so"); NPPA Reply Comments at 3 ("We agree with the Copyright Alliance that a pre-filing information session would be useful to first-time claimants.").

[189] While CCAs are not able to provide legal advice, they can answer claimants' procedural questions and provide other assistance. 17 U.S.C. § 1503(a)(2)(B); 37 C.F.R. § 201.2(a)(3) ("The Copyright Office, however, does not give specific legal advice on the rights of persons, whether in connection with particular uses of copyrighted works, cases of alleged foreign or domestic copyright infringement, contracts between authors and publishers, or other matters of a similar nature."). The CCB's network of *pro bono* partners provides more tailored guidance to individual claimants, including in many cases pre-filing counseling to potential claimants. This type of guidance can be helpful in calibrating claimants' expectations as well as helping them file compliant claims. For instance, the CCB has found that—despite the educational information available—claimants are often disappointed to learn that the CCB cannot issue injunctions or award damages at the levels they hoped.

file clearly noncompliant claims. The Office is exploring how best to expand this type of assistance, within resource limitations.

Finally, two commenters expressed concern that the CCB's compliance review may entail a higher pleading standard than found in federal court, pointing to noncompliance orders in specific proceedings.[190] The Office cannot opine on the merits of specific cases but confirms that a heightened pleading standard is not applicable in the CCB's compliance review.[191]

**b) Service Requirements**

Service is critically important to the CCB's proper functioning.[192] Proper service acts as a fundamental safeguard for due process rights by ensuring that respondents are aware of the proceeding against them. Given the CCB's voluntary nature, respondents must be notified that they have the right to opt out and, if they do not do so, will relinquish their right to have their dispute decided by a jury in an Article III court.

Effecting proper service, however, has been challenging for claimants, particularly those proceeding *pro se*. As of December 31, 2025, approximately 35% of compliant claims were dismissed due to a failure to file a valid proof of service. While

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[190] *See* Melissa Eckhause Initial Comments at 6 (arguing that compliance review essentially operates as "an automatic Federal Rules of Civil Procedure 12(b)(6) motion to dismiss even before the claim is served on the respondent"); NPPA Reply Comments at 3 ("We join with the commenters who are concerned that the compliance and pleading standard may be higher than as is required in federal court.").

[191] Claims in federal court must simply include "a short and plain statement . . . showing that the pleader is entitled to relief." FED. R. CIV. P. 8(a)(2). Additionally, in federal court, *pro se* pleadings, "however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers." *Erickson v. Pardus*, 551 U.S. 90, 94 (2007) (quoting *Estelle v. Gamble*, 429 U.S. 97, 106 (1976)). The CASE Act's legislative history makes clear that *pro se* claims should be liberally construed and that "traditional rules of civil procedure [should be] significantly relaxed." *See* H.R. REP. NO. 116-252, at 23–24 (citing Copyright Office Small Claims Report at 57–58).

[192] *See, e.g.*, NPPA Reply Comments at 3 ("When the CASE Act was being drafted, it was well understood that traditional service of process would be important to protect the constitutional and due process rights of respondents. The constitutionality of the CASE Act and the CCB have not been challenged, and we think the service requirements are key to upholding the Act should there ever be a challenge."); Re:Create et al. Initial Comments at 4 (describing service requirements as "due process requirements without which the CCB would be glaringly unconstitutional").

many commenters noted these challenges,[193] they did not propose any alternative methods of service that would better serve CCB parties.[194]

The incorporation of state-law methods into the CASE Act has led to unforeseen consequences for both claimants and respondents.[195] While the incorporation of these methods has expanded the options available to claimants, the CCB lacks the resources to prepare and maintain service guides for all fifty states. Additionally, some states allow alternative methods, but only after some form of court action,[196] such as court approval.[197] Because the CCB is not a court, it cannot provide the requisite court action. Accordingly, these alternative service methods are not available to claimants as a practical matter, which can result in confusion and frustration.

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[193] *See* Authors Alliance Initial Comments at 6 ("We understand that service of process can be difficult for unrepresented claimants to navigate, but we think that high standards must be maintained."); CCI Initial Comments at 7–8 (detailing challenges with service requirements); Copyright Alliance Initial Comments at 8 (recognizing "concerns associated with the service requirements contained in the CASE Act" but not recommending any modifications); NYIPLA Initial Comments at 3 ("The NYIPLA notes that the CASE Act's service requirements are unclear and relatively complex for *pro se* claimants."); NPPA Reply Comments at 3 ("It is clear based on the comments, and what we have heard from the community as well, that service of process is a genuine obstacle."); Jonathan Bailey Initial Comments at 2 ("[M]any filers struggle to complete the required process service. It is not something that many *pro se* filers will have ever done before.").

[194] *See* CCI Initial Comments at 10 (recommending service by marshal or court appointee); Michael Ravnitzky Initial Comments at 2 (recommending service by "electronic notifications").

[195] Copyright Alliance Reply Comments at 5 (favoring "improv[ing] education, awareness, and guidance" as an initial step, but suggesting potentially "a change to the CASE Act to make service of process rules uniform regardless of the state in which a respondent is served" to "make it easier to navigate service of process").

[196] *See, e.g.*, W. VA. CODE R. § 4(d)(1)(F)–(G) (permitting service by mail, provided that clerk handles mailing).

[197] *See, e.g.*, FLA. STAT. § 48.102 (permitting other service methods on business upon motion and showing inability to effectuate personal service); CAL. CODE CIV. PROC. § 415.50 (permitting service by publication "upon affidavit . . . to the satisfaction of the court . . . that the party to be served cannot with reasonable diligence be served"); TEX. CIV. PRAC. & REM. § 109, 109a (permitting service by publication or other substituted service methods if authorized by court); ARIZ. R. CIV. P. 4.1(k) (permitting alternative service methods with court approval).

Some states also allow service methods that may be less likely to reach respondents. For example, as the Authors Alliance pointed out,[198] the CCB was obligated to accept service by publication in at least one proceeding as permissible in Washington State, which ultimately resulted in a default determination. While the CASE Act permits the use of such state-approved service methods,[199] we share commenters' concern about the adequacy of these methods in notifying respondents.

These state-approved methods also place a burden on the CCB. If the CCB receives a proof of service that purports to use an alternative state method, it reviews it to determine whether use of the alternative method is actually permitted under state law and, if so, whether it was properly effected. Not only is service a due-process requirement, but the date of service is also used to calculate the start of the opt-out period, so the review must be exacting. This can result in significant communication between the CCB and the claimant, and the claimant may need to attempt service again, which prolongs the process and may result in additional costs.[200] In turn, this can cause confusion for respondents if they were notified of the claim but service was not legally sufficient.

The Office would strongly support a standard, streamlined, low-barrier service method that still protects respondents' due process rights.[201] Achieving both ease of

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[198] *See* Authors Alliance Initial Comments at 6–7.

[199] *See* 17 U.S.C. § 1506(g); *see also* Copyright Alliance Reply Comments at 4 ("The CASE Act specifies that claimants must follow certain aspects of the particular state's laws related to service of process. Thus, the service requirements are determined by the states, not the CCB. If there is a concern with a particular state's service requirements, that should be raised to officials in the state or challenged within that state's court.").

[200] *Cf.* Kristina McGowan Initial Comments at 1 ("I was required to hire a process server . . . for $140 which took weeks to finalize. The CCB was exacting and when an address or name was not submitted entirely correctly, I was required to resubmit the form.").

[201] Commenters were divided as to whether the CCB's service requirements should be modified. *Compare* CCI Initial Comments at 10; Michael Ravnitzky Initial Comments at 2, *with* CCIA Initial Comments at 2 ("The complexity [of the service requirements] is what mitigates constitutional concerns by ensuring due process. Unfortunately, it is not possible to procedurally simplify."); Authors Alliance Initial Comments at 6 ("In fact, current requirements may be too lax given the potential for respondent confusion and the fact that the CCB is supposed to be a voluntary tribunal."). Some commenters also recommended alternative service methods that would not be a good fit for the CCB due to lack of feasibility or concerns that they would not adequately notify respondents. *See* CCI Initial Comments at 10 (recommending

service and adequate notice requires a delicate balance, and the CCB's voluntary nature and relatively short history further complicates this calculus. For instance, while some jurisdictions allow service by certified mail, [202] the CCB lacks the name recognition of local courts, which may cause its service packets to go unopened or unread. This is compounded by the CCB's nomenclature (*e.g.*, Copyright Claims Board, Copyright Claims Officers), which could cause it to be mistaken for an insurance adjustor or other nonjudicial entity, rather than a legal tribunal.[203] Given the importance of these issues and the challenges experienced by parties and the CCB so far, we recommend that the CASE Act be amended to permit additional service methods or to streamline the current ones. In the meantime, the Office and the CCB will continue to explore ways to assist claimants with navigating service.[204]

We likewise recommend consideration of ways to leverage and further streamline the waiver of service process. Currently, the claimant must send the waiver of service forms and service packet to the respondent "by first class mail or by other

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service by marshal or court appointee); Michael Ravnitzky Initial Comments at 2 (recommending service by "electronic notifications").

[202] *See Methods of Service on Individuals by State*, U.S. MARSHALS SERV., https://www.usmarshals.gov/what-we-do/service-of-process/criminal-process/methods-of-service-individuals-state (last visited Feb. 9, 2025); *but see Certified Mail Statement*, SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE, Form L-1091 (Rev. July 2013), https://www.occourts.org/system/files/l1091.pdf) (describing certified mail as "the least reliable method of service because the addressee can refuse or not be available to sign the postal receipt"). Should Congress choose to explore this option, additional safeguards such as requiring a return receipt or restricted delivery would be important.

