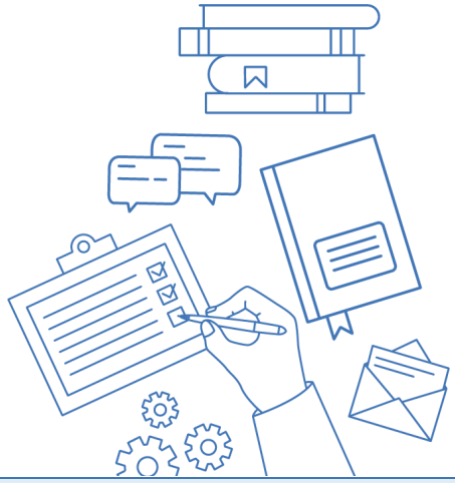
CCB HANDBOOK

Responding to an Infringement Claim

If an infringement claim was filed against you before the CCB and you did not opt out, you'll need to file a response to the claim. This is your first opportunity to give the CCB your side of the story.



NOTE: This chapter discusses preparing a response to an infringement claim. If the claimant brought a claim for a declaration that their activity is not infringing, you can see how to craft your response to that claim in the **Responding to a Claim Requesting a Declaration of Noninfringement** chapter. If the claimant brought a claim for misrepresentation in connection with a takedown notice or counter-notice, you can see how to craft your response to that claim in the **Responding to a Misrepresentation Claim** chapter.

Chapter at a Glance

- **Preparing Your Response**
- **Raising Defenses to an Infringement Claim**
- **Filing Your Responses on eCCB**
- **Less Common Situations**
  - **There's More Than One Type of Claim Against You**
  - **You're Involved in Multiple Proceedings Against This Claimant**
  - **Another (Not Named) Party is Essential to the Claim**

Why You Need This Information

Filing your response is the first thing you'll do in your proceeding. It's your first opportunity to respond to the allegations the claimant made against you and raise defenses you have to those allegations. This chapter provides the key points you should think through as you're preparing your response, information on common defenses to copyright infringement you can raise in your response, and an overview of the logistics of filing your response through **eCCB**.

WHERE YOU ARE IN A CCB PROCEEDING:

1. Filing a Claim
2. Compliance Review
3. Service
4. Opt-Out Period
5. Proceeding Becomes Active
6. **Response**
7. Discovery
8. Settlement
9. Written Testimony
10. Determination
11. Post-Determination

How did you get here?

A claimant brought an infringement claim against you before the CCB. After they formally delivered that claim to you, you were given sixty days to decide whether you wanted to participate in the CCB proceeding or opt out of the proceeding. Since you didn't opt out, the proceeding moved into its **active phase**. The CCB issued an order requiring you to register for eCCB and link your eCCB account to the case. You must do that before you can file a response. The CCB also issued a schedule that provides key dates and deadlines for the proceeding. The first deadline in that schedule is for you to file your response to the claim against you.

When do you file your response?

You'll need to file your response through eCCB by the deadline in the schedule, which will usually be thirty days from the date the schedule was issued. The exception to this is if the claimant asked you to waive formal **service** and you accepted, then the scheduling order will give you sixty days to respond instead of thirty. You cannot file your response before the scheduling order is issued. But once the schedule has been issued, you may file your response before the deadline. It's a good idea to start thinking through and working on your response well before the deadline. Your response is important, and you shouldn't leave it until the last minute.

How do you prepare and file your response?

Before you file your response, you should review the claim carefully and think through what the claimant is accusing you of, the facts and arguments they're making, the evidence they included (if any), and whether you would describe the events differently from the claimant's version of events. Beyond considering whether you disagree with the claimant's version of the facts, you should think about whether you have any defenses to the claim against you. Once you've thought this through and gathered the information you need, you can submit your response through the eCCB.

What happens next?

Once you submit your response, the CCB will hold a virtual **conference**. This virtual conference will be attended by the other participants in your proceeding and a Copyright Claims Officer. During the conference, the Copyright Claims Officer will explain what to expect in the proceeding, instruct you to give a brief description of your story, and ask whether you and the other participants are interested in a separate **settlement** conference to discuss the possibility of voluntarily resolving your dispute. If there is no interest in a settlement conference, you and the other participants will begin the **discovery** phase, which will involve exchanging key information and documents to learn more about the claims and defenses in the proceeding.

