

Starting a Misrepresentation Claim

You can bring a claim of misrepresentation before the CCB if you believe the respondent said something false in a takedown notice or counter-notice to an **online service provider**, and this resulted in the online service provider taking content offline or putting it back online. To file a misrepresentation claim, you submit a claim form in eCCB, the CCB’s electronic filing and case management system, that explains why you believe the respondent made a false statement in the takedown notice or counter-notice and how that false statement harmed you.



NOTE: This chapter only discusses preparing a misrepresentation claim. There are separate chapters for preparing an [infringement claim](#) and a claim for declaration of [noninfringement](#).

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Why You Need This Information

This chapter describes key information about misrepresentation claims under section 512(f) of the Copyright Act and the steps needed to raise a misrepresentation claim before the CCB. When you fill out your claim form, you will need to provide details about the misrepresentation and how it harmed you. This chapter can guide you through explaining the facts of your case in **eCCB** and proving the claim.

WHERE YOU ARE IN A CCB PROCEEDING:

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

HOW DID YOU GET HERE?

If someone made a false statement to an online service provider in a takedown notice or counter-notice about alleged infringement, and that false statement caused you harm, you may be considering bringing a misrepresentation claim. Filing your claim is the first thing you'll do to get your CCB proceeding started. If you file a CCB claim, you are a "claimant," and the person or entity you bring the claim against is called a "respondent." Claimants can choose to bring their copyright misrepresentation claims either before the CCB or in federal court. **Note that the information in this chapter is also relevant to you if you are filing a counterclaim for misrepresentation before the CCB.**

HOW DO YOU START A MISREPRESENTATION CLAIM?

To bring a claim before the CCB, you need to fill out a short claim form in eCCB. eCCB will walk you through step-by-step instructions, directing you to provide:

- the names and addresses of the parties,
- information about your copyrighted work,
- a detailed description of how your rights were violated,
- any harm you suffered because of the respondent's actions,
- any documents you wish to attach to the claim (they are not required at this time, but they are helpful), and
- what relief you are seeking.

You will need to certify that your claim is true and pay an initial **\$40** filing fee. If the proceeding enters the **active phase**, a second filing fee of \$60 will be due.

The CCB handles three types of copyright-related claims:

- infringement claims,
- a declaration for noninfringement, meaning that one's activity is not infringing another person's work, and
- misrepresentation claims related to a takedown notice or counter-notice under [section 512 of the Copyright Act](#).

This chapter describes how to start a misrepresentation claim. Information on the other kinds of claims is available in the chapters on [Starting an Infringement Claim](#) and [Starting a Noninfringement Claim](#). You may submit more than one of these claims in a CCB proceeding, as long as you have a basis for each claim you assert.

WHAT HAPPENS NEXT?

Once you submit your claim, the CCB will check that it complies with relevant laws and regulations and gives the respondent enough information to respond to it. The [Compliance Review](#) chapter describes this process. If your claim is not compliant, you will have two opportunities to revise and refile it.

If your claim is compliant, the CCB will notify you and authorize you to proceed with formally delivering the claim, an initial notice, and an opt-out form on each respondent. The [Service](#) chapter describes service and waiver of service. Respondents have sixty days to opt out of the proceeding, and if all respondents opt out, the proceeding will not go forward. If at least one respondent does not opt out during the opt-out period, the claim enters the "active phase." The [Opting Out](#) chapter provides further information.

The DMCA Notice and Takedown System

Misrepresentation claims in the CCB are about the “notice and takedown” system set up by the Digital Millennium Copyright Act (DMCA).

Congress passed the DMCA to establish a fairly simple process to address accusations of online infringement, usually without the need for litigation. A copyright owner can provide a takedown notice to an online service provider, notifying them that someone posted infringing content on the service provider’s system or network and demanding it be taken down. Online service providers include websites that host content uploaded by users, such as YouTube and Instagram, and search engines that direct users to particular websites, such as Google and Bing. If an online service provider has followed the requirements of the DMCA by promptly removing or disabling access to the content the copyright owner identified as infringing, it can’t be held responsible for the copyright infringement of others.

Once the content is taken down, the person or company that posted the content may get it reposted by sending a counter-notice to the service provider. Typically, the counter-notice states that the content was removed or disabled by mistake or misidentification and asks that the content be reposted.

What Is a Misrepresentation Claim?