[203] *See* Authors Alliance Initial Comments at 6 (emphasizing importance of service requirements, given that "so many respondents (many of whom are also unrepresented) will have no previous familiarity with the CCB's existence" and "may believe that the information they're served with is part of a scam").

[204] Several commenters offered suggestions for ways to improve service. A few commenters recommended that the CCB offer additional resources for parties. *See* Authors Alliance Initial Comments at 7; NYIPLA Initial Comments at 3; Copyright Alliance Initial Comments at 8–9; NPPA Reply Comments at 4; CCI Initial Comments at 10. A few commenters suggested that the CCB partner with trade organizations, such as the National Association of Professional Process Servers. *See* Jonathan Bailey Initial Comments at 2; Copyright Alliance Initial Comments at 8–9; NPPA Reply Comments at 4. Authors Alliance suggested "includ[ing] strong wording at the filing stage," cautioning claimants to familiarize themselves with the service requirements because many claims are dismissed due to a failure to timely file a proof of service. *See* Authors Alliance Initial Comments at 7. Another recommended "encouraging the use of verified service addresses" as a way to "improve the ease and efficiency of service while preserving due process and ensuring accessibility for all claimants." NYIPLA Initial Comments at 3.

reasonable means," and provide "a prepaid or other means of returning the form without cost."[205] The respondent must then sign the form and return it to the claimant within thirty days,[206] and the claimant is charged with uploading it to eCCB thereafter.[207] Allowing the service packet and waiver forms to instead be exchanged electronically, possibly through a hyperlink, would ease this process, as it would allow the respondent to waive service through eCCB. With these changes, if the claimant is able to provide an email address for the respondent, waiver of service could be used as a first service method by default, and the CCB could transmit the materials in the first instance to provide more legitimacy to the communication. If the respondent does not agree to waive service within a certain timeframe, the claimant could then attempt one of the statutory methods.

#### c) The Conduct of the Active Phase

The Office received relatively few comments on the active phase. Nevertheless, given the importance of this phase, and concerns about the length of overall proceedings, ways to improve and streamline it should be considered. The Office's recommendations below are informed by input from CCOs and CCB staff based on their experience conducting proceedings.

*Single-CCO Determinations:* To shorten the duration of standard proceedings, we recommend that all proceedings be handled initially by a single CCO, rather than a panel of three. The Copyright Small Claims Report proposed that a panel of three CCOs with different backgrounds and specialties should preside over standard proceedings to "help ensure a balanced system sensitive to both sides of infringement claims" who could "undertake a holistic analysis of infringement claims with an eye toward the resourceful resolution of disputes."[208] In practice, we believe these benefits have been outweighed by the amount of time taken by the deliberative process among three CCOs—especially in light of the relatively low degree of complexity of proceedings thus far. Allowing one CCO to handle each proceeding would enable the CCB to act more nimbly and process proceedings more efficiently. This would parallel

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[205] 17 U.S.C. § 1506(g)(6).

[206] *Id.*

[207] 37 C.F.R. § 222.5(c)(5).

[208] Copyright Small Claims Report at 100–01.

the treatment of copyright cases in federal court, which are handled by a single judge.[209] While a federal court judge may not have particular expertise in copyright matters, each CCO is required to be an expert in copyright law. Additionally, a single CCO already manages the conferences ahead of a determination and thus will have developed more familiarity with the issues and parties than his or her colleagues.[210] This proposal was supported by several commenters.[211]

If the CASE Act is revised to permit single-CCO determinations in standard proceedings, it should be made clear that requests for reconsideration are still determined by the full panel of three CCOs. This would render the reconsideration process more functional than its current iteration, which requires the same panel to both render the determination and consider any request for reconsideration. Under the revised system, the full panel would review a determination with fresh eyes and thus more easily identify any "clear error of law or fact material to the outcome" or "technical mistake" that was raised by the request for reconsideration.[212] We believe that this modification to the CASE Act would increase the CCB's efficiency.[213]

*Smaller Claims:* In its current form, the smaller claims track does not provide a meaningful alternative to the standard track. Although the smaller claims track was

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[209] Copyright Alliance Initial Comments at 10 ("Only one judge presides over a case in federal district court, which would make having only one CCB Officer not an unusual feature.").

[210] *See* 37 C.F.R. § 222.11(b) (stating that pre-discovery and post-discovery conferences are presided over by a CCO).

[211] *See* Copyright Alliance Initial Comments at 9 ("At present, three CCB Officers preside over a standard CCB proceeding. We suggest that this be changed to only one CCB Officer, unless a request is made by one of the parties for all three CCB Officers."); NPPA Reply Comments at 4 ("We suspect that most CCB cases are not extremely complex, and that is the vision for the CCB. Therefore, we are supportive of changing the CCB review from three officers to one officer, unless requested by a party.").

[212] *See* 17 U.S.C. § 1506(w) (setting forth standard for requests for reconsideration).

[213] The Office declines to accept the Copyright Alliance's suggestion that if a single CCO is permitted to determine standard proceedings, parties should retain the ability to request that the full panel hear the proceeding instead. *See* Copyright Alliance Initial Comments at 9. Allowing a party to request a full panel determination as a matter of right may undermine the purpose of the reform by compelling all three CCOs to devote resources to proceedings that may not warrant that level of scrutiny. Additionally, under our proposal, parties would have the benefit of all three CCOs weighing in through the reconsideration process.

intended to be a more efficient process,[214] it has not worked that way in practice.[215] As of December 31, 2025, contested smaller claims proceedings lasted on average 655 days, or approximately one year and ten months—*longer* than the average contested standard proceeding (607 days). Notably, the second longest CCB proceeding in this sample was a contested smaller claims proceeding, at 810 days or approximately two years and three months.[216]

Moreover, there is not a significant difference in the average amount of damages awarded in smaller claims proceedings compared to standard proceedings. As of December 31, 2025, for determinations that included a damages award, the average amount awarded in standard proceedings was $3,843.45, whereas the average amount awarded in smaller claims proceedings was $3,000.

In spite of this, the smaller claims track has been popular, with 46% of claimants requesting it as of December 31, 2025. The Office believes that there is value in continuing to make this option available and, with regulatory reform, it has potential to be an appealing alternative to the standard track. It may be possible, for instance, to combine or omit certain aspects of smaller claims procedures to make them function more like a standard small claims court.[217]

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[214] S. REP. NO. 116-105, at 8.

[215] *See* NYIPLA Initial Comments at 4 (observing that though the "smaller claims track aims to simplify dispute resolution for low-value claims, . . . it seems to [mirror] the complexity of standard proceedings"). *But see* Copyright Alliance Initial Comments at 10 ("[W]e believe that the processes and procedures for smaller claims proceedings are appropriately tailored to parties' needs and expectations . . . ").

[216] It is worth noting that there were only three contested smaller claims proceedings during this time period. While there were several additional smaller claims proceedings that resulted in a default, default smaller claims proceedings are indistinguishable from default standard proceedings. *See* 37 C.F.R. § 226.4(f)(2). Because these default smaller claims proceedings do not make use of the smaller claims procedures, they do not provide insight into impact of smaller claims procedures on the length of proceedings.

[217] *See* Authors Alliance Initial Comments at 3 ("The CCB might consider trialing an extremely expedited process for 'smaller claims,' where when both claimant and respondent agree, the CCB holds an early, informal zoom hearing to speak to the parties together and attempt to resolve the case. A CCB Officer could, for instance, hear oral presentations for the parties and give an early indication of how he or she would be inclined to decide the case (similar to how many cases in federal court are encouraged to settle after hearing a preliminary version of the case in a preliminary injunction hearing)."); *see also* NYIPLA

This is an area where the Office has significant regulatory discretion, so we do not at this time believe any statutory changes are needed. We will continue to consider ways to further streamline the active phase of both standard proceedings and smaller claims proceedings, including the possibility of testing some proposed reforms through a pilot program. Among the possibilities the Office may explore are providing ways for the CCB to tailor timeframes to the needs and preferences of parties, encouraging more use of mediation at the beginning of proceedings, and generally aligning procedures more closely with those of small claims courts.

#### d) The Default Rate and Default Procedures

Despite the ease of opting out, some respondents do not do so and subsequently fail to participate in their proceeding, resulting in a default. Several commenters expressed concern about the incidence of defaults in CCB proceedings.[218]

At first glance, the CCB default rate may appear high. As of December 31, 2025, the number of default determinations slightly exceeded the number of final determinations in contested proceedings. Of the forty-three determinations issued during this time period, twenty-two were the result of defaults and twenty-one were in contested proceedings. However, in addition to those forty-three determinations, the CCB dismissed 136 proceedings due to a known party settlement.[219] Taking both determinations and settlements into account, the number of two-party resolutions exceeded the number of default resolutions by seven to one.

One commenter attempted to compare the CCB's default rate to the default rate for copyright cases in federal court, arguing that the proportion of determinations that result from default (over half) "is in stark contrast to copyright claims brought in federal court, which end in default only 7% of the time."[220] This is comparing apples to

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Initial Comments at 4 (suggesting that the Office explore "merging the discovery step with case presentation" in smaller claims).

[218] *See* Jonathan Bailey Initial Comments at 4 ("Defaults are easily the biggest problem in cases that reach the active phase."); Re:Create et al. Initial Comments at 5–6; Authors Alliance Initial Comments at 2.

[219] *See supra* Part III.A.2.a. The number of settlements is likely even higher than this, as a number of other active proceedings were voluntarily dismissed. Though the party did not always provide a reason for seeking voluntary dismissal of the proceeding, some portion of these were probably also dismissed due to a settlement.