Preparing Your Response

This section walks through points you should keep in mind when you're preparing to file a response to an infringement claim. First, this section will provide an overview of what an infringement claim is and what it means. Next, this section will cover some key questions you should ask yourself when you're reviewing the claim and thinking about your response. Finally, the section provides some information on specific defenses.

What's an Infringement Claim?

When someone owns a copyright in a work or has been given an **exclusive license** to rights in a work, they have certain rights that only they can use.

These **exclusive rights** include

- The right to **make copies** of the work;
- the right to prepare other works based on the work, called **derivative works**;
- the right to **distribute copies** of the work; and
- the right to **publicly perform or publicly display** the work.

If you do any of these activities without the permission of the copyright owner, you may be infringing the owner's copyright (unless you have a legitimate defense). You can find more information about exclusive rights in this **video**.

To bring a copyright infringement claim before the CCB, the claimant either must have a **copyright registration** or a **pending application** to register the copyright in the work.

The claimant must demonstrate the following

- They own a **valid copyright** in the work.
- You **used one of the exclusive rights** in the work without permission. This is usually proven through two factors:
    - You had **access** to the claimant's work, meaning you had a reasonable opportunity to view or hear the claimant's work.
    - The work of yours that is supposedly infringing is **substantially similar** to the original elements of expression in the claimant's work.

Copyright doesn't necessarily protect every aspect of a work. You can find more information about what copyright does and doesn't protect in **Circular 33**, Works Not Protected by Copyright, and **Circular 1**, Copyright Basics.

Questions to Ask Yourself

After you review the claim carefully and think through the points it makes, you should keep some key questions in mind.

1. DO YOU DISAGREE WITH ANY OF THE FACTS OR CIRCUMSTANCES?

If the claim presents certain details as fact that you think are wrong or includes arguments that you disagree with, your response should identify those details and arguments and explain why you think they're wrong or why you disagree. You may want to go through the claim and make a list of everything you think is wrong before you begin to file your response.

2. DOES THE CLAIM LEAVE OUT ANY IMPORTANT FACTS?

If you think the claim leaves out important facts, you should include those facts in your response and, if appropriate, describe why those missing facts may change or alter the overall picture of the events described in the claim.

3. CAN THE CLAIMANT PROVE EACH ELEMENT OF COPYRIGHT INFRINGEMENT?

As discussed above, to prove copyright infringement, the claimant has to show that you used one or more of their exclusive rights. This usually means they're required to show that you had *access* to the work they say you infringed and that what you did was *substantially similar* to the original elements in the work they say you infringed.

If you never had access to their work, then you should make that clear in your response. You can even describe why it is unlikely that you had or even could have had access to the work (for instance, if you have no relationship with the claimant and their work is not publicly available). Similarly, you should mention any ways in which your work is not substantially similar to the original elements in the work they say you infringed—for example, if your work is very different from the claimant's work or the two works only have unoriginal or unprotected aspects in common (such as the use of a fact or of a basic and common idea).

4. DOES THE CLAIM INCLUDE EVIDENCE?

If the claimant included any evidence as attachments to the claim, you should review that evidence carefully. As a first step, make sure the evidence is what the claimant says it is. For example, if it's an agreement that the claimant says is in effect between you and the claimant, make sure it's the final, signed version of the agreement.

Next, take a look at how the claimant relies on the evidence in their claim and make sure they aren't misrepresenting it in any way. If you notice any issues with the claimant's evidence or how they're using it to support their claim, you should include that information in your response.

> **NOTE**: Attaching evidence is optional. If the claimant didn't attach any documents to the claim, it doesn't necessarily mean they don't have evidence to support it. If the claimant didn't attach documents, you'll have an opportunity to learn what kind of evidence the claimant has during the discovery phase of your proceeding, during which each participant will exchange information and documents related to the claims and defenses.

5. DO YOU HAVE ANY EVIDENCE YOU WILL WANT TO INCLUDE WITH YOUR RESPONSE?

You can attach documents or other evidence to your response when you file. If there's a key document or set of documents you think are helpful to your response, you should consider including them. You're not required to attach any documents or other evidence at this point in the proceeding. You will, however, have to give that evidence to the claimant during the discovery phase of your proceeding.