You can bring a DMCA misrepresentation claim in the CCB if all of the following actions occurred:

- The respondent sent an online service provider either
 - a **takedown notice** claiming online content or activity was infringing, or
 - a **counter-notice** denying infringement and claiming the online content was removed or disabled due to a mistake or a misidentification.
- The respondent made a **misrepresentation** (a false or incorrect statement of fact) in the takedown notice or counter-notice.
- The respondent **knew** the misrepresentation was false or incorrect.
- The misrepresentation was **important** to the online service provider’s decision to take down or repost the content.
- The online service provider **relied on** the misrepresentation.
- You were **harmed** as a result.

Make sure your claim describes each of these elements of misrepresentation. You ultimately will have to prove each one.

The full text of the portion of the DMCA that discusses the requirements for misrepresentation claims, section 512(f), is available on the [Copyright Office website](#). More resources related to section 512 and the notice-and-takedown system are available on copyright.gov/512.

Questions to Ask Yourself Before You Bring a Misrepresentation Claim

This section reviews key issues to consider and information to prepare for a CCB misrepresentation claim.

Did the respondent make a misrepresentation in a DMCA takedown notice or counter-notice?

For you to have a DMCA misrepresentation claim, the respondent must have sent a copyright takedown notice or counter-notice to an online service provider making a false or incorrect statement that the respondent knew was false or incorrect.

Examples: The respondent wrote a song and gave you permission to use it as part of your online video. The respondent later sent a takedown notice to your online service provider, falsely claiming that you had no right to use the song.

The respondent posted a copy of your video online. You sent a notice to the respondent's online service provider to take it down. The respondent sent a counter-notice claiming that you're not the copyright owner, but you are, and the respondent had no basis to believe you did not own the copyright.

Did the online service provider take down or restore the allegedly infringing online content or activity because of the false statement?

To win a misrepresentation claim, you must show that the misrepresentation was **material** enough to have caused the online service provider to remove or repost the work. A misrepresentation isn't important or significant if the service provider wouldn't have relied on it or used it as the basis to remove or repost the content in question.

Not every incorrect statement will be sufficiently important or significant to support a misrepresentation claim.

The following situations would not be likely to meet the importance test if:

- the respondent's takedown notice included an incorrect address, or
- the respondent's counter-notice included a typo in the date.

Did the false statement cause you harm?

A DMCA misrepresentation must have caused some provable harm ("injury") or damage to you, such as a financial loss.

NOTE: Even if there has been no money lost, the CCB may find that the misrepresentation caused harm, for example, to your reputation or your interest in freedom of expression. Some courts have determined that the misrepresentation itself counts as harm for a DMCA misrepresentation claim, while other courts have required the claimant to show a separate harm from the misrepresentation. The rule the CCB will follow depends on the law of the federal court in the location with the strongest connection to the participants and the claim.

For example, this requirement would likely be satisfied in the following circumstances:

- You sell drawings through an online marketplace, and a takedown notice prevented any sales until the marketplace reposted the drawings. The lost sales could be an injury for these purposes.
- You make advertising money from your videos based on how many viewers watch them. One of your videos was online for a while, with thousands of viewers each month, until it was taken down based on the respondent's takedown notice. You lost a substantial amount of advertising income before your video was restored, and this could be considered harm for these purposes.
- You are an artist, and your art was posted online by another person until you sent the website host a takedown notice. The poster of your art was able to get their post put back up due to a false counter-notice. You may have had sales diverted or been otherwise harmed due to your art being posted on an unauthorized website.

Do you want to be in the “smaller claims” track?

If you are seeking damages of \$5,000 or less, you have the option to have your claim heard under the CCB's “smaller claims” procedures. Smaller claims proceedings are even more simplified and efficient than standard claims, with the information and documents that each party has to share more narrowly tailored to the needs of the proceeding. More information is available in the [Smaller Claims](#) chapter.

TIP: The claims form on eCCB will ask you whether you want to proceed on a smaller claims track and will ask you to confirm that choice. Choose carefully because you can only change your mind about whether you want your claim to be heard as a smaller claim before you serve it on any of the parties. After your claim is served, you can only change that decision with the agreement of the other parties and the CCB.

What harm did you suffer, and what do you want from the CCB?

If you bring a misrepresentation claim and win, the CCB can order the respondent to pay you any damages they caused, up to \$30,000. If you are seeking damages, however, your claim should identify some financial loss or harm or other provable injury you suffered because of the misrepresentation.

You may also state in your claim that you want the respondent to agree to stop making misrepresentations. Unlike federal court, the CCB cannot order the respondent to stop or modify activities unless the respondent notifies the CCB that, if found liable, they will stop or modify the activity. For a misrepresentation claim, that could include agreeing to stop sending false takedown notices or counter-notices. Therefore, you can state that you would like the respondent to stop their activities, but the CCB can't order this unless the respondent agrees.