[220] Re:Create et al. Initial Comments at 4–5 (citing Lex Machina, COPYRIGHT AND TRADEMARK LITIGATION REPORT 2021 23 (2021)).

oranges, though it is admittedly difficult to find an apples-to-apples comparison given the eccentricities of the CCB process when compared to federal court. The 7% figure refers to the number of federal court cases that result in default out of the total number of copyright cases filed in federal court.[221] If the CCB's number of default determinations is compared to the total number of CCB claims filed, that makes the CCB's default rate approximately 1%, as of December 31, 2025. Looking at the number of defaults relative to claims at other stages of the process results in different rates. The default rate is approximately 3% if the number of default determinations is compared to the total number of CCB claims that passed compliance review, and approximately 10% compared to the number of claims that reached the active phase. Additionally, the CCB issued default notices in sixty-three proceedings as of December 31, 2025—or 29% of proceedings that reached the active phase during that time period.[222] In sum, whether the default rate is a cause for concern depends on the frame of reference, and direct comparisons are difficult. Though the default rate is generally lower than the federal court rate in some of these comparisons, the CCB's default rate is similar to or exceeds the federal court rate in others.

There is no way to know why some respondents neither opt out nor participate, resulting in a default. Some may default due to improper service (despite the fact that the CCB sends a second notice to each respondent).[223] The CCB already devotes a significant amount of time to confirming that proofs of service reflect valid service, but it is often unable to definitively determine whether the correct respondent was properly served.[224] A few respondents have made clear in correspondence that they are aware that a CCB claim has been brought against them but still fail to opt out or respond.

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[221] *See* Lex Machina, COPYRIGHT AND TRADEMARK LITIGATION REPORT 2021 23 (2021).

[222] This figure does not account for proceedings where the respondent reengaged with the process upon receipt of a default notice or the proceeding was later voluntarily dismissed by the claimant, either due to settlement or otherwise.

[223] *See* 17 U.S.C. § 1506(h) (requiring CCB to send second notice "notify[ing] the respondent of a pending proceeding against the respondent"); 37 C.F.R. § 222.4.

[224] While the CCB is able to cross-reference proofs of service on business entities against its own Designated Service Agent Directory or publicly available corporate records, it generally must take the address for an individual respondent provided by the claimant at face value and cannot do much beyond confirming that the address itself exists.

Other respondents may default due to lack of familiarity with the CCB.[225] To address these concerns, it may help to invest in increasing the public's awareness of the CCB and the legitimacy of its notices.[226]

NYIPLA suggested that the CCB amend default procedures to "award claimants default judgments if claimant's well-pled pleadings, which would be assumed to be true for purposes of liability, establish that respondent is liable."[227] In effect, this proposal would more closely align CCB default procedures with those found in federal court.[228] However, Congress intended the CCB's default procedures to be more protective of respondents than those of federal courts. While federal courts "generally limit themselves to evaluating the plaintiff's well-pleaded allegations and any materials attached to the complaint," the CASE Act requires the claimant to submit evidence beyond what was included in the pleadings[229] and mandates that the CCB "carefully scrutinize the available evidence, and consistent with district court practice, [] consider applicable affirmative defenses such as fair use, where warranted by the circumstances of the case."[230] Accordingly, "[r]elative to federal courts, the Copyright Claims Board has both more statutory authority and a greater obligation to scrutinize the merits of a claim."[231] The Office believes the default procedures are appropriately more rigorous than those found in federal court, given the CCB's status as a voluntary forum. These

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[225] *See* Authors Alliance Initial Comments at 2 ("[R]espondents are likely to be unfamiliar with the CCB, and this may result in them ignoring the proceedings, to their detriment."); Re:Create et al. Initial Comments at 5–6 ("[I]t is possible for respondents to fail to opt out due to mistrust and misunderstanding of the CCB process.").

[226] Authors Alliance Initial Comments at 7–8 (recommending "directly addressing the respondents' potential fears that service packet is part of a scam: provide background on the CCB, its age, its creation and recommend a trusted source that the respondent can contact if they have questions like their local court or congressional representative").

[227] NYIPLA Initial Comments at 4.

[228] *See generally* FED. R. CIV. P. 55. For example, the District Court for the District of Columbia default procedures require the court to accept well-pleaded allegations as true to determine whether liability and entry of default judgment are appropriate. *Ventura v. L.A. Howard Constr. Co.*, 134 F. Supp. 3d 99, 103 (D.D.C. 2015).

[229] *See* H.R. REP. NO. 116-252, at 24–25; 17 U.S.C. § 1506(u)(1).

[230] H.R. REP. NO. 116-252, at 24–25.

[231] *Id.* at 24.

procedures currently strike the proper balance between claimants' interests and defaulting respondents' due process. As a result, we decline at this time to recommend statutory changes.[232]

#### e) Determination Enforcement

The Copyright Small Claims Report acknowledged that "[a] small claims tribunal will not mean much if its decisions can simply be ignored."[233] Nonetheless, as "a non-Article III administrative tribunal," the CCB "lack[s] the inherent powers to enforce its determinations."[234] Consequently, the CASE Act permits a prevailing party to seek an order from a federal district court confirming the relief awarded in the final determination and reducing the award to judgment.[235] To seek such an order, the prevailing party must submit an application to the court that includes a certified copy of the determination and a statutorily compliant declaration.[236] Claimants requested certified copies of determinations in three CCB proceedings[237] and subsequently filed actions in federal court.[238]

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[232] Another commenter recommended adjustments to default procedures that would penalize the defaulting party. *See* Jonathan Bailey Initial Comments at 5 (suggesting implementing a penalty against defaulting parties when awarding damages or amending the CASE Act to allow claimants to move default cases to federal court more easily). Given that the CCB is intended to be a voluntary forum and in light of our concerns that respondents may often default due to lack of proper service or lack of knowledge of the CCB, we decline to adopt this suggestion.

[233] Copyright Small Claims Report at 128.

[234] *Id.* The Report determined a method for prevailing parties "to turn an award of relief into a court-enforceable judgment," based on the Federal Arbitration Act as model, and this method is now used in the CASE Act. *Id.*

[235] 17 U.S.C. § 1508(a).

[236] *Id.* § 1508(b)(1), (2). The court will then grant the order and direct entry of judgment unless the determination was vacated, modified, or corrected. *Id.* § 1508(a). If the court issues an order confirming the relief awarded by the CCB, it will likewise require the noncompliant party to compensate the winning party any reasonable expenses required to secure the order, including attorneys' fees. *Id.*

[237] *See* Urbanlip.com Ltd. v. Faviana Int'l Inc., No. 22-CCB-0137 (CCB 2022); Bronner v. EssayZoo, No. 22-CCB-0012 (CCB 2022); Jaramillo v. Duque, No. 22-CCB-0277 (CCB 2022).

[238] *See* Mot. for Order to Confirm and Reduce to Judgment, In re Bronner v. EssayZoo, No. 1:24-mc-00117-TSC (D.D.C. Aug. 30, 2024); Pet. for Clerk's Certification of a Judgment, Urbanlip.com Ltd. v. Faviana Int'l Inc., No. 1:24-mc-00497-MKV (S.D.N.Y. Oct. 29, 2024); Compl., Jaramillo v. Duque, No. 1:26-cv-20532 (S.D. Fla. Jan. 26, 2026).

As noted by several commenters,[239] this process may pose challenges for some prevailing parties, particularly those that are *pro se*. After taking advantage of the relatively streamlined procedures of the CCB, federal court is the only recourse when a party fails to comply with a determination. Parties who appeared *pro se* in their CCB proceeding may feel ill-equipped to navigate this process in federal court without an attorney. Though the CASE Act guarantees reasonable expenses, including attorneys' fees, to parties who seek to reduce their determination to judgment in federal court,[240] the need to retain an attorney may not align with their expectations or resources. And even if a party successfully petitions a district court for an order reducing the determination to judgment, that is only the first step; it must then actually enforce that judgment. As a result, many prevailing parties may conclude that enforcement is not worth the effort, rendering the CCB determination nothing more than a Pyrrhic victory.

Given these issues, it is worth considering additional statutory mechanisms to ease the enforcement process for prevailing parties. Meanwhile, the Office will continue to consider what additional resources it can provide to CCB parties seeking to enforce their determinations, including by leveraging existing *pro bono* resources.[241]

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[239] *See* NYIPLA Initial Comments at 5 ("Currently, a party seeking to enforce a CCB determination must initiate an action in federal court and file a motion, a process that presents two significant barriers to justice: financial burden and procedural complexity."); Jonathan Bailey Initial Comments at 3, 7 ("One area where the CCB is struggling is that there is no simple way for a victorious filer to collect damages. Though CCB awards are enforceable in federal court, the CCB doesn't provide guidance for doing that . . . [and] [w]hile the CASE Act does allow claimants to seek attorneys' fees and other costs in obtaining such an order. . . it is still a time-consuming and overwhelming process that requires an attorney.").

[240] 17 U.S.C. § 1508(a).

[241] Commenters suggested various solutions to make determination enforcement more accessible, such as lowering the federal court filing fee for actions aimed at enforcing CCB determinations from $405 to $40, NYIPLA Initial Comments at 5; providing parties with additional guidance on next steps for elevating a proceeding to federal court, such as through a *pro bono* partnership service, Jonathan Bailey Initial Comments at 3; developing "user-friendly tools, such as click-through online 'wizards' and standardized physical forms" to guide parties through the process, particularly *pro se* parties, NYIPLA Initial Comments at 5–6; and awarding higher damages to make determinations more worthwhile to enforce in federal court, Jonathan Baily Initial Comments at 6–7. While the Office appreciates these suggestions, it does not have the authority to lower federal district court filing fees, which are under the purview of the Judicial Conference of the United States. 28 U.S.C. § 1914. We note that the CASE Act requires the noncompliant party to compensate the winning party with any reasonable expenses required to secure the order, including attorneys' fees. 17 U.S.C. § 1508(a). Moreover, it may not be possible to develop a

### f) The Opt-Out System

The Office's Notice of Inquiry sought comment on whether the opt-out system was working as intended and whether it should be modified.[242] Commenters were divided as to the efficacy of the system.

