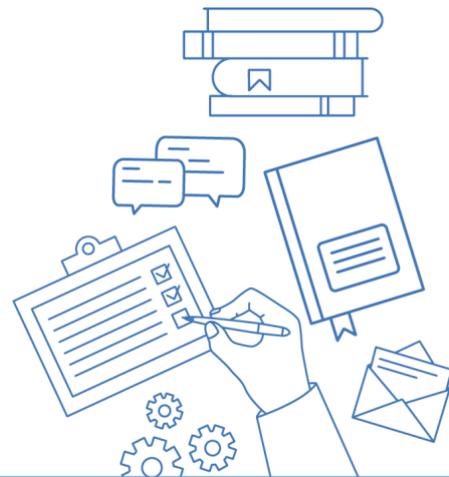


# Smaller Claims

All cases before the CCB benefit from streamlined procedures compared to those in federal court. The CCB also offers an **even more** streamlined “smaller claims” track designed for cases where \$5,000 or less is at stake. Claimants can choose the standard track or a smaller claims track at the time they file their claims.



## Chapter at a Glance

- [How Smaller Claims Are Different](#)
- [Overview of the Smaller Claims Process](#)
- [Preparing a Smaller Claim](#)
- [After You Submit a Smaller Claim](#)
- [The Active Phase](#)

## Why You Need This Information

When you file a claim before the CCB, you will be asked to choose between having it conducted as a standard proceeding or as a “smaller claims” proceeding. While the standard track is for claims seeking up to \$30,000, the maximum in the smaller claims track is \$5,000. There are some significant differences between the procedures in a standard proceeding and a smaller claims proceeding that should inform your choice. If you are a respondent who has received notice of a claim filed against you using the smaller claims track, these differences may also affect your decision as to whether or not to opt out and whether to bring counterclaims in the smaller claims proceeding (which will also be limited to a maximum of \$5,000).

## How did you get here?

You are involved in a proceeding where the amount at stake is \$5,000 or less. If you are a claimant, you are deciding whether to bring your claim under the CCB’s standard procedures or the smaller claims procedures. If you are a respondent, you have received notice of a claim filed against you and are deciding whether or not to participate in the CCB smaller claims proceeding. Either way, you’re curious about how a smaller claims proceeding differs from a standard track CCB proceeding.

### WHERE YOU ARE IN A CCB SMALLER CLAIMS PROCEEDING:

1. **Filing a Claim**
2. Compliance Review
3. Service
4. Opt-Out Period
5. Proceeding Becomes Active
6. Response
7. Initial Conference
8. Discovery (if Necessary)
9. Merits Conference
10. Findings of Fact
11. Determination

## Small claims? Smaller claims?

The claims that the CCB is authorized to hear are generally referred to as “small claims.” The CCB is called a small-claims tribunal because it can only hear claims for \$30,000 or less (as opposed to federal court, where damages have no cap).

In “smaller claims” proceedings, the damages cap is reduced to \$5,000, and proceedings are further streamlined.