The following are examples of documents that you may wish to consider including with your response

- A copy of any of the works that are mentioned in the claim or response, if not already attached to the claim.
- A copyright registration certificate for your work(s) that are part of the claim.
- Communications or agreements that show you had permission to use the work.
- Documents that show you created your work independently or before the claimant's work was created.
- Documents that show your activity took place before the claimant's copyright was registered (this could affect the amount of money a claimant is awarded if they are victorious in the case).

- Documents that show the claimant doesn't actually have rights in the work.
- Any other key material that supports your response.

6. DO YOU HAVE ANY DEFENSES BEYOND YOUR DISAGREEMENT WITH THE FACTS OR THE CLAIMANT'S ALLEGATIONS OF "ACCESS" OR "SUBSTANTIAL SIMILARITY"?

In your response, you'll have the opportunity to raise various defenses to the activity the claimant is accusing you of. A defense goes beyond simply disagreeing with the claimant's version of the facts or why the facts are not a copyright claim. Instead, a defense is a separate reason why the claimant shouldn't win their claim. You'll find information on common infringement defenses later on in this chapter. eCCB will have a list of common copyright defenses when you file your response, and you can check as many of them as you think may apply, although you will have to give specific details on why you think each one applies.

7. DO YOU HAVE ANY CLAIMS YOU WANT TO MAKE AGAINST THE CLAIMANT?

In some circumstances, you can make claims against the claimant, called **counterclaims**. Only certain types of copyright counterclaims directly related to the facts and circumstances the claimant alleged in the claim may be raised with the CCB. If you want to make a counterclaim against the claimant, *you must do so with your response*. When you file your response, eCCB will ask you whether you want to include any counterclaims.

> **NOTE**: eCCB will walk you through this process as part of the online response form. You can find more information about counterclaims in the **Counterclaims** chapter. If you believe you may have a counterclaim, please read the section of this Handbook on counterclaims carefully, as the counterclaims available at the CCB are limited.

8. DO YOU WANT LEGAL REPRESENTATION?

You're able to represent yourself in your CCB proceeding whether you are an individual or a business. You're not required to hire a lawyer, but you're allowed to hire one if you want. Some lawyers or law students may be willing to represent you for free or for a reduced fee. The CCB provides a **directory** for **pro bono** law student legal representation on its website. If you want to learn more about your options for representing yourself or getting a lawyer, you can find more information in the **Representation** chapter.

Raising Defenses to an Infringement Claim

In addition to disputing various facts and allegations that the claimant made in their claim or adding facts that the claimant may not have included, you'll have the opportunity to raise defenses to the claim. A defense doesn't necessarily dispute the claimant's facts; instead, a defense provides a legitimate reason why you were allowed to take the actions that you took under the law and prevents the claimant from succeeding in proving their claim.

This table provides a list of the most common defenses to copyright infringement, which also appear in the response form on eCCB. On eCCB, you can check as many of these as you think may apply to you, although you will have to give specific details on why you think each one applies. This chart gives a quick overview of defenses. More information on each defense follows.

This defense on eCCB. . .	May apply if. . .
Works or Elements Not Protected by Copyright: In General	The claimant's work, or the portion of the work the claimant says you infringed, isn't protected by copyright. For instance, the work so completely lacks creativity that it should not have copyright protection; or, all you copied from the work were facts, which cannot be owned by anyone (although the particular way in which an author describes the fact may be protected).
Works or Elements Not Protected by Copyright: The Public Domain	The claimant's work, or the portion of the work the claimant says you infringed, is not, or is no longer, under copyright protection and is therefore in the public domain. For instance, the claimant is the heir to Benjamin Franklin, whose works are so old they have become part of the public domain.
Lack of Claimant Ownership of Rights	The claimant isn't actually the owner or exclusive licensee for the rights at issue in the work they claim was infringed.
Joint Ownership	You're a joint owner of the work the claimant says you infringed.
Independent Creation	You independently created the work the claimant alleges is infringing without any use of the claimant's work.
License	You were given permission to use the work the claimant says you infringed.
Statute of Limitations	The claimant waited more than three years to bring their claim.
Fair Use	You used the claimant's work without permission but in a way that was a fair use, a defense that permits use of the work for purposes such as criticism, comment, news reporting, teaching, scholarship, and research. See below for a list of factors often weighed when claiming this defense.