Do you have any evidence you want to include in your claim?

You can attach documents or other evidence to your claim when you file. If there is a key document or set of documents you think are helpful to your claim, you will likely want to include 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 respondent during the **discovery** phase of your proceeding.

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

- a copy of the takedown notice, and of any counter-notice, that you say includes a misrepresentation
- documents that show that the respondent’s statement amounted to a misrepresentation
- documents that are evidence you suffered damages because of the misrepresentation
- documents that are evidence of how much you suffered in damages
- any other key evidence that supports your response

Do you want legal representation?

The CCB is set up to be far more streamlined and easy to understand than federal court. As such, you’re able to represent yourself in your CCB proceeding whether you’re an individual or a business. You’re not required to hire a lawyer, but you are allowed to use one. 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. 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.

How to Submit a Claim

You file your CCB claim by submitting an online claim form. This section provides guidance on filling out the claim form through eCCB.

eCCB can be found on the [CCB’s website](#). [eCCB](#) will guide you through the steps to file your claim, with instructions and helpful information along the way. Information about setting up an account and accessing the online form can be found in the [eCCB](#) chapter.

Keep these things 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 [contact the CCB](#) to request permission to file a paper claim. It’s up to CCB whether to grant your request, and using 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 claim on eCCB yourself, or a lawyer or law student representative can file it for you.** A business representing itself can file through an in-house attorney, owner, officer, member, 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 someone else files the claim for you, they must certify that they confirmed the accuracy of the information with you.
- **eCCB will guide you through the filing step by step, asking you questions and giving you instructions.** eCCB also has “tooltips,” marked with a lowercase “i” in a circle, that give more information, including links to resources. This Handbook may also serve as a useful resource if you need additional guidance
- **You don’t need to complete your claim in one sitting.** You always have the option to save your claim form and return to complete it later by selecting “Save & exit” at the bottom of the screen. The claim form is broken up into easy-to-digest pages, so you should complete the screen you are working on before exiting. To return to a draft claim, select “Submit a claim” on

your eCCB dashboard. You will see a notice at the top of the pop-up window stating you have an incomplete filing. Click the “Continue filing” button to continue working on your claim, and then select your draft claim in the next window.

Once you’re ready to begin working on your claim, log in to your eCCB account. When you are logged in, click the “Submit a claim” link at the top of your dashboard. Then follow the steps below.

Selecting Your Claim Type

Once you have logged in to your eCCB account, click the “Submit a claim” link at the top of your dashboard. A pop-up box will appear and prompt you to identify the type of claim or claims you are asserting. There are three options:

- [claims of infringement](#) of a copyright,
- claims seeking declarations that your activities [do not infringe](#) someone else’s copyright (for example, if someone has threatened you with a copyright lawsuit and you wish the CCB to decide that your activities are not infringing), and
- claims of misrepresentation in takedown notices and counter-notices sent under the Digital Millennium Copyright Act (DMCA).

For purposes of this chapter, choose the third option. If you have infringement or noninfringement claims as well, you must also select those claims at this stage. You will go through each claim one at a time. Once you select the type of claim or claims you are asserting, click “Continue.”

On the next screen, you will be asked whether you want the claim to proceed as a “[smaller claims](#)” proceeding. Select “Yes” to choose a smaller claims track or “No” for a standard CCB proceeding. You should only choose a smaller claims track if you are willing to have your damages limited to a maximum of \$5,000. You can learn more about the smaller claims option, which provides for, among other things, a more streamlined discovery process, in the [Smaller Claims](#) chapter.

Providing Claimant Information

On the claimant screen, you need to identify each claimant in the proceeding and who is representing them (including whether the claimants are representing themselves). You will begin by clicking “Add claimant,” providing the information further described below on the pop-up screen, and clicking “Save.”

Once you are done adding the first claimant, you may add additional claimants, if any, by clicking the “Add claimant” button again. You may only include claimants who have agreed to be added.

When you have entered all of the claimant information, click “Save & continue.” Or, if you’d like to complete this filing in more than one sitting, select “Save & exit.”

CLAIMANT TYPE INFORMATION

You will need to identify each claimant and provide all contact information required on the screen. When you identify the claimant,

- select “individual” if the claimant is a person, or
- select “organization” if the claimant is a business, corporation, company, non-profit organization, or some other kind of entity.

If an individual goes by a stage name or pseudonym, you can include it in the “alias” field. Although not required, if the respondent is more likely to know the claimant by their alias than by their true name, providing the alias may help the respondent understand who is asserting the claim.

CLAIMANT REPRESENTATIVE

You will need to identify who is representing each claimant and provide all contact information required on the screen.