While Copyright Alliance took the position that "[t]he opt-out system is working as intended and does not need to be modified,"[243] other commenters disagreed. For example, Authors Alliance expressed concern that "many respondents do not appear to be aware of the opt-out system," which they asserted called into question "the supposed voluntary nature of the proceedings."[244] A commenter, who filed a claim with the CCB only for the respondent to opt out, expressed consternation about the opt-out right: "I had no idea that the respondent could simply 'opt out' and that nothing more would be done. What kind of justice is this? Why wouldn't an entity from whom one is seeking justice 'opt out'?"[245] Other commenters framed their support of the opt-out system in terms of its constitutional necessity.[246] Some cited the negative incentives the opt-out system may create for respondents. One commenter argued that the opt-out system "could be exploited" by respondents preferring to litigate in federal court, which has the "potential[] [to] undermine the CCB's accessibility goals."[247] Similarly, the CCI pointed out that large platforms typically have more resources than small creators and thus are able to afford to litigate in federal court, so they have "a strong incentive to opt out, knowing that (a) it is unlikely that a claimant would then sue in

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one-size-fits-all form that would satisfy the differing procedural and formatting requirements of each federal district court.

[242] NOI at 11625, 11627

[243] Copyright Alliance Initial Comments at 9.

[244] Authors Alliance Initial Comments at 2.

[245] Kristina McGowan Initial Comments at 2.

[246] *See* CCIA Initial Comments at 2 ("The opt-out system is working as intended and must be maintained so that the CCB's operation does not violate the U.S. Constitution."); Re:Create et al. Initial Comments at 4 (describing opt-out system as a "due process requirement[] without which the CCB would be glaringly unconstitutional").

[247] Michael Ravnitzky Initial Comments at 3.

federal court and (b) even if they did, the platform has the means to defend itself in court."[248]

In addition, several commenters viewed the number of defaults as calling into question whether the opt-out system is functioning as intended. Re:Create et al. asserted that the number of default determinations "may suggest shortcomings in the opt out mechanism, as respondents who understood the nature of the CCB and the consequences of their non-participation might have been expected to opt out of the proceeding."[249] In line with this, Authors Alliance observed that "there are many individuals who have no interest in interacting with the CCB but for some reason have not completed the opt out paperwork" and cautioned that if the CCB "continues to take an overly rigid approach to opt-outs, it risks alienating the very public it seeks to serve."[250] On the other hand, Copyright Alliance took the position that any issues regarding opt outs and defaults are addressed by the CCB's due process protections, such as service of process, and commended the way the CCB has upheld respondents' due process rights throughout proceedings.[251]

The Office recognizes commenters' concerns, but we believe it would be premature to abandon the opt-out approach, which would require a major reworking of the CCB's regulations and procedures. In the Office's view, it makes sense to first implement some changes to see if concerns with the current system can be sufficiently addressed.[252]

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[248] CCI Initial Comments at 10.

[249] Re:Create et al. Initial Comments at 5.

[250] Author Alliance Initial Comments at 2, 7.

[251] Copyright Alliance Reply Comments at 5–6.

[252] In the Copyright Small Claims Report, the Office did not take a position as to whether the CCB should be an opt-in system or an opt-out system, explaining that there are benefits and drawbacks to each approach. Copyright Small Claims Report at 97–99. Although much of the length and complexity of the initial phase of CCB proceedings is a consequence of the opt-out system, no commenters proposed switching at this point to an opt-in system. We note that an opt-in system would require an affirmative response from respondents consenting to participate in a proceeding, which would presumably result in less use of the CCB. *See* Copyright Small Claims Report at 98–99. The number of claims in an opt-in system would likely be more akin to the number of contested active proceedings the CCB currently administers per year (dozens), as opposed to the current number of claims filed (hundreds).

Additionally, one commenter suggested deterring opt outs by penalizing respondents in the event that a claimant files in federal court following an opt out, including "restricting access to remedies such as attorneys' fees in federal court" for respondents, allowing "enhanced statutory damages" for prevailing claimants, "establish[ing] a rebuttable presumption of willfulness" for respondents, and "imposing modest additional costs or bonds."[253] The Office cannot recommend these measures, as a key feature of the CCB is voluntary participation.[254] Attempts to impose negative consequences on respondents who opt out of CCB proceedings and are subsequently brought into federal court would penalize opt outs, despite the CCB's voluntary nature and respondents' explicit right to do so. There can be valid reasons why respondents opt out, such as a desire to have the case heard by a jury or the availability of more extensive discovery.

The Office does, however, recommend one statutory change. Under the current system, the opt-out period contributes significantly to the length of CCB proceedings. Parties are required to wait for the full course of the sixty-day period, even if they are both ready to begin the active phase. If respondents could choose to waive the remainder of the opt-out period, it would shorten proceedings. Accordingly, we recommend that the CASE Act be amended to allow respondents to affirmatively waive the remainder of the opt-out period if they wish to participate in the CCB.

Commenters also suggested ways to optimize the functioning of the opt-out system, such as increasing education about the CCB process and opt outs, both before and during and proceeding.[255] The Office appreciates these comments and will take them under advisement as it considers the CCB's resources moving forward.

### *B. Recommendations as to Other Statutory Topics*

The other topics identified by the CASE Act for study are the number of proceedings the CCB can administer; adjustments to the CCB's authority; awards of fees and costs; methods for identifying and locating online infringers; and mediation and other nonbinding ADR. Below, we also consider two other pertinent matters: district

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[253] Liza Phoenix Initial Comments at 1.

[254] 17 U.S.C. § 1504(a); H.R. REP. NO. 116-252, at 17, 30; S. REP. NO. 116-105, at 3, 11; *see also* Copyright Small Claims Report at 97.

[255] *See* CCI Initial Comments at 13; Liza Phoenix Initial Comments at 1; Michael Ravnitzky Initial Comments at 3.

court referrals and the interplay of the CCB with the DMCA's notice-and-takedown process.

### 1. The Number of Proceedings

In addition to the CCB's use and efficacy, the CASE Act directed the Office to study "the number of proceedings the Copyright Claims Board could reasonably administer."[256] As the Senate Report observed, "it is initially unknown how many potential claims will be brought before the Board, how many respondents will opt out, and how long on average the Board will take to hear a claim. It will take several years for the Board to have a complete understanding of these statistics."[257]

The CCB has proven capable of administering the number of claims filed thus far. In recent months, however, there has been an increase in the number of claims filed. If this trend holds, the CCB may need additional CCAs or support staff to assist with this increased volume. Its caseload may also increase if it receives additional district court referrals or if it sees an influx of artificial intelligence–generated claims and filings, which may be less likely to comply with statutory or regulatory requirements and could create additional burdens for staff.

If the CCB's caseload does at some point exceed its capacity, the regulations provide a safety valve. The CCB may impose a temporary moratorium on the filing of new claims if it "determine[s] that the number of pending cases before it has overwhelmed [its] capacity."[258] To date, the CCB has not had to make use of this provision.

### 2. Adjustments to the CCB's Authority

The CASE Act next directs the Office to consider "[w]hether adjustments to the authority of the Copyright Claims Board are necessary or advisable, including with respect to (1) eligible claims, such as claims under section 1202 of Title 17, United States Code; and (2) works and applicable damages limitations."[259]

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[256] Pub. L. No. 116-260, § 212(e)(6), 134 Stat. at 2199–2200.

[257] S. REP. NO. 116-105, at 7. Though this question was presented in the Office's Notice of Inquiry, 90 Fed. Reg. 11625, 11627, the Office did not receive any comments on this issue.

[258] 37 C.F.R. § 233.3(a).

[259] Pub. L. No. 116-260, § 212(e), 134 Stat. at 2199–2200 (2020).

### a) Eligible Claims

The Copyright Small Claims Report stressed that restricting the CCB's jurisdiction primarily to copyright infringement matters would enable the CCB "[t]o operate efficiently and within the scope of its expertise."[260] It recognized that limiting parties' ability to bring related, non-copyright claims "may prevent some small copyright claimants from pursuing every claim they might wish in an alternative forum," but doing so "offers the benefit of a quicker and less expensive option to address their chief concern."[261] However, it left open the possibility of reconsidering these conclusions in the future.[262]

The CASE Act directed the Office to consider whether the CCB should be permitted to hear claims related to copyright management information ("CMI") under section 1202. CMI refers to "information conveyed in connection with copies or phonorecords of a work or performances or displays of a work, including in digital form," such as a work's title, author, copyright owner, and terms and conditions of use; names of performers in non-audiovisual works; names of writers, performers, and directors credited in an audiovisual work; and any "identifying numbers or symbols referring to such information or links to such information."[263] Section 1202 prohibits the knowing provision or distribution of false CMI "with the intent to induce, enable, facilitate, or conceal infringement,"[264] as well as the intentional removal or alteration of CMI, or distribution of works with removed or altered CMI, "knowing, or . . . having reasonable grounds to know, that it will induce, enable, facilitate, or conceal an infringement."[265] Commenters were divided on the issue.[266]

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[260] Copyright Small Claims Report at 105.