Statutory Exceptions and Limitations	Your use of the claimant's work is permitted by another exception or limitation to infringement listed in the Copyright Act and discussed **below**.
Other Defenses	You believe you have another defense that isn't mentioned above.

When you're preparing your response, you should only raise defenses that you have a legitimate reason to believe apply to your situation, because you'll need to explain why they apply.

The Defenses

The following defenses appear as options to select in the response form on eCCB.

Works or Elements Not Protected by Copyright: In General

Copyright **protects** original expression that was independently created and contains some modicum of creativity.

Copyright **does *not* protect**, for example

- **Ideas, concepts, or principles**;
- facts or discoveries;
- procedures, systems, or methods of operation;
- names or individual words;
- titles, slogans, or short phrases; or
- familiar symbols or designs.

If the claimant is accusing you of copying their work and you believe the work simply cannot be protected by copyright, or if the claimant is accusing you of copying an aspect of their work that is *not* protected by copyright, then you can raise a defense that the work, or the relevant aspects of the work, in question aren't protected by copyright.

You can still raise this defense even if the claimant's work has been registered by the Copyright Office. If the claimant has a copyright registration, there's an assumption that the work is protected by copyright that you will have to overcome. However, registrations can be challenged on an overall work, and a registration for an overall work doesn't necessarily mean that all aspects of the work are protected by copyright. A biography, for example, is protectable, while the fact that the subject of the biography was born in Illinois in 1950 is not protectable.

EXAMPLES

This defense might apply if. . .

- Your movie and the claimant's play only have the idea of aliens invading Earth in common.
- Your documentary about the Copyright Office uses the same facts as the claimant's history of the Copyright Office, but does not copy how the claimant creatively expressed those facts.

- Your book about home remodeling makes use of the same system for closet organization that the claimant described on their podcast.
- Your song has the same title as the claimant's poem, but the lyrics have nothing in common with the rest of the poem.
- Your painting and the claimant's fabric design both contain a simple bull's-eye symbol.

Works or Elements Not Protected by Copyright: The Public Domain

The **public domain** refers to works that anyone can use freely. The public domain is made up of works whose copyright protection has expired, works that aren't eligible for copyright protection (or lost their eligibility) due to a failure to meet certain requirements, and works by the United States government.

- **Copyright protection has expired:** Copyright law limits the **length of copyright protection** to a certain number of years. Once that period of copyright protection ends, the work is in the public domain and is free for anyone to use without having to get the original copyright owner's permission. If the claimant is accusing you of using a work or portions of a work where the period of copyright protection has ended, you can raise a defense that the work is in the public domain and is free to use.
- **United States government works:** Works created by the United States government aren't protected by copyright. This includes laws, court opinions, government studies, and this Handbook**.**
- **Failure to comply with technical requirements:** Copyright law used to have a number of requirements a copyright owner needed to meet to get or keep copyright protection, such as placing a sufficient **notice** that the work is protected by copyright on the work itself and **renewing** the copyright after a certain number of years. These requirements have been eased over the years (and have not been in place this century), but older works could have lost protection if these requirements were not met. If you have reason to believe that the claimant's work fell into the public domain for this reason, you can raise a defense that the work is in the public domain and is free to use.

  NOTE: You can also raise this defense if the elements of the claimant's work that you are alleged to have infringed were taken by the claimant from the public domain.

EXAMPLES

This defense might apply if. . .

- Your movie is based on a novel whose term of copyright protection ended (and went into the public domain) before you created your movie.
- Your song is based on an old song that fell into the public domain after the original copyright owner forgot to renew their copyright.
- Both your opera and the claimant's ballad use the Copyright Act as the lyrics, and the claim alleges your opera's lyrics infringe the claimant's lyrics.
- Your movie is only similar to the claimant's movie because both you and the claimant separately created movie adaptations of William Shakespeare's *Romeo and Juliet*, which is in the public domain.