## What happens after you select a smaller claims proceeding?

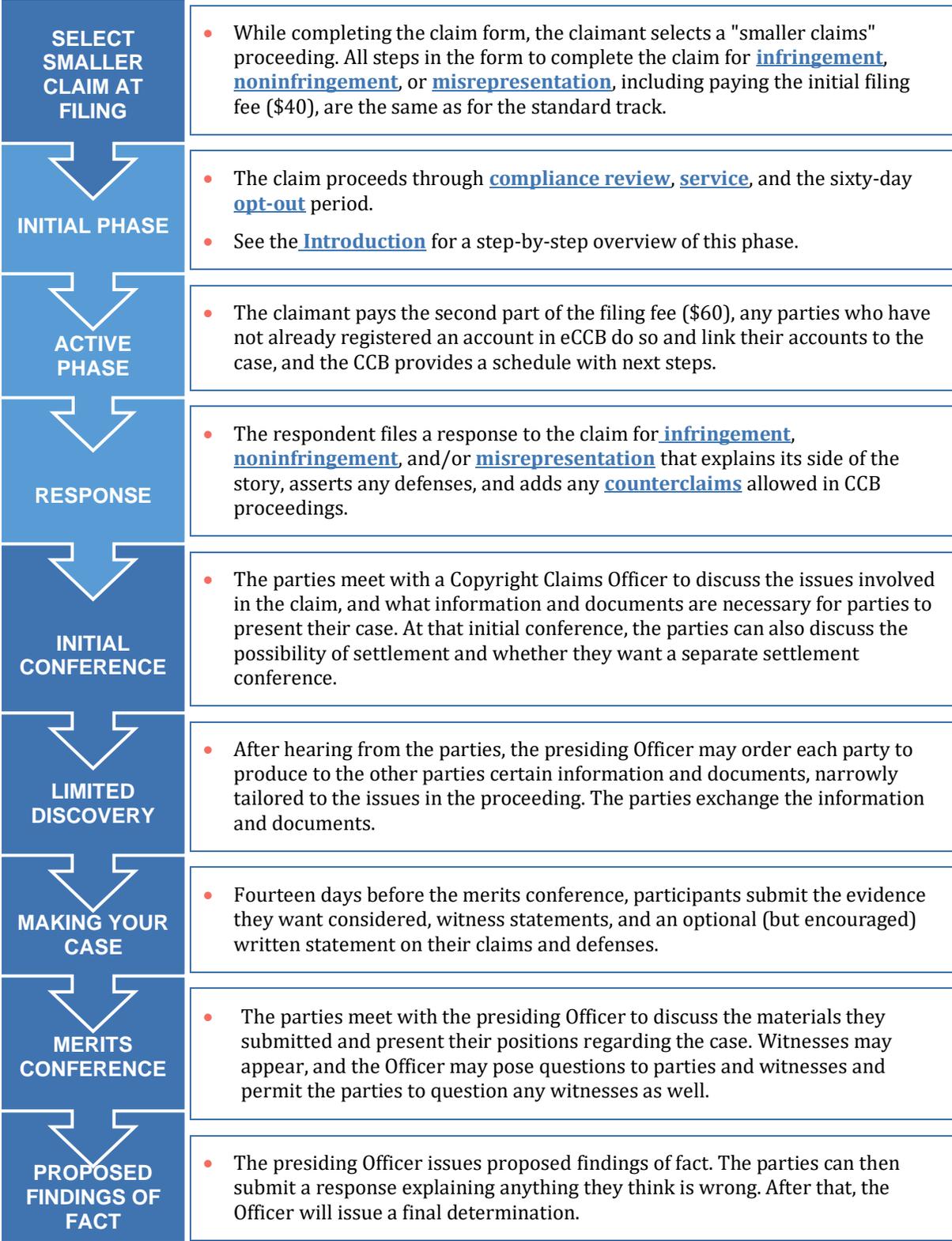
You can find a roadmap of what happens in a CCB smaller claims proceeding below. The differences between the standard track and the smaller claims track all occur in the **active phase** of the proceeding.

# How Smaller Claims Are Different

The standard CCB proceeding is already designed to be more streamlined and less expensive than litigation in federal court. The smaller claims track is even more streamlined. There is less **discovery**, and the focus is on conferences between the parties and a Copyright Claims Officer.

|                               | Standard CCB Proceeding   | Smaller Claims Proceeding  |
|-------------------------------|---|--|
| <b>Damages</b>                | Damages are limited to \$30,000 per proceeding.   | Damages are limited to \$5,000 per proceeding.   |
| <b>Managing a Proceeding</b>  | All three Copyright Claims Officers will hear the case. At least two conferences will be held, including one before and one after discovery. Otherwise, the Officers will only be involved during the information exchange process if asked by the parties.           | One presiding Copyright Claims Officer is assigned to the case. That Officer plays an active role in managing the case.  |
| <b>Scope of Discovery</b>     | Parties use a standard set of written questions and requests for documents provided by the CCB. Parties may then request additional discovery if necessary. Parties may also request to use an <b>expert witness</b> , although such requests will rarely be granted. | Parties use the pre-discovery conference to meet with the Officer and discuss what evidence is needed to present their case. The Officer will only require discovery that is narrowly tailored to those needs. The use of expert witnesses will not be permitted.  |
| <b>Presenting the Case</b>    | Parties submit written arguments, evidence, and witness statements, and respond to each other’s arguments. The CCB may decide the case based on written submissions or may hold a virtual hearing.  | Parties submit shorter written arguments, and their evidence and witness statements, before having a “merits conference” to discuss the issues with the presiding Officer. After the conference, the Officer shares with the parties proposed <b>findings of fact</b> and provides the parties an opportunity to respond if they believe the Officer has gotten any of them wrong. |
| <b>Making a Determination</b> | All three Officers consider the evidence involved in the claim and make a <b>final determination</b> .  | Only the presiding Officer makes the final determination. The only time all three Officers will do so is if there is a <b>default</b> by the respondent.   |

# Overview of the Smaller Claims Process



# Preparing a Smaller Claim

The process for filing a claim is the same regardless of whether you are choosing a standard proceeding or the smaller claims track. The material you will need to gather or consider before filing a claim is also the same. For more information on filing claims before the CCB, see [Starting an Infringement Claim](#), [Starting a Misrepresentation Claim](#), or [Starting a Noninfringement Claim](#).