NOTE: Self-representing individuals cannot represent other claimants.

Representative option. . .	Select if. . .
Myself	<ul style="list-style-type: none"> • You are the claimant, and you are representing yourself. • You are an attorney or law student representative who is completing the claim form on behalf of a client. • You are an authorized business representative completing the claim form on behalf of your organization.
Self-Representing	You are adding an individual as a claimant other than yourself and they are representing themselves.
Authorized Representative	An organization is a claimant, which is involved in the proceeding, and they are represented by one of its owners, officers, partners, members, in-house attorneys, or another authorized employee other than yourself.
Attorney or Law Student Representative	You should select this if you do not represent the claimant, but the claimant is represented by an attorney or law student.
Unknown	There is a claimant involved in the proceeding who has given you authorization to file the claim on their behalf, but you don’t know how they will be represented or have the necessary contact information of their representative. They will need to provide their representative’s contact information before the claim can move forward in the active phase .

Providing Respondent Information

On the next screen, you need to identify each respondent in the proceeding. You will begin by clicking “Add respondent,” providing the identifying information required on the pop-up screen, and clicking “Save.” You may add additional respondents by clicking the “Add respondent” button again.

If your respondent is an organization, you will need to confirm whether the organization has a **designated service agent** by searching the [Designated Service Agent Directory](#). There is a link to the directory within the online claim form. If the organization has an agent, you will need to put the contact information from the directory into the claim form.

When you have entered the information for all respondents, click “Save & continue.” Or, if you’d like to complete this Filing in more than one sitting, select “Save & exit.”

Sometimes, you may not know all the information you need.

- **If you don’t know the respondent’s identity and the infringement is online:** CCB staff attorneys can give you information about obtaining a subpoena under 17 USC § 512(h), which may help you obtain information from an online service provider to identify the respondent in cases of online infringement.
- **If you don’t know an individual respondent’s name:** You may check the “I only know the individual by their alias” box and provide their alias.
- **If you don’t know the respondent’s address:** A respondent’s address is needed to complete service of the claim. If you know you are in danger of the **statute of limitations** expiring, you can submit your claim without the address and certify that you need to file the claim now because you believe the statute of limitations is about to expire. You will be given a set time period to provide the address before the claim is cleared for service.
- **If you don’t know the respondent’s email, phone, or fax:** You do not need it to file your claim. This information is optional, but it is helpful if available.

Confirming the Claim Type

After you enter the required information about all claimants and respondents, eCCB will ask you to confirm the type of claims you want to bring, and your choice of whether this will be a standard CCB proceeding or a “smaller claims” proceeding.

Your previous answers should already be selected. If they are correct, select “Save & continue.” If they are not correct, you may change your answers as needed, select “Apply changes,” and then select “Save & continue.” Changing your claim answers will reload the previous steps, so you would need to reenter the claimant and respondent information.

Completing the Misrepresentation Section

Next, the eCCB claim form will prompt you to provide the details of your misrepresentation claim. The claim form’s misrepresentation page contains a series of blank boxes for you to enter the key facts about the takedown notice, any counter-notice, and the respondent’s statement that you claim was false.

TAKEDOWN NOTICE

First, provide the following information about the takedown notice:

- the name of the person or business that sent it;
- the name of the online service provider that received it;
- the date it was sent, if you know the date; and
- a description of the notice. This description does not have to be lengthy, and you do not need to duplicate information that you provide elsewhere in the claim.

COUNTER-NOTICE

The next question asks if a counter-notice was sent. If no, select “No.” If there was a counter-notice, select “Yes.”

If you select “Yes,” new fields will appear, asking you for the same four items about the counter-notice that you provided above about the takedown notice: who sent it, who received it, the date sent if known, and a description. Complete those sections in the same way described above.

You must also check a box to indicate whether the misrepresentation appeared in the notice or in the counter-notice.

THE MISREPRESENTATION

In the next field, identify the specific words in the notice or counter-notice that you believe are a misrepresentation of the facts, and explain why those words are a misrepresentation.

TIP: If you have a copy of the notice or counter-notice that contains the disputed words, you can also upload it through eCCB along with your claim, but in this field, you should focus on the specific words that you believe misrepresented the facts. More information about uploading documents can be found in the [Documentation](#) section of this chapter.

Describe the Harm Suffered and the Relief You Are Seeking

The last question on the page asks you to describe the harm you have suffered as a result of the alleged activity and the relief you are seeking from the respondent.

In your own words, describe how the misrepresentation caused you harm.