Ownership

Only the copyright owner or someone who has an exclusive license to the copyright can bring an infringement claim. If you can show that the claimant doesn't actually own the rights in the work they say was infringed, you won't be held responsible for copyright infringement with respect to that claimant. Showing that the claimant, at the time they brought the claim, was not the rightful owner, did not have an exclusive license to use the copyright, or has assigned (given or sold) the copyright to someone else, defeats the claim.

Under copyright law, the author is the work's creator, and the author typically is also the owner of the copyright. However, there are a few common situations when this isn't the case:

- **The author assigned the rights to someone else:** If there's a written agreement in which the author gave or sold the copyright to another person or entity, then that other person or entity will be the copyright owner.
    - **EXAMPLE:** A writer signs a book publishing agreement giving the book's copyright to a publisher.
- **Works made for hire:** If an employee prepares a work as part of their job duties, then the work may be considered a **work made for hire**. Certain kinds of works can also be **works made for hire** when they were specially ordered or commissioned, and the creator and the commissioning party agree in writing that the resulting work is owned by the commissioning party. For **works made for hire**, the employer or the commissioning party is considered the author as well as the copyright owner under the law.

NOTE: This defense doesn't necessarily mean that you *didn't* infringe the copyright. In raising this defense, you're just saying that you didn't infringe the *claimant's* copyright, because they're not actually the copyright owner. The real copyright owner still can raise the same claim against you.

EXAMPLES

This defense might apply if. . .

- The claimant says you infringed their novel, but they assigned their copyrights to a publishing house and are no longer the copyright owner.
- The claimant says you infringed a magazine article they wrote, but they wrote it as part of their job duties, so the magazine is the author and copyright owner of the article, which is a work made for hire.
- A company sues you for copying a design they paid an independent designer to create for their company, but they never got a written agreement assigning them the copyright in the design, so the author of the work, not the company, owns the copyright.

Joint Ownership

You can't infringe a copyright you own or jointly own. A work prepared by two or more authors may be considered a **joint work** if, when they created the work, the authors wanted their contributions combined into an inseparable single work. Typically, each of the joint authors has full rights to use or give others permission to use the work without the other authors' permission, unless there is an agreement between them that says otherwise. Joint owners generally must share any income they receive from their use and licensing of the work with the other owners, but failure to make such payments is a type of claim called an "accounting," not infringement, and is not a claim that can be heard by the CCB.

EXAMPLES

This defense might apply if. . .

- The claimant says you infringed a song, where you wrote the lyrics and the claimant wrote the music as joint authors of the song.
- The claimant says you infringed a graphic novel, where the claimant wrote the words and you created the illustrations as joint authors of the novel.

Independent Creation

You didn't infringe a copyright if you can prove that you independently created the work the claimant says you infringed, and you didn't copy the claimant's work or make a work based on the claimant's work. This is the case even if your work and the claimant's work are similar.

EXAMPLES

This defense might apply if. . .

- Without ever having seen the claimant's painting, you created a painting that is very similar.
- Without ever having heard the claimant's song, you came up with a very similar melody.

License

Copyright owners can give permission to others to use their works. That permission could come in written form, or sometimes orally, though that may be harder to prove.

In some cases, even if the copyright owner never explicitly told you that permission was granted, the CCB may find that a license or permission was implied based on the way the parties acted. A typical situation would be when an author creates a work at the request of a company, which pays the author for the work, and the author knows that the company is going to distribute copies of the work. These sorts of actions can be a good way to prove that an oral license or permission existed.

EXAMPLE: A newspaper asks a photographer to take photos at the state fair and offers to pay the photographer $200. The photographer delivers the photos to the newspaper, which pays the photographer $200. The photographer has given an implied license to the newspaper to publish the photos as the photographer knows that is the reason they are being paid.

If you show that you had permission to use the work, you won't be held responsible for copyright infringement, unless the claimant can show that your activities went beyond what they gave you permission to do. For example, a story author can give you the right to make copies of the story without giving you the right to make a sequel based on that story. Or the claimant could have given you certain rights but only in one state or in one type of media, but you expanded beyond that limitation.

