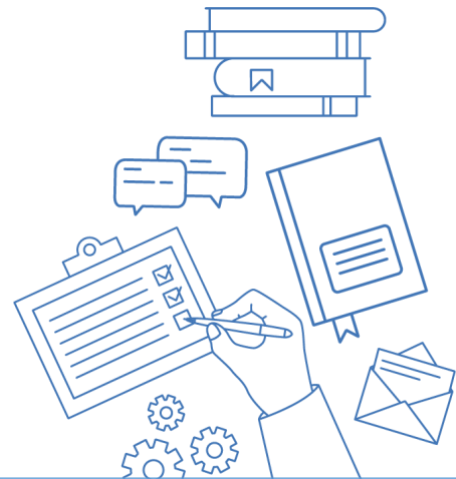


# Service of the Claim

Service is a process that ensures respondents are formally notified that a claim has been filed against them. The CCB itself cannot serve a respondent. It is the claimant's responsibility to find someone (other than the claimant) to deliver the necessary documents. This chapter will walk through the steps to serve a respondent.



## Chapter at a Glance

- Documents Included in Service
- How to Serve the Respondent
- Filing Proof of Service
- Waiver of Service
- Service: What to Know if You Are a Respondent
- Designating a Service Agent

## Why You Need This Information

Once the CCB notifies you that your claim has passed compliance review, you will need to give the claim and initial notice documents to each respondent, and you need to know the requirements for doing so. Your claim cannot proceed unless you serve the documents and file proof of service within a ninety-day window.

## Quick Summary of Service

- The CCB will provide you with a set of materials to deliver to the respondent, including an initial notice, a copy of your claim once it has passed compliance review, and other materials. You may not include any additional documents in the service beyond what the CCB authorizes.
- The CASE Act provides certain approved methods for service but in some cases refers to service under the law of the state in which the respondent is served. The method of service may depend on whether the respondent is an individual or business.
- You may ask a respondent to waive service and agree to receive the service materials without being formally served.

### 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

- After you file proof of service or waiver of service, the CCB will send a second notice to the mail and email addresses of all respondents who have not opted out. The claimant must provide these addresses to the CCB.
- If you are a respondent who has been served with an initial notice from a claimant, you have **sixty days** to make an important decision: whether to participate in or to opt out of the proceeding.

## How did you get here?

After your claim passes compliance review, you have ninety days to file evidence that you have formally notified the respondent(s) of the claim. This is called the proof of service. A proof of service form is included in the set of materials that the CCB sends to you. You will not serve it on the respondent. Instead, you will fill out the form after you complete service and send it back to the CCB but you do not have to serve it on the respondent.

## How do you serve a respondent?

As a claimant, you may not serve the documents on the respondent yourself. Instead, after your claim is found compliant by the CCB, **you must have the claim, initial notice, and other materials described below served by someone who is not a party in the proceeding** and is over eighteen years of age (unless you are serving via mail). If you are serving an individual via mail under a state law that permits service by mail, then you may mail the documents yourself unless that particular law has different requirements.

You have **ninety days** from the day you received the notice of compliance to both serve the respondent **and** file the proof of service with the CCB. How service is accomplished will depend on who the respondent is, where they are located, and whether they have a designated service agent. In some cases, service can be accomplished easily. In other cases, it may be more difficult, and it may be advisable to seek professional assistance. You may want to consider hiring a **process server** who is located in the area where the respondent resides. Process servers should be familiar with the state laws and local practices concerning service of process.

Alternatively, you can ask the respondent to waive service, which allows you to bypass some of the service requirements but requires the cooperation of the respondent. Waiver of service is discussed [below](#). However, if the respondent does not agree to waive service, you must have them formally served.

If the respondent is a corporation, partnership, or unincorporated association that has designated a service agent with the CCB, **you must serve that agent**, and you can serve the respondent by mail (or, in many cases, by email). These options and others are described below. If no service agent has been designated, service must be made by personal delivery to an officer or agent of the corporation or by other means authorized by the law of the state in which the corporation is served.