[261] *Id*.

[262] *Id*. (suggesting the Office consider eligible claims in future study).

[263] 17 U.S.C. § 1202(c).

[264] *Id*. § 1202(a).

[265] *Id*. § 1202(b).

[266] *Compare* AIPLA Initial Comments at 2 (arguing for expansion because CMI claims "are increasingly relevant in online infringement contexts" and "providing a forum for limited-value claims could fill an important enforcement gap"); NPPA Reply Comments at 6 (arguing that CMI claims "are perfect for a simplified process under the CCB" because they are "eligible for low-value statutory damages awards,"

After careful consideration, we do not recommend expanding the CCB's jurisdiction at this time to include CMI claims. We agree with the commenters who saw benefits in enabling these claims to be brought before the CCB by parties who cannot afford to litigate in federal court. But Section 1202 claims have not been extensively litigated or interpreted, there are relatively few federal court precedents for the CCB to rely on, and the CCB must follow existing judicial precedent rather than make new law.[267] Accordingly, we think CMI claims are not yet appropriate for the CCB. That conclusion may change, however, as a body of law takes clearer shape in this area.

A few commenters suggested that the CCB be permitted to hear certain claims related to copyright contracts, such as where a licensee fails to pay the licensor or where there has been a breach of a license agreement.[268] While the CCB can sometimes hear

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which "makes them impractical for bringing to federal court because of the expense and complex nature of even simple federal cases"); CCI Initial Comments at 16–17 (stating that CMI claims are well-suited to CCB processes because they "typically involve straightforward factual questions" and a "stringent dual intent standard"); Kernochan Center Initial Comments at 2 ("The Kernochan Center believes that many claims of copyright management information removal are not being heard because claimants do not have the financial ability to bring claims in federal court and yet are unable to have them adjudicated by the CCB. The CCB's goals will be furthered by providing meaningful remedies that address authors' section 1202 claims."); Jonathan Bailey Initial Comments at 7 (stating that allowing such claims "would give filers without a large amount of actual damages access to additional damages"); AIPLA Initial Comments at 2 (stating "[m]any small creators rely heavily on CMI"), *with* Authors Alliance Initial Comments at 8 ("Section 1202 in particular is a complex statute with the meaning of many of its terms currently being debated before federal courts."); CCIA Initial Comments at 2–3 (expressing concern that inclusion of CMI claims "would likely lead to an increase in non-adjudicable claims").

[267] *See* H.R. REP. NO. 116-252, at 25 ("The [CASE] Act takes copyright law as it finds it: the Act does not alter the substantive provisions of the Copyright Act or the case law construing it, and the Board's determinations must follow existing precedent. The Act also leaves copyright law as it finds it: the determinations of the Board may not be cited or relied upon, and the Board must dismiss claims that, among other things, would require it to make truly novel case law.").

[268] Authors Guild Initial Comments at 2 (recommending that the CCB be permitted to hear "cases where a licensed user of a copyrighted work has failed to pay the author under the terms of the license" and noting that "it often makes no sense for authors to bring a lawsuit to recover these payments when the amounts owed are usually relatively small—often in the four or low five figures, which in no way would cover the cost of a lawsuit"); SFWA Comments at 2 (arguing that "failure of a publisher to pay owed royalties is very common and, while this may be a direct contractual violation, expanding the CCB's jurisdiction to cover it would be very much in keeping with the CCB's mission"); NYIPLA Initial Comments at 6 (suggesting that the CCB be permitted to hear "a claim that respondent breached the license agreement that arises out of the same facts and situations as the infringement or misappropriation

certain types of contractual counterclaims, these can only be asserted in a limited scenario: when a counterclaim "arises under an agreement pertaining to the same transaction or occurrence that is the subject of a claim of infringement . . . if the agreement could affect the relief awarded to the claimant."[269] To date, respondents have not asserted contractual counterclaims in any CCB proceedings.

A number of claimants, however, have attempted to file contract claims with the CCB. The CCB currently dismisses these during compliance review. The Office understands the appeal of expanding the CCB's jurisdiction to hear contract claims related to copyright in certain circumstances. For instance, the CCB reports that, in some instances, claimants have filed relatively simple contract claims premised on a copyright licensee's failure to pay, which are closely aligned with the CCOs' core expertise.[270] This suggests there is demand for a forum to hear such claims.

Nonetheless, the Office is hesitant to endorse this change. Allowing claimants to file contract claims would require the CCB to interpret and apply state law and would significantly expand the CCB's jurisdiction. While some contract cases may be fairly straightforward and related to copyright issues, drawing a jurisdictional line that is appropriately limited to this type of claim (as opposed to ones that raise novel or complicated state-law issues) may be challenging. Additionally, state small claims courts already provide a cost-effective, streamlined forum for low-dollar value contract claims. We will explore whether there are ways that the CCB can offer assistance to parties in this area, such as referring them to local small claims courts or directing them to the CCB's *pro bono* partners.[271]

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claim"); NPPA Reply Comments at 6 (endorsing the suggestion that "the CCB's jurisdiction should be expanded to cases of failure to pay an agreed license for a copyrighted work"). We note that NPPA went further and suggested that "[s]uch claims for a failure to pay an agreed license fee should deviate from the standard no-attorneys-fees rule in the CCB, and allow for fees and a multiplier of damages, particularly if a contract allows for it." NPPA Reply Comments at 6.

[269] 17 U.S.C. § 1504(c)(4)(B)(ii).

[270] Although the current CCOs have experience in contract law and other areas, this expertise is not statutorily required, and it is possible that future CCOs may not all share that background.

[271] MPA recommended that the CCB should "allow residents of the United States to bring claims against non-residents," noting that "copyrighted works are routinely distributed online in virtually every industry—by rightsholders of all types and sizes—making those works as susceptible to infringement by non-residents as by those located in the U.S." MPA Reply Comments at 2. We decline to adopt this

For the foregoing reasons, the Office does not recommend any adjustments concerning the limited set of claims that the CCB can hear. In our view, the CCB should continue to focus on issues that require copyright-specific expertise, rather than taking on additional types of claims.[272]

**b) Eligible Works**

The CASE Act also instructed the Office to consider potential adjustments to the CCB's authority with respect to the types of works that may serve as the subject matter for claims.[273] The Office did not receive any comments on this topic. Currently, there are no limitations concerning the types of works that can be the subject of CCB claims, and there has been no indication that the CCB has been unable to determine a claim due to the type of work at issue. The CCB also has procedures that require it to dismiss claims that are unsuitable for its determination, such as claims that require "[t]he determination of a relevant issue of law or fact that could exceed . . . the subject matter competence of the Copyright Claims Board."[274] To the extent issues regarding a particular type of claim arise, they can be evaluated for suitability on an ad hoc basis.

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recommendation. Claimants already struggle to serve and enforce determinations against domestic respondents, and these challenges would only be compounded for claims against foreign respondents.

[272] This is in line with the views of several commenters, who recommended against expanding the CCB's authority. *See* Copyright Alliance Initial Comments at 14 ("Adjustments to the CCB's authority are not necessary or advisable."); Authors Alliance Initial Comments at 8 (recommending against expanding CCB's authority due to "the difficulty claimants have had in making viable claims under current rules"); CCIA Initial Comments at 2–3 ("Even with [the CCB's current] limited scope, claimants appear to find it difficult if not impossible to formulate compliant, cognizable claims—even with expert guidance from CCB attorneys."); Re:Create et al. Initial Comments at 6 ("There is no reason to consider adding to the CCB's docket or to its powers until it can be established that the CCB is capable of accomplishing its initial mandate."). *But see* NPPA Reply Comments at 6 (positing that "the Copyright Office can walk and chew gum at the same time—thus both working out kinks and beginning the process of expanding CCB jurisdiction to other conflicts that arise under Chapter 17, or are rooted in copyright issues").

[273] Pub. L. No. 116-260, § 212(e), 134 Stat. at 2199–2200.

[274] 17 U.S.C. § 1506(f)(3)(C). The CCB can consider whether a claim is unsuitable both on its own initiative or at the request of a party. 37 C.F.R. § 224.2(b)–(c).

Accordingly, we do not recommend any adjustments to the types of works for which the CCB may determine claims.[275]

### c) Applicable Damages Limitations

Finally, the CASE Act instructed the Office to study potential adjustments to the CCB's damages limitations.[276] As of December 2025, damages were awarded in nearly 72% of final determinations, with damages awarded in 57% of contested proceedings and 86% of default proceedings. With respect to determinations that included a damages award, the average amount awarded was $3,598.58.[277] The highest amount awarded was $11,000, and the lowest amount was $750.

The Office declines to recommend changes to the damages limitations at this time, given that the CCB's damages awards have consistently been well below the statutory limits. Commenters generally opposed modifying the damages limitations,[278] though some left open the possibility of the need for future adjustments.[279] Under the

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[275] In the event that an issue with respect to eligible works arises in the future, the CASE Act provides the Office with the authority to impose limitations on the types of works to which claims may pertain. *See* 17 U.S.C. § 1504(c) ("The Copyright Claims Board may render determinations with respect to the following claims, counterclaims, and defenses, subject to such further limitations and requirements, including with respect to particular classes of works, as may be set forth in regulations established by the Register of Copyrights.").

[276] Pub. L. No. 116-260, § 212(e), 134 Stat. at 2199–2200.

[277] As of December 31, 2025, for determinations that included damages awards in favor of a claimant, the average amount awarded in determinations in contested proceedings was $2,392.17, while the average amount awarded in default determinations was $4,360.53.