NOTE: An agreement with the claimant may provide you with more than just a possible defense to an infringement claim. It may also be a basis for a counterclaim against the claimant. You can raise a narrow type of counterclaim in a CCB proceeding, which is one related to an agreement relevant to the same facts and circumstances as the infringement claim, as long as the agreement could affect the award the claimant is seeking in the proceeding. You can find more information on counterclaims in the **Counterclaims** chapter.

EXAMPLES

This defense might apply if. . .

- The claimant says you infringed their song by using it in your movie, but they signed an agreement giving you the right to use the song in your movie.
- The claimant says your play infringes their novel, but they told you that you could create a play based on their novel.
- The claimant told you over the phone that you could reprint the blog post they say was infringed on your website and cashed a check from you as payment for the right to reprint the blog post.
- You paid the claimant to create graphics for your company's web pages, and you then used the graphics on the web pages.

Statute of Limitations

Under the law, claimants have a certain period of time during which they can bring a claim. Once this time limit expires, the claimant can no longer bring the claim. This time limit is called the "statute of limitations." For copyright infringement, the statute of limitations is three years.

Each act of infringement of a work is considered separately for purposes of the statute of limitations. If someone infringes a work multiple times over an extended period, a claimant can bring an infringement claim based on the activities that happened within the previous three years, but not for the activities that happened before that. Therefore, it is important to understand that even if the first infringing activity occurred more than three years ago, the claimant can still bring a claim against the infringing activities that occurred within the last three years.

NOTE: Different courts have different rules for calculating the statute of limitations. Some courts calculate the three-year period based simply on the date the activities took place. Other courts calculate the three-year period based on the date the claimant discovered, or reasonably should have discovered, the activities. The CCB will follow the rules for calculating the statute of limitations of the courts in the location with the most connection to the parties and the claim.

EXAMPLES

This defense might apply if. . .

- The claimant accuses you of photocopying their novel once thirty years ago.
- The claimant accuses you of performing their play once on July 1, 2019, but then waited until July 2, 2022, to file their claim against you.

Fair Use

Fair use is a legal principle that promotes freedom of expression by allowing the use of copyrighted works without permission in certain circumstances. Figuring out whether use of a copyrighted work without permission qualifies as fair use can be **complicated**. The Copyright Act provides several examples of activities that typically qualify as fair use: criticism, comment, news reporting, teaching, scholarship, and research. However, other activities may qualify too. Under copyright law, four factors must be considered to determine whether something is fair use:

1. **The purpose and character of the use, including whether the use is for commercial or nonprofit educational uses.** This factor looks at how the party claiming fair use is using the copyrighted work. Nonprofit, educational, and noncommercial uses are more likely to be

considered fair use. This does not mean, however, that all nonprofit, educational, and noncommercial uses are fair, or that all commercial uses are not fair. Instead, the CCB will consider the purpose and character of the use as well as the other factors below. Additionally, "transformative" uses are more likely to be considered fair. Transformative uses are those that add something new, with a further purpose or different character, and don't simply provide a substitute for the original work.

2. **The nature of the copyrighted work.** This factor analyzes the degree to which the work that was used relates to copyright's purpose of encouraging creative expression. Using a more creative or imaginative work (such as a novel, movie, or song) is less likely to support a defense of fair use than using a factual work (such as a technical article or news item). In addition, use of an unpublished work is less likely to be considered fair.
3. **The amount and substantiality of the portion used in relation to the copyrighted work as a whole.** This factor considers both the quantity and quality of the copyrighted material that was used. If the use includes a large portion of the copyrighted work, fair use is less likely to be found; if the use is only of a small amount of copyrighted material, fair use is more likely. That said, the use of an entire work has been found to be fair under certain circumstances. And in other contexts, using even a small amount of a copyrighted work was determined not to be fair, because the selection was an important part—or the "heart"—of the work.
4. **The effect of the use upon the potential market for or value of the copyrighted work.** The fourth fair use factor involves a review of whether, and to what extent, your use harms the existing or future market for the copyright owner's original work. This factor considers whether the use is hurting the current market for the original work (for example, by displacing sales of the original) or whether the use you engaged in could cause substantial harm if it were to become widespread.