## What Happens Next?

After service has been completed, you have **seven days** from the date of service to upload the proof of service form to eCCB, but keep in mind that your upload of the proof of service form must be completed no later than ninety days after the CCB notifies you that your claim is compliant. If you use a process server, they should provide you with the proof of service form to file in eCCB. In any case, the proof of service must be signed by the person who served the respondent. Service starts the respondent's sixty-day **opt-out period**.

## Are you a respondent?

If you are a respondent, respondent-specific information is [below](#).

## Documents Included in Service

You will need to arrange for copies of the following documents to be served on the respondents:

- the initial notice,
- the approved claim, and
- the opt-out notification form.

**NOTE:** You **cannot** include additional communication or materials (such as settlement demands, additional correspondence, or additional materials that describe the strength of your claim) when you serve these documents.

### The Initial Notice

The initial notice provides notice to the respondent that a CCB action has been filed and gives the respondent important information about the claimants, the claim, and the CCB itself. When the CCB creates the initial notice, it uses the information provided in your claim. The initial notice is addressed to the respondent and contains essential identifying information about the claim and the CCB, including:

- the parties' names and a **docket number** assigned by the Board,
- the names and mailing addresses of all claimants,
- the type of claim or claims that you are asserting, and
- other information about the CCB and the proceeding.

### The Approved Claim

This is the claim that you submitted through eCCB and that the CCB found compliant. The claim details the facts you have described and the type of claims (infringement, noninfringement, or misrepresentation) you are asserting.

### The Opt-Out Notification Form

This is the form that a respondent who decides to opt out of the CCB proceeding may use to opt out by mail. As described in the initial notice, a respondent may choose to opt out of the [proceeding](#). The opt-out notification can be done either online or by filling out the paper opt-out notification form for opting out by mail.

# How to Serve the Respondent

The rules regarding service differ depending on whether you are serving (1) an individual or (2) a corporation, partnership, or unincorporated association. The CASE Act provides rules on the ways you are allowed to serve a respondent, but it also gives you the option of following the service rules of the state in which service is made in most circumstances. Note that special rules apply to service on minors or persons who are incompetent; those rules depend on the law of the state in which service is made. However, certain rules apply no matter who is being served or how they are served:

- The person who makes service must not be a party to the proceeding. This means that if you are the claimant, you must arrange for somebody else to serve the respondent.
- The person who makes service must be over eighteen years old.

## Completing Service on an Individual

There are several options for serving an individual, other than a minor or incompetent person (discussed below). **As a claimant, you may not personally serve the documents. Instead, you must have the claim served by someone who is not a party in the proceeding and is over eighteen years of age** (unless you are serving via mail, which is permitted under some state laws and when serving a corporation, partnership, or unincorporated association that has designated a service agent). If the respondent does not live near you, it may be easier (although at an expense) to hire a process server in the area where the respondent lives. If the respondent lives in your area, you may be able to get a friend or relative to do the service.

Federal law specifies a number of ways you can serve a respondent in a CCB proceeding, any of which will satisfy the requirements for service. They include:

- hand-delivering a copy to the respondent in person,
- leaving a copy at the respondent's residence with someone of suitable age and discretion who resides there, and
- delivering a copy to an agent designated by the respondent to receive service of process on their behalf.

In addition to the methods allowed by federal law, the state where the respondent resides will often have additional options for service. You may also serve an individual by complying with the rules for service of process in the state where service is made. Some states permit service by mail, but even in those states, the requirements may vary. For example, in some states you must use certified mail; in others, first class mail is permitted. And some states require that if you serve by mail, the service must be made by the clerk of the court, an option that will not be available to you. The Copyright Office is not in a position to advise you about the rules regarding service in each state.

Keep in mind that, especially when serving an individual, you should consider mailing the respondent a request to waive service. If the respondent is willing to waive service, it will, in most cases, be much easier to get past this step in the process. However, if the respondent does not respond to your request within thirty days, you should take steps to formally serve the respondent. Also, if you plan on requesting a waiver of service, you should do it early because you still must serve the respondent and file proof of service within ninety days of the CCB notifying you that your claim is compliant and can be served. For more on waiver of service, see the discussion [below](#).

