

# THE JOURNAL OF FEDERAL AGENCY ACTION

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# Reflections on the Early Operation of the Copyright Claims Board

William H. Frankel and Dalton Hughes\*

*In this article, the authors explain that the Copyright Claims Board has successfully catered to petitioners around the world in its early months of operation, making use of the videoconferencing proceedings and curtailed discovery, and that the Copyright Claims Board remains a good option for small-scale damages collection regardless of the size of the litigants.*

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Navigating copyright-based legal disputes through traditional federal court options can be a costly and time-consuming process. Historically, federal court was the only venue for copyright lawsuits of all sizes, big and small. The Copyright Claims Board (CCB), however, now offers a streamlined and cost-effective alternative for smaller copyright disputes<sup>1</sup> in the United States. This article explores the usefulness of the CCB after its early months of operation, and explains why the CCB could be the right forum for copyright litigants.

## Background of the CCB

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The CCB was created after Congress passed the Copyright Alternative in Small-Claims Enforcement (CASE) Act in December 2020. After years of rule making, the CCB started operating in June 2022. The creation of the three-member tribunal aimed to provide a simplified and accessible forum for resolving small-scale copyright infringement claims involving damages amounts of up to \$30,000.<sup>2</sup> The CASE Act and CCB attempt to make the small-claim dispute process more affordable, efficient, and accessible for plaintiffs and defendants alike, as the CCB is less costly and a voluntary alternative forum to federal court litigation.

The CCB is only able to review three copyright claims:<sup>3</sup>

1. Infringement claims,
2. Claims seeking declarations that specific activities are not infringing of another's copyright, and
3. Claims alleging misrepresentation in Digital Millennium Copyright Act notices.

All other copyright claims must be brought in federal court. In addition, defendants have the opportunity to opt out of a proceeding at the CCB within 60 days after the claim is filed, which requires the claimant to pursue the action in federal court instead. According to Bloomberg Law and the Copyright Alliance, as of January 2023, the CCB has only reported 20 opt-outs.<sup>4</sup> Opting out is advantageous for some defendants who want to bring counter-claims, involving copyrights or other claims, along with defendants who desire more robust discovery.

However, opting out<sup>5</sup> carries risk as well, because in federal court damages will no longer be capped at \$30,000, other non-copyright claims can be brought by the claimant, discovery is more complex, more procedural filings must be completed, and the case likely will take longer and be more expensive for all parties involved.

## Reflections on the Early Operations of the CCB

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In June 2023, the CCB celebrated its first year in existence. There were 485 claims filed in the first year of operation of the CCB.<sup>6</sup> Plaintiffs at the CCB hailed from 43 different states and 24 different countries, successfully utilizing the online videoconferencing dispute practice the CCB requires. The Copyright Office did not release specific cost-savings data on the disputes, but believes that “claimants and respondents who participate in CCB proceedings have lower costs thanks to the ability to represent one’s self, low filing fees, and discovery far more limited than federal court . . . federal court could have been out of reach, leaving little room for recourse or to resolve disputes, resulting in the disenfranchisement of many people who may have valid copyright claims but limited resources.”<sup>7</sup>

Although 485 cases at the CCB had been filed, according to the docketing system, 305 cases were dismissed or closed<sup>8</sup> for failure to state a claim. One case had a final determination on the merits:

*Oppenheimer v. Prutton*, where \$1,000 in statutory damages<sup>9</sup> were awarded. The CCB has maintained its promise of efficiency when dismissing cases that do not have adequate claims to proceed, but have yet to prove if they can efficiently turn around disputes that reach the merits.

In addition to handling cases, the CCB touts other accomplishments adjacent to its proceedings. The CCB has produced numerous handouts<sup>10</sup> to educate the public on copyright infringement and intellectual property rights. These resources help parties determine where to bring their claim, what their damages options may be, and if they should retain counsel—with 70 percent of participants in CCB proceedings opting to represent themselves. The CCB also maintains a pro bono assistance list to streamline help to certain parties for their claims free of charge.

## Reasons to Consider Using the CCB

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### Affordability

A main reason Congress created the CCB was to provide resolution support to a broader range of individuals and businesses who may not be able to afford drawn-out traditional litigation fees compared to the damages at stake. The Copyright Office notes that the median cost to litigate a full copyright case is \$350,000.<sup>11</sup> The CCB primarily caters to single creators, small businesses, and independent artists who may have limited resources to pursue federal litigation, but is a smart choice for all sizes of plaintiffs pursuing small claims. There is no doubt that CCB proceedings have been significantly less expensive than federal court litigation.

### Efficiency

The CCB aspires to resolve claims in less than a year. This goal was mostly achieved by the CCB over its first year, as evidenced by its case docketing system.<sup>12</sup> This expedited process can save parties from lengthy litigation in federal courts, which often takes years to reach a final judgment. And decisions made by the CCB are binding on the parties, just like those in federal court. Note, however, that a party *cannot* file the same claim in federal court following a CCB decision after electing to use the CCB to resolve a claim. So



far, the CCB has shown efficiency in dismissals but merit-based case resolution efficiency remains to be seen.

## Accessibility

CCB proceedings are conducted completely online. Litigants at the CCB only need videoconferencing software to participate and argue their side. In addition, the CCB avoids costly and complicated evidence and discovery collection standard in federal court litigation. The CCB is a great option for litigants in other countries or those unable to travel to a certain venue.

## Conclusion

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The Copyright Claims Board continues to provide a more accessible and efficient means of resolving small-damages copyright infringement claims. Its benefits of affordability, efficiency, accessibility, and overall streamlined process provides a useful alternative for copyright owners of all sizes.

## Notes

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