However, there are three areas in the claim form that will require special attention if you want to bring a smaller claim:

- **Select “yes” to a smaller claim.** The first question on the claim form will ask you if you would like your claim to proceed as a smaller claim. You need to select yes here if you want the smaller claims track. After you have entered the information identifying the parties, you will be asked to confirm your selection. You will also have an opportunity to review your claim before filing and, if desired, switch your answer.

**NOTE: Once you have served your initial notice and claim on any other parties, you cannot change your choice of a standard or smaller claims track unless all parties agree and the Board then grants you permission.** If you change your mind and want to switch the type of track *before* serving the claim on the other parties, you must request an updated initial notice so that you can serve the new initial notice on the respondent.

- **When asked in the claim form to describe the harm caused and your requested monetary relief, be sure to ask for no more than \$5,000.** After you submit your claim, a CCB staff attorney will review it to make sure it complies with the applicable law and regulations. If you ask for more than \$5,000, but also request a smaller claims proceeding, the processing of your claim may be delayed for clarification.
- **Provide any documentation or evidence that you want to use when making your case.** One benefit of a smaller claims proceeding is that discovery will be limited to what the parties can show is still needed for your particular case. The more information and documents you provide now, the less (if any) that will be needed in the discovery phase.

## After You Submit a Smaller Claim

The immediate steps after submitting a smaller claim are the same as in a standard proceeding.

After you submit a smaller claim, a CCB staff attorney will review whether it is appropriate for the CCB. This involves checking to see if your claim complies with the relevant laws and the CCB’s rules and gives the respondent enough information to respond. For more information, see the [Compliance](#) chapter.

If your claim is compliant, the CCB will clear you for service, meaning that you will need to formally give the claim and initial notice documents to each respondent. For more information, see the [Service](#) chapter.

After the claimant completes service, the respondent has sixty days to decide whether to participate in or to opt out of the proceeding. For more information, see the [Opting Out](#) chapter.

After the sixty-day opt-out period has passed, if at least one respondent has not opted out, the proceeding moves into the active phase.

# The Active Phase

## Initial Order and Schedule

Once a proceeding becomes active, the CCB will issue an order directing (1) the claimant to pay the additional filing fee of \$60 and (2) any participants who haven't yet registered for eCCB to do so and to link their eCCB account with the case within fourteen days of the date of the order. For more information on the initial order, please see the [Active Phase](#) chapter. The CCB will then issue a schedule that sets out the next steps for the proceeding and includes key dates and deadlines.

## Response

The first deadline in the schedule is normally for the respondent to file a response. The response can dispute facts, provide any defenses, and include relevant evidence or documents. Similar to the claim, if you are a respondent, the more relevant information and documents you provide now, the less (if any) will be needed in discovery. The process for filing a response in a smaller claims proceeding is the same as in a standard proceeding. For more information, see the chapters on Responding to an [Infringement](#), [Noninfringement](#), or [Misrepresentation](#) claim.

The respondent will also be given the opportunity to file counterclaims at this time. If the smaller claims track has been chosen by the claimant, the respondent must limit the monetary relief sought in the counterclaims to no more than \$5,000. **If you are a respondent in a smaller claims proceeding and you do not want the monetary relief on your counterclaims limited to \$5,000, you can file a claim in a separate CCB proceeding.**

## Initial Conference

After the respondent files a response, the presiding Officer will conduct an initial conference with the parties. The conference is held virtually, either online or by telephone.

In the initial conference, the Officer will explain the steps of a smaller claims proceeding. The Officer will ask the parties to discuss their claims as well as any defenses and counterclaims. This conference gives you an opportunity to explain your positions on the legal and factual issues of the case.

The initial conference is also your opportunity to inform the Officer about any documents and evidence you may need from the other side to prove your side.

***Example:** In an infringement case, the respondent may claim they had permission to use the work. A party, or the Officer, may ask the parties to exchange with each other any agreement or communications showing that permission was or was not given.*

After considering any evidence filed with the claim and response, and what the parties said in the conference, the Officer will decide whether they need to share additional documents or information with each other.

The Officer may also ask the parties if they wish to discuss the possibility of settlement, and may propose a separate conference to facilitate settlement. A settlement conference will be scheduled if all parties agree and will be held by a different Copyright Claims Officer than the presiding Officer of your case.