**Example:** *Laura Langley, who lives in New York City, needs to serve Eric Kessler, who lives in Seattle. She hires John Thomas, a trained Seattle professional process server who serves documents in legal proceedings, to hand-deliver the claim to Eric. John visits Eric’s workplace, hands the papers to Eric, and then completes the proof of service form and returns it to Laura. Laura must upload the proof of service form to eCCB within seven days of service (and within ninety days of when the CCB notified Laura that her claim was compliant).*

**Example:** *Cassandra Smyth asks her friend Jane Jones, who is over eighteen years old, to serve the required papers on Ralph Corbin, who lives across town. When Jane knocks on the door, it is answered by Gloria Corbin, who tells Jane that Ralph is not at home. Gloria, who is over eighteen years old, says that she is Ralph’s wife and that she also lives in the home. Jane hands the papers to Gloria. Later that day, Jane completes the proof of service form and returns it to Cassandra. Cassandra must upload the proof of service form to eCCB within seven days of service (and within ninety days of when the CCB notified Cassandra that her claim was compliant).*

## Special Case: Service on a Minor or Incompetent Person

The CASE Act provides that if the respondent is a minor or is an incompetent individual, service must be made by complying with the law of the state in which service is made. In most states, a minor is a person under eighteen years old. However, there are some states in which a person under nineteen or a person under twenty-one is a minor. Federal law does not define who is to be considered an incompetent person, but in context it appears that the reference is to mental incompetency, and whether someone is an incompetent person may be determined under the law of the state in which the person resides. The Copyright Office is not in a position to advise you about the laws of the various states.

## Completing Service on a Business

Again, as a claimant, you cannot be the person who serves the respondent (unless you are serving via mail). Instead, you must have the claim served by someone who is not a party in the proceeding and is over eighteen years of age.

## Designated Service Agents

There are several options for serving a **business entity**. **If the respondent has listed a designated service agent in the CCB directory, you must serve that agent** using the listed contact information for the agent. This is the easiest way to serve a business entity, but you may use it only if the business has listed a service agent in the CCB’s Designated Service Agent Directory.

All designated service agents must accept service at least by mail. When you serve a designated service agent by mail, the person who does the service must use certified or priority mail and deposit it with the U.S. Postal Service. You may mail the documents to the respondent under this provision even though you are the claimant because this type of service is not “personal” service.

Business entities may also permit service on their service agent by email; the directory will indicate when a designated agent accepts email service. If you wish to serve such an agent by email, the person who does the service should attach the required documents to an email addressed to the service agent. The email should state that you are serving the agent in a CCB proceeding and identify the respondent.

**Example:** *It’s time for Eve Flyer to have her claim served on Shadrach, Meshach, and Abednego, a partnership. Eve checks the CCB’s Designated Service Agent Directory and sees that the firm has named Sydney Carton as its designated service agent and that service by email is acceptable. Eve directs Delilah, her coworker, to attach the initial notice, claim, and opt-out notification form to an email sent*

*to Carton's email address and to state in the email that she is serving Carton, as service agent for Shadrach, Meshach, and Abednego, with the attached papers in a CCB proceeding filed by Eve. Delilah follows Eve's directions and then fills out a proof of service form. Eve must upload the proof of service form to eCCB within seven days of service (and within ninety days of when the CCB notified Eve that her claim was compliant).*

## Other Forms of Service

When a business entity has not listed a designated service agent with the CCB, you may serve a business entity by serving an officer, a managing or general agent, or any other agent authorized by the law of the state where service is made to receive service of process. Alternatively, you may serve the company by any means permitted under the law of the state where service is made. The Copyright Office is not in a position to advise you about the rules regarding service in each state.

If you are serving a business entity via mail, either because the business entity has listed a designated agent in the CCB's Designated Service Agent Directory or because state law permits service by mail, then you may mail the documents yourself unless the state law permitting such service has different requirements.

As a general rule, corporations (and other business entities such as limited liability companies (LLCs), limited partnerships (LPs), or limited liability partnerships (LLPs)) are also required by state law to designate agents for service of process, and in many states, service may be made on the state's secretary of state. Even if such a business entity has not listed a service agent in the CCB's directory, it will have a designated agent under state law wherever it is licensed to do business, and you may serve that agent under state law. The agent for service of process under state law will not necessarily be the same person as an entity's agent listed in the CCB's Designated Service Agent Directory, and the Copyright Office cannot advise you on such state laws.