[278] *See* Jonathan Bailey Initial Comments at 8 (pointing out that the CCB has never "approached its damages cap in any meaningful way" and thus he did not "see a point in adjusting them at this time"); Copyright Alliance Initial Comments at 14 (suggesting limitations be revisited in the future, "especially to account for and keep up with rising costs and inflation"); Re:Create et al. Initial Comments at 6.

[279] NYIPLA Initial Comments at 6–7 (recommending "a cautious approach" to increasing the damages limitations, "perhaps with incremental increases in those amounts over a several-year period" and suggesting that "an increase in both the amount of damages and recoverable attorney's fees should provide more incentives for claimants and their counsel to rely on CCB proceedings"); Michael Ravnitzky Initial Comments at 6 (stating that the damages limitations "may need adjustment to ensure the CCB remains an attractive forum for resolving disputes" and adding that "[e]valuating the current distribution of damages awarded in CCB cases can provide insights into whether the caps are appropriate").

CASE Act, the Office has the regulatory authority to modify the CCB's damages limitations in the future as needed.[280]

Some commenters argued that relatively low damages awards may disincentivize claimants from enforcing their determinations or from filing a claim in the CCB in the first place.[281] For example, one commenter was of the opinion that "the biggest challenge [to determination enforcement] is that many awards aren't worth pursuing. An award of the statutory minimum of $750 is likely more hassle than it's worth. Since there's no federal small claims court and these awards are only enforceable in federal court, the hassle may just be too great. Higher damage awards, even slightly, would change that calculus."[282] While the Office appreciates these comments, the CCB sets damages awards based on the facts of each proceeding, and the case has not been made to artificially inflate them. Parties also have the ability to recoup their costs and fees when confirming their awards in federal court,[283] which also mitigates some of these enforcement challenges.

Two commenters recommended allowing voluntary dismissal without prejudice if discovery reveals that actual damages may be higher than the statutory maximum.[284] The Office declines to recommend this change at this time. Currently, claimants may only voluntarily dismiss a claim without prejudice before a response is filed.[285] Once the parties reach discovery, a claim will be dismissed with prejudice, unless all parties agree otherwise or the CCB finds that it would be in the interests of

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[280] Three years after the CCB's first determination, the Register may conduct a rulemaking concerning the damages limitations and any resulting rule will become effective 120 days after it is submitted to Congress, unless Congress enacts a law to the contrary during that time. 17 U.S.C. § 1510(a)(2). Thus, should the need arise, the Office may conduct a rulemaking in the future.

[281] *See* NYIPLA Initial Comments at 6–7; Jonathan Bailey Initial Comments at 6–7.

[282] Jonathan Bailey Initial Comments at 6–7.

[283] *See* 17 U.S.C. § 1508(a) ("If the United States District Court for the District of Columbia or other district court of the United States, as the case may be, issues an order confirming the relief awarded by the Copyright Claims Board, the court shall impose on the party who failed to pay damages or otherwise comply with the relief, the reasonable expenses required to secure such order, including attorneys' fees, that were incurred by the aggrieved party."),

[284] *See* Joe Keeley Initial Comments at 3; NPPA Reply Comments at 5.

[285] *See* 17 U.S.C. § 1506(q)(1).

justice for it to be dismissed without prejudice.[286] The CASE Act carefully balances the rights and interests of both claimants and respondents. Allowing a claimant to voluntarily dismiss its claim as a matter of right if damages prove higher than the statutory maximum would unduly favor claimants and potentially induce more respondents to opt out. The CCB has the authority to determine that dismissal without prejudice would be in the interests of justice, but that should be the exception rather than the rule.

Finally, the CASE Act currently requires parties to make an election between actual and statutory damages "at any time before final determination is rendered."[287] We recommend that this provision be modified.[288] While it mirrors federal court practice,[289] it does not translate well into the context of a small claims tribunal intended for inexperienced litigants. The election requirement favors more experienced parties, and *pro se* parties in particular may not fully understand the distinction between these categories of damages and the consequences of their election. We recommend that the CASE Act be amended to give the CCB discretion as to whether to award actual or statutory damages. Such a system would allow parties to rely on the CCOs' expertise, particularly where they have varying degrees of exposure to the legal process.

### 3. Awards of Fees and Costs

Next, the CASE Act asked the Office to study "[w]hether greater allowance should be made to permit awards of attorneys' fees and costs to prevailing parties, including potential limitations on such awards."[290] In general, parties in CCB proceedings bear their own attorneys' fees and costs.[291] This is in contrast to copyright claims in federal court, where district court judges have discretion to allow recovery of

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[286] 37 C.F.R. § 222.17(c).

[287] 17 U.S.C. § 1504(e)(1)(B).

[288] Copyright Alliance recommended that the CASE Act be modified so that parties could "make their election of damages after the CCB makes a finding on the amounts it would award for both statutory or actual damages." Copyright Alliance Reply Comments at 6–7.

[289] *See* 17 U.S.C. § 504(c)(1) (stating that copyright owner generally "may elect, at any time before final judgment is rendered, to recover, instead of actual damages and profits, an award of statutory damages for all infringements involved in the action").

[290] Pub. L. No. 116-260, § 212(e), 134 Stat. at 2199–2200.

[291] 17 U.S.C. § 1504(e)(2)(3).

costs and reasonable attorneys' fees to the prevailing party, contingent upon the timely registration of the work at issue.[292]

An exception to the general prohibition on awards of costs and fees in the CCB applies where a party has engaged in bad-faith conduct during the course of the proceeding.[293] In such a circumstance, the CCB may "award reasonable costs and attorneys' fees to any adversely affected party . . . in an amount of not more than $5,000" as part of a determination.[294] But if the adversely affected party is *pro se*, the award is limited to costs only and cannot exceed $2,500.[295] The CCB has not awarded costs or fees in any proceedings to date.

We do not recommend amending the CASE Act to permit prevailing parties to recover attorneys' fees in situations not involving bad faith. The CCB is intended to be used without the need for an attorney. Making fee awards available would only benefit represented parties, and it would not serve the purposes of the CASE Act for a *pro se* party who has proceeded in good faith to be responsible for a represented party's attorneys' fees. This could also remove an incentive for parties to utilize the CCB where the opposing side has retained counsel.

However, allowing prevailing parties to recover costs would not pose the same equity concerns.[296] In theory, the availability of costs could serve as an incentive for claimants to utilize the CCB, but could have the opposite effect on respondents. But it

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[292] *See id*. §§ 412, 505.

[293] *See supra* Part III.A.1.

[294] 17 U.S.C. § 1506(y)(2). Notably, the CCB may only issue such awards in proceedings "in which a determination is rendered." *Id*. Accordingly, if a claim is dismissed prior to a determination—such as during compliance review or due to a failure to prosecute—the CCB may not award attorneys' fees and costs for bad-faith conduct that occurred prior to that point.

[295] *Id*. § 1506(y)(2)(A). In "extraordinary circumstances," for instance if a party has engaged in a pattern of bad-faith conduct, the CCB may award more. *Id*. at § 1506(y)(2)(B).

[296] It would also be in line with the approach taken by the United Kingdom's Intellectual Property Enterprise Court Small Claims Track, which permits the recovery of costs in a wider range of circumstances than is currently the case in the CCB, even without bad-faith conduct. HM Courts & Tribunals Service, *Guide to the Intellectual Property Enterprise Court Small Claims Track*, GOV.UK (Aug. 12, 2025), https://www.gov.uk/government/publications/intellectual-property-enterprise-court-a-guide-to-small-claims/guide-to-the-intellectual-property-enterprise-court-small-claims-track#the-procedure-for-claims-in-the-ipec-small-claims-track.

likely would not impact participation much in either direction, given that the level of costs in the CCB will be relatively low.[297] The ability to recoup the costs of service could, on the other hand, encourage claimants to invest in more reliable service methods; this, in turn, would benefit respondents as well, by increasing the chances that they are properly notified of the claim. Respondents also may be more likely to waive service if they may be responsible for the costs should the claimant prevail, again shortening the duration of the process. Allowing the recovery of costs also may offset some of the concerns about the incentives posed by relatively low damages awards raised by some commenters.[298] For these reasons, we recommend that the CASE Act be modified to permit prevailing parties to recover costs regardless of a showing of bad faith, but not attorneys' fees.

As noted above, the CCB has experienced relatively few instances of bad-faith conduct,[299] and current procedures generally appear to be sufficient in addressing any such behavior.[300] However, in the rare instances where *pro se* parties are adversely affected, the Office recommends amending the CASE Act's limitations on awards. While represented parties generally may recover up to $5,000 in the event of bad-faith conduct, *pro se* parties are only able to recover costs, which will never approach the limit of $2,500. The framework in the statute thus favors represented parties over *pro se* parties and may not sufficiently deter bad-faith conduct. This asymmetry could be corrected by allowing *pro se* parties to recover some multiple of costs incurred or a flat fee, at the CCB's discretion.

Beyond this, it is premature to recommend any adjustments to the limitations on awards of attorneys' fees and costs and the circumstances under which such awards are available, considering that costs and fees have not been awarded in any proceedings. As with the limitations on damages, the Office is presently empowered to adjust the

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[297] For claimants, costs generally consist only of the $100 filing fee and any costs associated with service. *See* 37 C.F.R. § 201.3(g). Respondents do not incur any costs.

[298] *See supra* Part III.B.2.c.

[299] *See supra* Part III.A.1.

[300] *See* Copyright Alliance Initial Comments at 15 (noting that "[m]echanisms within the CASE Act and CCB regulations provide sufficient ways to address bad-faith conduct" and it had "not seen evidence of rampant misuse of the CCB which would warrant changes to the law").

limitations on costs and attorneys' fees through a rulemaking[301] and will consider doing so if needed in the future.