Fair use is evaluated on a case-by-case basis, and the outcome of any given case depends on the facts. This means there is no formula to determine how much of a copyrighted work can be used as fair use, such as a predetermined percentage or amount of a work or a specific number of words, lines, pages, or copies. If you claim fair use as a defense, then you will need to present facts related to the factors listed above, and the CCB will use its experience with, and knowledge of, fair use to evaluate the factors based on the facts presented by the parties.

EXAMPLES

This defense might apply if. . .

- You wrote a review of the claimant's book that includes some quotations from the book needed to give your review context.
- You used clips of the claimant's songs on your podcast episode critiquing the claimant's latest album.
- You use the claimant's work in a way you believe is, on the whole, noncommercial, is transformative, does not use more of the claimant's work than it needs to make its point, and did not negatively affect the market for claimant's work.
- Mary has a hit song, "I'm in a Band," and Joe decides to comment on or criticize the song by making fun of it through a parody named "I'm Very Bland," where Joe takes the well-known chorus from Mary's song and puts it to funny lyrics that ridicule Mary's lyrics.

Statutory Exceptions and Limitations

In certain specific situations, use of someone else's copyrighted work without permission may be allowed by sections 108 to 122 of the Copyright Act, which may be found in **Circular 21, Reproduction of Copyright Works by Educators and Librarians**. here. Among other things, these sections include protections for certain activities related to the following:

- noncommercial copying and distribution by libraries and archives;
- the sale or transfer of a lawfully acquired physical copy of a work (for example, your ability to re-sell the individual physical copy of a book you bought—sometimes called "**the first-sale doctrine**");
- performances and displays of works in the course of **teaching**;
- **performances and displays of certain works in the course of religious services;**
- **performances by nonprofit organizations for nonprofit purposes; and**
- **certain transmissions of radio, television, cable, or satellite broadcasts in a place of business**.

Each of these statutory limitations includes extremely specific requirements to qualify. If your response raises one of these exceptions or limitations as a defense, you should clearly identify which one applies and state in detail why it applies to the particular circumstances of your use.

EXAMPLES

This defense might apply if. . .

- Your used bookstore sells a secondhand copy of the claimant's book.
- You play a DVD or Blu-ray of a claimant's documentary about NASA for your students while teaching an in-person public school astronomy class.

Filing Your Response on eCCB

Your response is due by the date provided in the schedule. This date will typically be thirty days from the date the CCB issues the schedule; although, it will be sixty days if the claimant asked you to waive service and you did so. You must wait until the schedule comes out before filing your response. But once it comes out, you may file your response before the deadline. Your response is important, and you should be thoughtful about preparing it. Don't wait until the last minute to get started.

You'll file your response to the claims by using a response form available on eCCB, which may be found on the **CCB's website**. This section provides guidance on filling out the response form through eCCB.

A few things to keep in mind before you get started:

- **You must use eCCB for all filings in your CCB proceeding.** If you truly can't use eCCB, for example, because you don't have access to the internet, you can request an accommodation. It's up to CCB whether to grant your request, and use of the electronic system is *strongly recommended*. Using mail for your filings instead of eCCB will be costlier, increase the chances that your filings could get lost, and likely will cause delays.

- **You may file your response yourself, or your lawyer or law student representative can file it for you, if you have one.** If you are a business representing itself, you can file through an in-house attorney, an owner, officer, member, or partner, or another authorized employee if that employee has the permission of an owner, officer, member, or partner in writing. You can find more information about representation in CCB proceedings in the **Representation** chapter.
- If there are multiple respondents in your proceeding, **each respondent must submit a separate response**, unless the respondents are represented by the same lawyer, law student, or other representative. If you are not a legal representative, you cannot file a response on behalf of another respondent.
- **eCCB will walk you through the filing by asking you questions or giving you instructions**. You should keep this Handbook nearby so you can refer to it if you need to, but eCCB will also have "tooltips," marked with a lower case "i" in a circle, which also give more information, including links to resources.
- **You don't need to complete your response in one sitting.** You have the option to save your response form and return to complete it later by selecting "Save & Exit" at the bottom of the screen. As the response is broken up into easy-to-digest pages, it is recommended that you complete the page you are on before trying to save and exit.