**Example:** *Stanley Moon is ready to serve Widgets, Inc. in his CCB proceeding. He knows that George Spiggot is the president of Widgets, Inc., and he hires Gabriel Angel, a process server, to deliver the papers personally to Spiggot at Widgets, Inc.'s headquarters. Gabriel walks into Widgets, Inc.'s offices, sees Spiggot at the receptionist's desk, and hands the papers to him. Gabriel then fills out a proof of service form. Stanley must upload the proof of service form to eCCB within seven days of service (and within ninety days of when the CCB notified Stanley that his claim was compliant).*

**Example:** *Napoleon Sarony has filed an infringement claim in the CCB against Burrow-Giles Lithographic Co., and he has been informed by the CCB that his claim has passed compliance review. After checking the CCB's Designated Service Agent Directory and finding no entry for Burrow-Giles Lithographic Co., he checks the with the New York secretary of state's corporation and business entity database and sees that Samuel Blatchford is the company's registered agent. Sarony asks his friend, Oscar Wilde, to serve Blatchford as agent for the company. Wilde goes to Blatchford's office at 232 Broadway in New York City and hands the papers to Blatchford. Later that day, he fills out a proof of service form. Sarony must upload the proof of service form to eCCB within seven days of service (and within ninety days of when the CCB notified Napoleon that his claim was compliant).*



## Filing Proof of Service

No matter the service method, the individual completing service must complete a proof of service form. You then must file the form with the CCB. There are two important dates to keep in mind when uploading your proof of service form to eCCB. You must upload the signed and completed form on the earlier of the following two dates:

- **Seven days** from the date of service. So, if service was made on a Monday, the completed proof of service form must be uploaded no later than the following Monday. If the date of service was a weekend day or federal holiday, you should start the seven-day calculation from the next federal business day. If the expiration of the seven-day period is a weekend day or federal holiday, the expiration of the seven-day period will be the next federal business day.
- **Ninety days** from the date you received the notification from the CCB that you should proceed with service because your claim passed compliance review. Similar to the above, if the time period starts or ends on a weekend or federal holiday, use the next federal business day.

Note that you need to meet both deadlines. So, if you served the respondent two days before the second (ninety-day) deadline expires, you cannot wait seven days to upload the proof of service form. You would have to upload it no later than two days after service in order to meet the ninety-day deadline.

Therefore, if service occurs in the last week of your ninety-day window, you will need to file your proof of service form as soon as possible before the ninety-day window ends.

## Waiver of Service

Unless the respondent is a business that has designated a service agent with the CCB, the least expensive way to deal with service will usually be to ask the respondent to waive service. However, the respondent is not required to agree to your request, so you should be prepared to proceed with formal service in the event that the respondent does not agree.

Waiving service means that the respondent agrees to receive the claim without being served according to the formal rules for service of process. In most cases, when a respondent is willing to waive service, you will be able to avoid much of the expense and effort involved in serving the respondent. Keep in mind that requesting a respondent to waive service does not extend your ninety-day window for filing your proof of service on the respondent. **You should ask for a waiver of service soon after receiving notice that your claim is compliant, and if a respondent does not waive service within thirty days or if your time to serve them is getting close to expiring, you should proceed with service.**

Waiving formal service does not mean that the respondent is waiving the right to opt out of the proceeding. A respondent may choose to waive service because they do not feel the need to make you serve them formally or, if they do not opt out, waiving service gives the respondent an extra thirty days to respond to a claim after the proceeding has become active.

If you want to request waiver of service, you will need to send the respondent the following items by first class mail:

- **The initial notice.**
- **The approved claim.**
- **The opt-out notification form.**

- **Request to waive service of notice and waiver of personal service form.** You must use the request and the waiver form, which the CCB will send to you along with the documents to serve when it advises you that your claim has passed compliance review and instructs you to proceed with service of the documents. If you choose to serve the respondent rather than request a waiver of service, do not include this with the materials that you serve. The request gives the respondent important information about the waiver process and describes the effect of agreeing or declining to waive service. Fill in all of the required information in the form. If you would like to give the respondent the option to return the form to you by email, you should include your email address in the request.
- **Return postage.** You must also include an envelope, with postage prepaid and addressed to yourself (or your lawyer or authorized representative), in which the respondent can return the waiver form.