## Discovery

Discovery in a smaller claims proceeding only occurs if it is required by the Officer.

Any request for the production of information or documents that the Officer orders will:

- be narrowly tailored to the issues in the proceeding;
- be highly likely to lead to the production of evidence related to key issues; and
- ensure that the order will not result in an undue burden on any party.

The parties must serve any documents or evidence that responds to the discovery order on all other parties by a date set by the Officer. The typical method of service of discovery materials is by email, unless the parties agree otherwise or the format of the evidence makes email service impossible.

You can ask for discovery at the pre-discovery conference or, if you realize after the conference that you have a need for discovery, you can file a request through eCCB. You should be very specific about what you need and why. The other parties have fourteen days to respond to your request on eCCB.

If you have a dispute with the other party about discovery and you need a conference to resolve it, you can submit a request to the Officer through the eCCB system. You should give details about what discovery was not provided and why the failure to provide it does not follow the Officer's order. Any party opposing that request may respond within fourteen days. The Officer may hold a conference to discuss the issue before arriving at a decision.

If you are going to file a request for more discovery or a request regarding a discovery dispute, you should see if the other parties agree to provide the additional information or documents before filing the request. If you and the other parties cannot reach an agreement, you may ask if the other parties agree to have a conference with the Officer to resolve the disagreement. In each situation, you should note that consent when you make your request (or mention your attempt to contact the other side or their disagreement).

## Preparing for the Merits Conference

After the discovery period is over, a merits conference is held so that the parties can fully present their positions in the case. Fourteen days before the merits conference, the parties should submit the following items through eCCB:

- The **evidence** they want the Officer to consider when making the determination along with any other evidence or specific information the Officer may have requested for the merits conference.
  - **NOTE: You may only submit evidence the other parties have seen**, either because it was given to you by them during the discovery process, or because you attached it when you filed your claim or submitted your response.
- A **position statement** that provides your arguments regarding the claims, defenses, any counterclaims, and damages involved in the proceeding.
  - While this isn't required, it is your opportunity to explain the key facts and your position on how you believe the law should be applied to these facts.
- **Witness statements** from any individuals with personal knowledge of important facts of the case.
  - **NOTE: Expert witness** testimony is not allowed and will be disregarded if submitted.

## PREPARING A POSITION STATEMENT

If you are submitting a position statement, it must be submitted in a specific format. It must:

- Have a caption at the top of the first page stating the names of the parties and the proceeding number, and noting that it is for the Copyright Claims Board;
- Be typed in 12-point type or larger;
- Be double-spaced, except for headings, footnotes, and block quotations, which can be single-spaced;
- **Be seven pages or less;**
- Identify the party submitting the position statement; and
- Have a typed or handwritten signature of the party, or their representative, who is submitting the statement.

## PREPARING A WITNESS STATEMENT

A witness statement must contain only factual information, not legal argument. The information provided should be detailed and based on the personal knowledge of the witness about facts relevant to the claims, defenses, and counterclaims. The text of the witness statement must be organized in numbered paragraphs, as it makes it easier for the parties and the CCB to refer to them. In addition, the witness statement must say that the witness swears to its truth “**under penalty of perjury.**”

If you want to question another party’s witness, you may submit a request that the witness attend the merits conference. This request must be submitted no later than seven days before the merits conference. The CCB cannot compel a third-party witness to appear, but may ask the other party to seek the voluntary appearance of a witness at your request.

When a witness attends a merits conference, you can ask the witness questions about the facts presented in their witness statement. If the witness does not attend the conference as requested, the presiding Officer **may still accept the witness statement as evidence.** However, the Officer may also take into account your inability to question the witness when considering how persuasive the witness statement is.

## Merits Conference

At the merits conference, the presiding Officer and the parties will discuss the evidence and issues that the parties presented. Each party has an opportunity to address and respond to the evidence and other submissions provided by the parties. Parties and the Officer may ask witnesses questions about their testimony. The Officer may also question the parties.

It is important to provide all evidence you wish to use to support your positions to the other side before the end of discovery. The Officer may exclude any evidence you try to submit that wasn’t provided to other parties when you submitted your claim or during the discovery process. It is also important that you give the other parties all information and documents that the Officer ordered you to produce, even if you don’t plan to use them to prove your case or defenses. The Officer could find that material you were ordered to but did not produce was likely unfavorable to your position and therefore resolve certain facts against you.

The Officer may also schedule a separate conference to discuss what to do about any material you were supposed to exchange with the other side, but did not.