### 4. Methods of Identifying and Locating Online Infringers

The CASE Act also directed the Office to consider "[p]otential mechanisms to assist copyright owners with small claims in ascertaining the identity and location of unknown online infringers."[302] The difficulty of identifying online infringers is not unique to the CCB. The CASE Act requires CCAs "[t]o provide information to potential claimants contemplating bringing a permissible action before the Copyright Claims Board about obtaining a subpoena under section 512(h) for the sole purpose of identifying a potential respondent in such an action."[303] Section 512(h) sets forth a streamlined process for a copyright owner to file a request with a district court clerk to issue a subpoena to an online service provider for purposes of identifying an alleged infringer.[304] The CCB has reported that it has provided information on section 512(h) subpoenas to potential claimants[305] and that claimants have used the section 512(h) process in conjunction with CCB claims.

Commenters were generally opposed to offering additional mechanisms to assist claimants in ascertaining the identity and location of unknown online infringers, such as giving the CCB subpoena power.[306] The Office agrees with commenters that granting the CCB subpoena power would pose difficult issues.[307] As NYIPLA explained,

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[301] 17 U.S.C. § 1510(a)(2).

[302] Pub. L. No. 116-260, § 212(e), 134 Stat. at 2199–2200.

[303] 17 U.S.C. § 1503(a)(2)(C).

[304] *See id.* § 512(h).

[305] *See, e.g.*, CCB *Handbook* ch. 3(a), https://ccb.gov/handbook/Infringement-Claim.pdf.

[306] CCIA Initial Comments at 3 ("There should not be any additional mechanisms to assist claimants in finding unknown online infringers, and there especially should not be subpoena power."). *See also* NYIPLA Initial Comments at 7; Jonathan Bailey Initial Comments at 8. *But see* NPPA Reply Comments at 6 (concurring that CCB should direct parties to the section 512(h) process but also suggesting that the Office "should study ways to enable CCB users to make it easy and seamless to use this process through the CCB itself, whether that means that the CCB is a pass-through with court supervision, or the CCB issues the subpoenas itself").

[307] Copyright Small Claims Report at 123–24 (discussing issues with granting CCB subpoena authority in context of identifying online infringers).

"[g]ranting subpoena authority could potentially impact the balance in favor of claimants" and "compelling disclosure of personal information—especially from intermediaries or platforms—may need to be subject to rigorous oversight and clear procedural protections," in addition to "increas[ing] complexity, costs, and delays, contrary to the streamlined goal of CCB proceedings."[308] The Office will explore whether there are any additional resources that the CCB can provide to assist potential claimants with navigating the 512(h) process.[309]

### 5. Mediation and Other Nonbinding ADR Services

The CASE Act instructed the Office to study "[w]hether the Copyright Claims Board should be expanded to offer mediation or other nonbinding alternative dispute resolution services to interested parties."[310]

At the time of the Copyright Small Claims Report, stakeholders were generally skeptical about the incorporation of mediation into the small claims process.[311] They argued that a mandatory mediation step would prolong the dispute resolution process and result in higher costs.[312] Accordingly, the Office concluded that "stakeholders [were] most interested in an adjudicative process that results in binding decisions rather than one that relies on ADR."[313] The Office, however, noted that "the possibility of mediation or other ADR procedures should [not] be abandoned completely" and that the CCB would benefit from a CCO with experience in ADR.[314]

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[308] NYIPLA Initial Comments at 7; *see also* Michael Ravnitzky Initial Comments at 7 ("Safeguards, including judicial oversight, clear criteria for issuing subpoenas, and notification requirements for affected parties, can ensure that subpoena requests are justified and protect respondents' privacy and due process rights. Ensuring that data obtained through subpoenas is handled securely and used only for the specific case is essential to maintain trust.").

[309] Jonathan Bailey Initial Comments at 8 (recommending that "using the existing system makes more sense than trying to carve out new powers for the CCB" and that CCB should instead focus on providing guidance to parties about section 512(h) process).

[310] Pub. L. No. 116-260, § 212(e), 134 Stat. at 2199–2200.

[311] Copyright Small Claims Report at 131.

[312] *Id.*

[313] *Id.*

[314] *Id.*

Indeed, Congress made clear that the CASE Act "reflects an intent to encourage compromise and settlement."[315] Under the CASE Act, at any point during the active phase, parties may jointly request a settlement conference with one of the CCOs.[316] If the parties independently reach a settlement, they can inform the CCB and request dismissal of any or all claims or counterclaims in the proceeding.[317] The statute further allows parties to request that settlement terms be adopted in the final determination, and the CCB is permitted to "issue a final determination incorporating such terms unless the Board finds them clearly unconscionable."[318]

As discussed above, the CCB held settlement conferences in twenty-seven proceedings as of December 31, 2025, seventeen of which were later resolved by a settlement. During this time period, 136 proceedings were dismissed due to a known settlement. Despite the initial hesitancy among stakeholders at the time of the Copyright Small Claims Report, commenters generally lauded the CCB's efforts at promoting settlement and negotiation,[319] with some suggesting that it is underutilized

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[315] H.R. REP. NO. 116-252, at 24. In fact, the importance of settlement is evidence by the fact that Congress required one of the CCOs to have alternative dispute resolution experience because of the "statutory mandate to facilitate settlement." *Id.* at 29; *see also* 17 U.S.C. § 1502(b)(3)(A)(iii).

[316] 17 U.S.C. § 1506(r)(1)(A). The CCO that presides over the settlement conference is recused from the final determination, unless the other two CCOs are unable to reach a unanimous decision. 37 C.F.R. § 222.18(e). Despite the recusal, they may still review the record and attend any hearing, but they are prohibited from "actively participat[ing] in the hearing or any substantive discussion among the Officers concerning the proceeding or the determination," unless "it is known that the other Officers cannot reach a consensus as to the determination." *Id.*

[317] 17 U.S.C. § 1506(r)(1)(B).

[318] 37 C.F.R. § 222.18(h); 17 U.S.C. § 1506(r)(2), (t)(1)(D).

[319] *See* Copyright Alliance Initial Comments at 4 ("[W]e have heard anecdotal evidence from many of our members (typically shared in confidence and with little details) that the mere presence of the CCB and the ability to bring a case before the CCB has led a third-party to respond where in the past they likely would not have, and that such responses have led to conversations that resulted in a settlement."); Melissa Eckhause Initial Comments at 2 ("[B]ased on my experience representing parties and my empirical research, the CCB's existence is promoting settlements or other private dispute resolutions"); Authors Guild Initial Comments at 1–2; Jonathan Bailey Initial Comments at 1 (stating that CCB has "been a powerful tool for encouraging settlements and negotiation"); DMLA Initial Comments at 2; Michael Ravnitzky Initial Comments at 1–2.

for such purposes.[320] Given these successes, we recommend amending the CASE Act to permit the CCB to offer nonbinding mediation outside the context of an active proceeding and to allow it to give CCOs the discretion to institute a mandatory settlement conference in a proceeding.[321]

Currently, the CASE Act only allows parties to request a settlement conference during the active phase.[322] As a result, parties are only able to utilize the CCB for voluntary, mediated discussions if a respondent has declined to opt out. It would advance the purposes of the CASE Act to allow the CCB to facilitate such discussions at earlier points in a proceeding, perhaps prior to filing a claim. Allowing parties to approach the CCB for mediation earlier on in the process, or even outside the context of a proceeding, would also have the benefit of increasing the number of voluntary, two-party proceedings. Though this may increase the CCB's workload, this kind of work is at the core of the CCB's responsibilities, and would provide a meaningful service to parties. While Copyright Alliance suggested "first optimiz[ing] the CCB under its current capabilities and dedicat[ing] resources to ensure those operations are running smoothly before examining whether to expand the CCB's offerings,"[323] we do not view this as a significant expansion of the CCB's offerings, but instead as a way to leverage a skillset it already possesses. Accordingly, we recommend that CASE Act be amended to allow the CCB to offer nonbinding mediation at the request of the parties outside of the context of active proceedings.

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[320] *See* NYIPLA Initial Comments at 2; Kernochan Center Initial Comments at 4–5.

[321] *See* Kernochan Center Initial Comments at 4–5 (suggesting "implementing a more formal mediation or ADR process to encourage settlement"); Michael Ravnitzky Initial Comments at 2, 7–8 (suggesting implementing pilot program for mediation and ADR services). *But see* Jonathan Bailey Initial Comments at 9 (stating that it is "wholly unnecessary for the CCB to offer formal mediation services," given that "[t]he CCB is already widely used as a mediation process"); NYIPLA Initial Comments at 7 ("Existing CCB procedures, including settlement discussions facilitated by the CCB, already provide participants with the primary benefits of mediation and nonbinding ADR, such as a flexible and informal resolution process."); AIPLA Initial Comments at 2–3 (cautioning that "layering formal mediation into the CCB structure may not fully serve its intended users well").

[322] 17 U.S.C. § 1506(r)(1).

[323] Copyright Alliance Initial Comments at 15.

The CASE Act currently permits the CCB to hold a settlement conference following a joint request from the parties,[324] which we interpret as precluding the CCB from holding a settlement conference on its own initiative. While there is value to this approach[325] and some of the CCB's success with settlement discussions may be due to all parties having affirmatively agreed to the conference, allowing the CCB to schedule settlement discussions at the outset of the proceeding could encourage parties to efficiently and collaboratively resolve their dispute. Accordingly, we recommend that the CASE Act be amended to give the CCB the flexibility to hold settlement conferences even when not specifically requested by parties.