**NOTE:** Because sending the request for a waiver is not personal service, you may send the request for waiver materials yourself as opposed to having someone not a party to the proceeding do it for you.

The respondent has thirty days to waive service. If the respondent agrees, the respondent should fill in the waiver form, sign it, and mail it back to you in the envelope you provided (or, if you included your email address in the request and the respondent prefers, the respondent may send it back to you as an email attachment).

If you receive the signed waiver of service from the respondent, you must upload it to eCCB within the earlier of the following two dates:

- **Seven days** from the day you received it from the respondent.
- **Ninety days** from the day you received the notification from the CCB that you should proceed with service because your claim passed compliance review.

## Service: What to Know if You Are a Respondent

If you have been served with an initial notice (along with the claim and opt-out form) from a claimant notifying you that you are a respondent in a CCB proceeding, this means that a claimant has filed a copyright-related dispute against you and has chosen to bring their claim before the CCB instead of federal court. The CCB is a cost-effective and streamlined alternative to federal court. You can opt out of a CCB proceeding within **sixty days** of being served, but then the claimant can decide to bring the same claims (and any other claims they have) against you in federal court. To learn more about the considerations related to a proceeding before the CCB or opting out, see the [Opt Out chapter](#).

In addition to the notification you receive from the claimant, the CCB will send you a separate notification within the sixty-day window if you have not yet opted out. The purpose of this second notice is to make sure you have received a copy of the claim, notification of the **opt-out period**, and other important information.

### Documents Included in Service

The claimant is required to provide you with several key documents: [the initial notice, the claim that the CCB approved for service, and the opt-out form](#). Note that CCB approval for service does not mean the CCB has formed any opinion regarding the claim. If the claimant asks you to [waive service](#), they will also provide a waiver of personal service form and return postage. **Claimants cannot add any additional communication whatsoever to these three documents. That means they cannot include**



**things like settlement demands, additional correspondence, or additional materials that describe the strength of their claim to this list when service is carried out.** If a claimant wishes to send you any of those things, they must do so separately.

## Waiver of Service

The claimant may ask you to waive service. Waiving service means that you agree to receive the claim without being served according to formal rules described [earlier in this chapter](#).

- **Waiving formal service does not mean that you have waived your right to opt out of the proceeding.**
- You may choose to waive service because you don't feel the need to require the claimant to go through formal service or because doing so gives you an extra **thirty days** to respond to a claim after the proceeding has become active.

## Completing and Filing Waiver of Service

You may agree to waiver of service by returning the **signed** waiver form in the postage-prepaid envelope to the claimant by mail (you may also return it as an attachment to an email if the request for a waiver includes the claimant's email address). **You have thirty days from the date the request was sent to return the waiver form.**

When completing the form, you will need to sign and acknowledge that you:

- are waiving the formal service requirements,
- understand that you may opt out of the proceeding within sixty days of receiving the request (just as if you received formal service), and
- are providing the required contact information, including your name, mailing address, and the name and mailing address of your lawyer or authorized representative, if applicable.

## If You Decline to Waive Service

You are not obligated to waive service. If you refuse or do not reply to the claimant's request to waive service, the claimant must serve the claim, initial notice, and opt-out notification form by the formal process described earlier in this chapter. You should, however, respond to the claimant and let them know you will not be waiving service.

## Effective Service

For an explanation of the rules governing service, see "[How to Serve the Respondent](#)."

## Now That You've Been Served

After you are served with the claim, or agree to waive service, you have sixty days to make an important decision: whether to participate in or to opt out of the proceeding. To learn more about the considerations related to a proceeding before the CCB or opting out (after which the claimant can then sue you on the same claims and any others they have in federal court), see the [Opt Out chapter](#).

# Designating a Service Agent

Entities who wish to designate, or assign, a service agent to receive CCB claims must use [the online form](#) through the Designated Service Agent Directory. For additional information about the Designated Service Agent Directory, please see the [tutorial](#) on our website. When a business designates a service agent, all CCB initial notices and claims in proceedings will be served through that agent.

## Eligible Entities for Designating a Service Agent

Corporations, partnerships, or unincorporated associations can submit a designation entry via the CCB's Designated Service Agent Directory.