TIP: A misrepresentation must be substantial or significant enough to have caused the online service provider to take the allegedly infringing content offline or to put it back online. So your description of the harm should indicate why you believe the misrepresentation was significant enough that the service provider relied on it as a basis for removing, disabling, or restoring access to the content.

You also need to state what kind of relief you want from the CCB. If you are seeking damages, you should identify some financial loss or harm or other provable injury you experienced because of the misrepresentation. You can include an estimate of any monetary loss that you are seeking, though it is not required. If you do state an amount, it cannot be over the maximum that the CCB can award you. The most that the CCB can award you in a misrepresentation proceeding is \$30,000, or \$5,000 if you choose to pursue the claim through the CCB’s “smaller claim” track.

You may state in this field that you would like the respondent to stop sending takedown notices or counter-notices about the conduct at issue. However, you should understand that the CCB can only make the respondent stop their behavior as part of its **final determination** if the respondent informs the CCB that, if found liable for misrepresentation, they agree to stop their behavior. If the CCB finds that the respondent committed a misrepresentation, and the respondent has agreed to go along with the requirement, the CCB’s final determination can require the respondent to cease sending false DMCA takedown notices or counter-notices about the conduct at issue.

When you have completed all of the fields on the Misrepresentation page, select “Save & continue” at the bottom of the page.

Adding Supplemental Documentation

In the next section of the claim form, you can choose to submit supplementary material or documents that play a significant role in your claim. Filing documents along with the claim can help to show the respondent and the CCB that you have important evidence in support of your claim. If you do not submit these documents now, you will need to provide various relevant documents when the proceeding moves to the active phase and discovery starts. See [above](#) for examples of evidence you may wish to consider submitting with your claim.

You can add a wide variety of file types, including:

- PDF (Portable Document Format) documents;
- Microsoft Word documents, Excel spreadsheets, and PowerPoint presentations;
- Corel WordPerfect documents;
- tab-separated values (TSV) files and comma-separated values (CSV) on your files;
- plain text and rich text documents; and
- audio, video, and image files.

To upload, you can drag the files from a folder into the box in the middle of the page, or you can click the “choose from folder” hyperlink in that box and select the files you wish to submit.

Once you have uploaded the supplemental documents and materials you wish to file with your claim, click the “Save & continue” button.

Review and Payment

The “Review & Pay” page includes all the information that you have provided in the claim up to this point. Carefully double-check the information on this page. If you have any corrections, you can select “Edit” to revise any entries necessary. Each section of information has an “Edit” button, which will take you back to that section so you can make changes. After you make changes, you can click “Save & review” to go right back to the review page.

DECLARATION

Once you have completed your review and any revisions, you must confirm that the information in your claim is accurate and truthful to the best of your knowledge. This declaration is “under penalty of perjury,” which means that you recognize you may be subject to penalties if you know that any statement in the declaration or your claim is not true.

To complete the declaration, type your full name into the “Digital signature” box near the bottom of the “Review filing” page and click “Agree & submit.”

FILING FEE

eCCB will then take you to a page to submit your payment. Your initial payment for the claim is a **\$40** filing fee (a second **\$60** payment will come if the opt-out period ends and at least one respondent has not opted out of the proceeding). You make the payment through Pay.gov, a secure government website portal for electronic collection of funds. You may select one of four ways to pay:

- bank account (ACH),
- Amazon account,
- PayPal account, or
- debit or credit card.

The fee is not refundable. You must submit the initial payment to complete the filing process, or the CCB will not receive and process your claim.

Select the way you want to pay, and click “Enter.” The website will direct you to a page to enter the account information for your method of payment.

When your payment is complete, congratulations! You have initiated your claim.

Less Common Situations

Refiled Claims

Information about refiled a CCB claim against a party who has already opted out of the same claim is available in the Refiled Claims section of the [Starting an Infringement Claim](#) chapter.

Claims Against a Library or Archives

Information about claims against libraries and archives and their employees is available in the Claims Against a Library or Archives section of the [Starting an Infringement Claim](#) 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.
- **Designated service agent:** A specific person or entity that a corporation, partnership, or unincorporated association has designated to receive service of CCB claims.
- **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.
- **Final determination/Determination:** The CCB's ruling regarding who actually wins the case, with any awards, and with the CCB's reasons for its findings.
- **Material:** Important or significant.
- **Online service provider:** Online service providers include websites that host content uploaded by users, such as YouTube and Instagram, and search engines that direct users to particular websites, such as Google and Bing.
- **Pro bono:** Legal services without a charge for the attorney's or law student's time or work.
- **Statute of Limitations:** A law that sets a time limit for when you must begin legal proceedings.