#### 6. Other Pertinent Matters

Finally, the CASE Act invites the Office to address "[s]uch other matters as the Register of Copyrights believes may be pertinent concerning the Copyright Claims Board."[326] The Office addresses two such matters: (1) district court referrals and (2) the interplay of the DMCA's notice and takedown process with CCB procedures.

##### a) District Court Referrals

Section 651 of Title 28 requires federal district courts to authorize ADR processes in all civil actions and implement their own ADR programs "to encourage and promote the use of alternative dispute resolution in its district."[327] The CCB is a qualified ADR process under section 651, and the CASE Act allows federal district court judges to refer eligible cases to the CCB with the parties' consent.[328] The Copyright Small Claims

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[324] 17 U.S.C. § 1506(r)(1)(A).

[325] *See also* AIPLA Initial Comments at 3 ("We recommend keeping [settlement conferences] strictly optional, used only where both parties affirmatively elect it, and where a clear framework ensures transparency and cost control.").

[326] Pub. L. No. 116-260, § 212(e), 134 Stat. at 2199–2200.

[327] 28 U.S.C. § 651(b).

[328] 17 U.S.C. § 1509(b). In the event of a district court referral, the CCB has the authority to suspend or amend its procedural rules, with some exceptions, if it would be "in the interests of justice, fairness, and efficiency" to do so. 37 C.F.R. § 235.1(b). For example, if the parties completed discovery in the district court prior to the referral, the CCB may waive its own discovery requirements to avoid redundancy. *See* CCB: District Court Referrals; Proof of Service Forms; Default Proceedings; Law Student Representation, 87 Fed. Reg. 77518, 77519 (Dec. 19, 2022). Referred parties likewise do not need to pay the standard CCB filing fee, given that the plaintiff has already had to pay a much higher federal court filing fee. 37 C.F.R. § 235.1(d).

Report explained that permitting referrals would "alleviate some of the burdens on federal district courts."[329]

Although it has great potential to save parties' costs, increase efficiency of dispute resolution, and reduce federal court backlogs, the referral process has been underutilized thus far. To date, only one case has been referred to the CCB from federal district court. It is likely that many courts and parties are not yet aware of the option, and the CCB plans to continue work to increase awareness.[330]

Currently, the CASE Act specifies that a CCB *proceeding* qualifies as an ADR process for purposes of section 651 of Title 28,[331] which suggests that the entire case must be transferred to the CCB for final determination. To increase referrals, the Office recommends that the CASE Act be amended to clarify that courts can refer a case to the CCB not only for a final determination, but also for more limited purposes, such as settlement, mediation, or preparation of a report and recommendation on a specific copyright issue.

The Office understands that, for certain parties, remaining in federal court may present some advantages, such as higher potential damages and an award of costs and attorneys' fees should they prevail, which may be particularly important to those that have already retained counsel.[332] Transferring the entire case to the CCB would require forgoing these benefits. Additionally, given the CCB's jurisdictional limitations, parties that transfer their case to the CCB must voluntarily dismiss any claims or counterclaims

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[329] Copyright Small Claims Report at 131–32.

[330] The CCB has engaged in outreach to district courts on this issue, such as communicating with and providing information to federal judges who expressed interest in the referral system. *See* Copyright Alliance Initial Comments at 16 (recommending that CCB reach out to the Administrative Office of the U.S. Courts and the Federal Judges Association to build awareness of, and consequently increase the number of, district court referrals).

[331] 17 U.S.C. § 1509(b).

[332] *Compare id.* § 1504(e)(3) (stating that, except with respect to bad-faith conduct, "parties to proceedings before the Copyright Claims Board shall bear their own attorneys' fees and costs"), *with id.* § 505 (stating that, in civil copyright action, a federal district court "in its discretion may allow the recovery of full costs by or against any party other than the United States or an officer thereof" and "may also award a reasonable attorney's fee to the prevailing party as part of the costs").

that the CCB is not able to hear.[333] Thus, parties wishing to maintain claims or counterclaims outside the CCB's jurisdiction may prefer to stay in district court, rather than abandon those claims or have some claims heard in federal court while other claims are heard in the CCB.

Allowing parties in a district court case to have a case referred to the CCB for limited purposes may prove to be a more attractive option than the current framework for several reasons. It would allow district court judges to take advantage of the CCB's considerable copyright expertise, which many district court judges and magistrates may lack. The CCB has proven to be successful at facilitating settlement and could offer mediation services at no additional cost to the parties, whereas some district court mediation options may require payment to the mediator.[334] Finally, in the event that settlement discussions before the CCB are not successful, the case could return to district court. While this may increase the CCB's workload, it would provide a valuable service both to parties and to courts and further the purposes of the CASE Act. It would also have the benefit of increasing the number of two-party contested proceedings before the CCB.

**b) The Interplay with the DMCA Takedown Process**

The DMCA establishes a mechanism by which a copyright owner may send a notice to an online or network service provider and have the service provider expeditiously take down the allegedly infringing material.[335] If the subscriber who posted the material believes it was taken down due to a mistake or misidentification, it can submit a counternotice.[336] Upon receipt of a counternotice, the service provider must reinstate the material in ten to fourteen business days, unless it receives notice that

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[333] In fact, this happened in the one case that was referred to the CCB. There, the plaintiff asserted infringement claims, in addition to a CMI claim. *See* Compl., Oppenheimer v. Prutton, No. 21-cv-1382 (N.D. Cal. Feb. 25, 2021), Doc. No. 1. As part of the referral, the plaintiff agreed to dismiss his CMI claim. Stipulation with Proposed Order Staying Action Pending Decision Before the CCB, Oppenheimer v. Prutton, No. 21-cv-1382 (N.D. Cal. Apr. 6, 2022), Doc. No. 28.

[334] *See, e.g.*, C.D. Cal. General Order 11-10, 3.8(b) (requiring payment to the mediator if mediation session lasts longer than three hours); N.D. CAL. ADR L.R. 6-3(c) (providing for payment to the mediator if mediation session lasts longer than four hours); N.D. ILL. ADR L.R. 4-3(b) (requiring parties to bear costs of mediation fees).

[335] *See generally* 17 U.S.C. § 512(c), (g).

[336] *Id.* § 512(g)(3), (g)(2)(B).

the party that originally submitted the takedown notice filed an action against the subscriber related to the allegedly infringing activity.[337] Under the CASE Act, filing an infringement claim or counterclaim in the CCB qualifies as such an action.[338]

Consistent with Congressional intent, the CASE Act has provided many parties with the opportunity to contest counternotices in a more streamlined and cost-effective manner. However, the CCB has seen an uptick in claims that are clearly noncompliant[339] and provide some indication that they were filed purely to prevent the reinstatement of allegedly infringing material, such as claims regarding online videos that quote a service provider's statement that a legal filing is required or claims that seek relief that would prevent the reposting of the material. Reviewing such claims for compliance inappropriately strains the CCB's resources.

One commenter expressed concern about defective claims being filed to prevent reinstatement of allegedly infringing material under the DMCA and suggested that only claims already found to be compliant should be sufficient.[340] On the other hand, several commenters pointed out that the long period often required for compliance review was inconsistent with the short window provided in the DMCA for challenging reinstatement.[341]

The Office shares the concern about potential misuse of noncompliant CCB claims. If evidence arises that a significant level of such misuse is taking place, a way

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[337] *Id.* § 512(g)(2)(C).

[338] *Id.* § 1507(d).

[339] To file an infringement claim in the CCB, a claimant must have "first delivered a completed application, a deposit, and the required fee for registration of the copyright to the Copyright Office." *Id.* § 1505(a)(1). In federal court, by contrast, a registration must have issued or been refused before a plaintiff can file a claim for infringement of a United States work. *See id.* § 411(a).

[340] *See* CCIA Initial Comments at 3–4 ("Filing a CCB claim should not be sufficient to prevent reinstatement of content when the claim is so defective that it cannot be adjudicated. . . . Instead, a counternotice should be contestable under § 512(g)(2)(C) only if the CCB complainant receives a notice of compliance and permission to serve.").

[341] *See* Copyright Alliance Reply Comments at 8 ("[M]ost CCB claimants do not receive a notice of compliance and permission to serve process within the DMCA window."); MPA Reply Comments at 3–4 (noting "the limited window of time, 10–14 days, in which a rightsholder has to file a copyright infringement claim to prevent the infringing material from being reposted" and that "[t]here is no guarantee that the claim will undergo compliance review quickly enough to ensure timeliness").

should be found to address it. But amending the CASE Act to make only compliant CCB claims sufficient to contest a counternotice is not a simple solution, as it would risk leaving infringing content online for weeks or months. The Office will continue to monitor this issue to see whether the problem becomes pervasive enough to require a tailored statutory solution.

## IV. CONCLUSION

The CCB has served the public well over the course of the last three and a half years by providing a cost-effective and streamlined alternative to federal court for many copyright claims. The Office is pleased to report that the CCB has been utilized by a broad spectrum of parties for a wide range of claims. It has been effective at assisting parties in resolving disputes, whether through a final determination or a settlement, and carefully applying copyright law to every claim it processes.

Nevertheless, there is room for improvement in various respects. While the Office is able to address some of the issues identified in this Report through its regulatory authority and outreach initiatives, others would require statutory amendment relating to speeding the process, enhancing use of CCB resources, and improving remedies and enforcement.

The Office would be pleased to serve as a resource to Congress in developing statutory language that implements our recommendations. In the meantime, we will explore those improvements that are within our purview, such as through the CCB's regulations, internal policies and procedures, and public materials and resources.

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Register of Copyrights and Director
U.S. Copyright Office
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