To complete the designation entry, the person submitting the listing needs to certify, under penalty of perjury, that the submitter is authorized by law to make the designation on behalf of the entities and affiliated entities listed.

## Trade Names and Affiliated Entities

When designating a service agent, eligible entities can provide up to fifty trade names or affiliated entities per entry that will be included and searchable on the Designated Service Agent Database.

- A **trade name** is an alternate business name or “doing business as” (d.b.a.) used by companies that do not operate or solely operate under their registered company name.
- An **affiliated entity** is a separate legal entity that is under the same direct or indirect common control. Affiliated entities are sometimes called parent or subsidiary companies.

To be included as part of a single designation entry, affiliated entities must have their principal place of business in the same state. To be included as part of a single designation entry, corporations must also have the same state of incorporation. Lastly, the names and contact information of the designated service agent and of the submitter for each affiliated entity and trade name must each be the same.

## Content of Designated Service Agent Entry

The Designated Service Agent Database entry requires certain identifying information, including:

- the legal name, business address, email address, and telephone number of the entity;
- the state of the entity's principal place of business;
- for corporations, the state or territory of incorporation;
- the name, address, email address, and telephone number of the designated service agent;
- the submitter's name, email address, and telephone number; and
- the method of service the corporation, partnership, or unincorporated has chosen.

**NOTE:** The email address and telephone number of the business entity itself (as opposed to that of the agent) will not be made publicly available on the Designated Service Agent Database and will only be used by CCB staff.

## Designation of Service Method

The Designated Service Agent Database entry requires the entity to indicate whether it accepts service only by mail or also by email. Each entity must accept service by certified mail and priority mail and may voluntarily accept service by email, as email service may be more convenient.

If the entity indicates that it has agreed to accept service by email, the directory will provide the email address of the agent.

## Examination of Entry By CCB

The CCB will examine the proposed Designated Service Agent Directory entry to determine whether the legal and formal requirements for designating a service agent have been met, including those set forth in the CASE Act and the CCB's regulations.

As a general rule, the CCB will accept the facts stated in a Designated Service Agent Directory entry unless they are contradicted by information provided elsewhere in the entry materials or in the Copyright Office's records or unless, on the face of the entry, some of the information appears to be inaccurate. The CCB will not knowingly issue multiple listings for the same entity because this would confuse the public record.

The CCB will communicate with the submitter if it finds

- a submitted entity does not qualify for the Designated Service Agent Directory,
- a submitted entry contains information that needs to be corrected, or
- there is reason to believe the submitter was not authorized to make the designation on behalf of the entity.

If the CCB determines it cannot add the service agent record to the directory, it will notify the submitter and explain the reasons for its determination. The submitter will have ten calendar days to respond to the issue that the CCB has identified. If the submitter responds and corrects the issue, the CCB will amend the entry and add it to the directory. If the submitter does not respond, or if, after reviewing the response, the CCB determines that the submission does not qualify for the Designated Service Agent Directory, the entry shall not be added to the directory.

## Amendments and Removal from Database

Eligible entities must maintain current information in the directory by submitting amendments when their information changes. **Information in the directory will be assumed to be correct. If a claimant serves a claim on a service agent listed for a respondent in the directory, service may be considered valid even if the agent information was incorrect because it was not updated by the respondent.**

If the CCB determines a designated service agent designation already included in the directory no longer qualifies for inclusion in the database, the CCB will notify the submitter and allow the submitter to respond within ten calendar days. If the entity does not respond, or if, after reviewing the response, the CCB determines that the submission no longer qualifies for the Designated Service Agent Directory, the entity shall be removed from the directory.

# Glossary

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- **Business entity:** For purposes of service, a corporation, partnership, or unincorporated association. Unincorporated associations include other business entities that are capable of being sued.
- **Designated service agent:** A specific person or entity that a corporation, partnership, or unincorporated association has designated to receive service of CCB claims.
- **Docket number:** The unique case number associated with your proceeding.
- **Opt-out period:** The respondent's sixty days to decide whether to participate in or to opt out of the proceeding.
- **Process server:** Someone hired to serve a party in a proceeding with formal papers in one of the ways allowed by law, such as by hand delivery.