***Example:** Pat was ordered to provide certain emails in discovery, but failed to, and did not have an adequate excuse. The Officer may find that, in light of the circumstances, it would be fair to conclude the emails that Pat did not provide were unfavorable to Pat’s position in the case. As a result, the Officer may decide the factual disputes at issue related to the missing evidence against Pat.*

If you are responding to a claim or counterclaim, you may inform the Officer at or before the merits conference, including in your position statement, that you would agree to stop or **mitigate** the alleged unlawful activity if you are found liable. The Officer cannot take your agreement into account when determining whether you are liable, but can consider it as supporting a smaller damages award if you lose the case.

## Proposed Findings of Fact

The presiding Officer will take all evidence and arguments into consideration to prepare proposed **findings of fact**. This document is shared with all parties through eCCB.

The parties then have twenty-one days to submit optional written responses to the proposed findings of fact. This is your last opportunity to persuade the presiding Officer to change, or keep, any of the proposed findings. Your response may not reference or attach evidence that was not previously filed, unless the presiding Officer permits you to do so. If you are given permission to reference or attach any additional evidence, the other parties will be allowed to respond to that new evidence in writing or during a conference.

A response to findings of fact must be submitted in a specific format. It must:

- Have a caption at the top of the first page stating the names of the parties and the proceeding number, and noting that it is for the Copyright Claims Board;
- Be typed in 12-point type or larger;
- Be double-spaced, except for headings, footnotes, and block quotations, which can be single-spaced;
- **Be five pages or less;**
- Identify the party submitting the response; and
- Have a typed or handwritten signature of the party, or their representative, who is submitting the response.

If you are seeking damages for an infringement claim or counterclaim, and if you haven’t already, you must let the Officer know whether you are seeking **actual damages** and the infringer’s profits attributable to the infringement or **statutory damages**.

If the Officer has additional questions or needs to discuss any issues with the parties after the responses are submitted, a conference may be arranged.

## Final Determination

The Officer will issue a final determination after considering any responses to the proposed findings of fact. A final determination is the CCB's ruling regarding who actually wins the case, along with any awards, giving reasons for its findings. This determination is **binding** on the parties, but can be appealed or reviewed in certain circumstances. For more information on the review of a final determination see the [About the Copyright Claims Board](#) chapter.

## Responding to a Smaller Claim

When a smaller claim is served on you, you have the same choice that you would have in a standard proceeding: to respond to the claim or to opt out of the proceeding. Further information is available in the [Responding to an Infringement Claim](#) and [Opting Out](#) chapters. Whatever you decide, you will use the same forms on eCCB as in a standard proceeding.

If you choose to participate, you may submit counterclaims against the claimant along with your response. The filing of counterclaims in a smaller claim proceeding is conducted with the same procedures and rules as counterclaims filed in a standard track proceeding. However, you cannot raise counterclaims in a smaller claim proceeding if you are seeking more than \$5,000 in damages. Any counterclaim that you submit will go through the same compliance review process as the initial claims.

**NOTE:** If you wish to raise a counterclaim for more than \$5,000, you may pursue that counterclaim as a claim of your own, either in a standard proceeding before the CCB or, potentially, in a lawsuit in federal court.

As with the claimant when they file a claim, if you are a respondent, the more relevant information and documents you provide now, whether you are just responding to a claim or also filing counterclaims, the less you may have to provide in discovery. Your response should include any relevant information and documents you believe the Officer would need in order to reach a determination on any defense or counterclaim that you raise.

# Glossary

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- **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.
- **Actual damages:** Money awarded based on the harm the claimant or counterclaimant suffered.
- **Bind/Binding:** Establishing a legal obligation among the parties that cannot be relitigated.
- **Default:** A determination that can be issued against a respondent or counterclaim respondent if they miss deadlines and fail to participate in their defense.
- **Discovery:** The process by which the parties exchange information and documents relevant to the issues in a case.
- **Expert witness:** A person qualified by knowledge, skill, experience, training, or education to give testimony about a technical issue.
- **Final determination:** The CCB's ruling regarding who actually wins the case, with any awards, and with the CCB's reasons for its findings.
- **Findings of fact:** Preliminary factual findings about the merits of the case that the Officer issues for possible inclusion in the final determination.
- **Mitigate:** Change or alter in a way to reduce the harm caused.
- **Penalty of perjury:** A verification that you recognize you may be subject to penalties if what you say is not true.
- **Statutory damages:** An alternative to actual damages, allowing a successful claimant or counterclaimant to receive an award in an amount within a set range that the court or the CCB considers just.