Once you're ready to begin working on your response, follow the steps below:

1. To begin working on your response, log in to your eCCB account. You can find more information about creating an eCCB account, accessing eCCB, and linking your account to your case in the **eCCB** chapter.
2. Click the "Submit a Response" link at the top of your dashboard. If you are the respondent in more than one case, you'll see a few different proceedings. Select the proceeding that you want to work on.
3. The response form asks you to provide basic contact information:
   a. Your name
   b. Your address
   c. Your phone number
   d. Your email address

   If you have a lawyer, law student, or other authorized representative representing you in the proceeding, your representative's phone number and email address can be provided instead of your own.
4. You will be asked to give a detailed statement explaining why you believe the claims are not valid. You should give specific reasons why facts presented by the claimant are incorrect or incomplete and why the CCB shouldn't side with the claimant.
5. The response form includes the most common defenses to the claim against you. You can click on as many of them as you wish, but for each reason or defense you check, you will need to describe why that defense applies to you. You should not check any defense box unless you have good reason to believe that it applies to you.
6. The response form also lets you raise your own claims, called counterclaims, against the claimant, if you have any. You must raise any counterclaims at this time, so you should gather any information you need for your counterclaims before you submit your response form. More information about the counterclaims allowed before the CCB is available in the **Counterclaims** chapter.

7. You, or your representative submitting the response, must certify that it is accurate and truthful to the best of your/their knowledge. If your representative is submitting your response, the representative must also certify that you confirmed to them the accuracy and truth of the information in the response.

Less Common Situations

The following situations are less common and are unlikely to apply for most responses.

There's More Than One Type of Claim Against You

This chapter addresses responding to an infringement claim. Although infrequent, in some proceedings there may be more than one type of CCB claim that the claimant brought against you. In addition to just an infringement claim, the claimant also may have raised a claim where they ask for a declaration that something they are doing is not infringing your copyright or a misrepresentation claim against you related to a takedown notice or counter-notice. If this is the case, please find specific information in the **Responding to a Claim Requesting a Declaration of Noninfringement chapter** and **Responding to a Misrepresentation Claim chapter**.

You're Involved in Multiple Proceedings Against This Claimant

If a claimant has started multiple proceedings against you related to similar facts and circumstances, you can ask the CCB to combine (or consolidate) the proceedings. If the proceedings are consolidated, they'll be treated as one proceeding for purposes of exchanging documents and information during discovery, submitting evidence to the CCB, and any hearings that the CCB decides to hold. The CCB will issue separate determinations for each proceeding, meaning that the $30,000 overall cap will apply to each proceeding within the consolidated proceeding, with separate financial awards (if any). You can find more information about consolidation in the **regulations**.

Another (Not Named) Party is Essential to the Claim

If you think someone else is actually responsible for what you're accused of doing, but that person or business isn't listed as a respondent or has opted out of the proceeding, then the claim may be unsuitable for the CCB to consider, and you can raise that issue in your response. You can find more information about unsuitability in the **Unsuitability chapter**.

Glossary

- **Active Phase:** When the respondent has not opted out, the portion of the proceeding starting from the end of the sixty-day opt-out period and continuing until the CCB's final determination of your case.
- **Conference:** A virtual meeting between the parties and the CCB to discuss issues related to the case.
- **Counterclaim:** Similar to a claim, a counterclaim is a set of facts that allows you to enforce your rights against the claimant in the same proceeding as long as it arises out of the same facts and circumstances as the claim.
- **Discovery:** The process by which the parties exchange information and documents relevant to the issues in a case.
- **eCCB:** The CCB's electronic filing and case management system.
- **Exclusive license:** A license is an agreement where the copyright owner allows someone else (a "licensee") to have certain rights in their work. A license is exclusive when the copyright owner agrees that they will only give those rights to that licensee.
- **Pro bono:** Legal services without a charge for the lawyer's or law student's time or work.
- **Service:** The process of having the claim, initial notice, and opt-out formally delivered to the respondent.
- **Settlement:** An agreement between parties containing the terms by which they agree to resolve their dispute.
- **Work made for hire:** A work that has been created by an employee in the scope of their employment, or created (for certain types of works) based on a written agreement commissioning that work and stating that the work should be treated as a work made for hire.