



November 8, 2022

Colorado Attorneys for the Arts

An Introduction to the Copyright Claims Board

Copyright Claims Board
**Monica McCabe, Whitney
Levandusky, and Laura Kaiser**

WHO MAKES UP THE CCB?



The Copyright Claims Board is made up of:

- Copyright Claims Officers **David Carson, Monica McCabe, and Brad Newberg**
- Supervisory Copyright Claims Attorney **Whitney Levandusky**
- Copyright Claims Attorneys **Dan Booth and Maya Burchette**
- Paralegal **Laura Kaiser**
- Program Specialist **Natalie Cronin**



David Carson



Monica McCabe



Brad Newberg



Whitney Levandusky



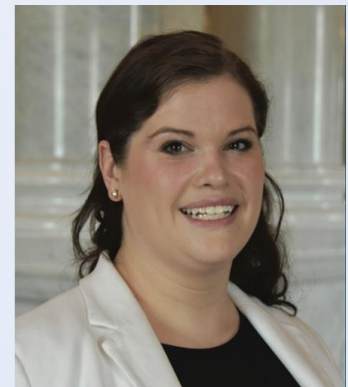
Dan Booth



Maya Burchette



Laura Kaiser



Natalie Cronin

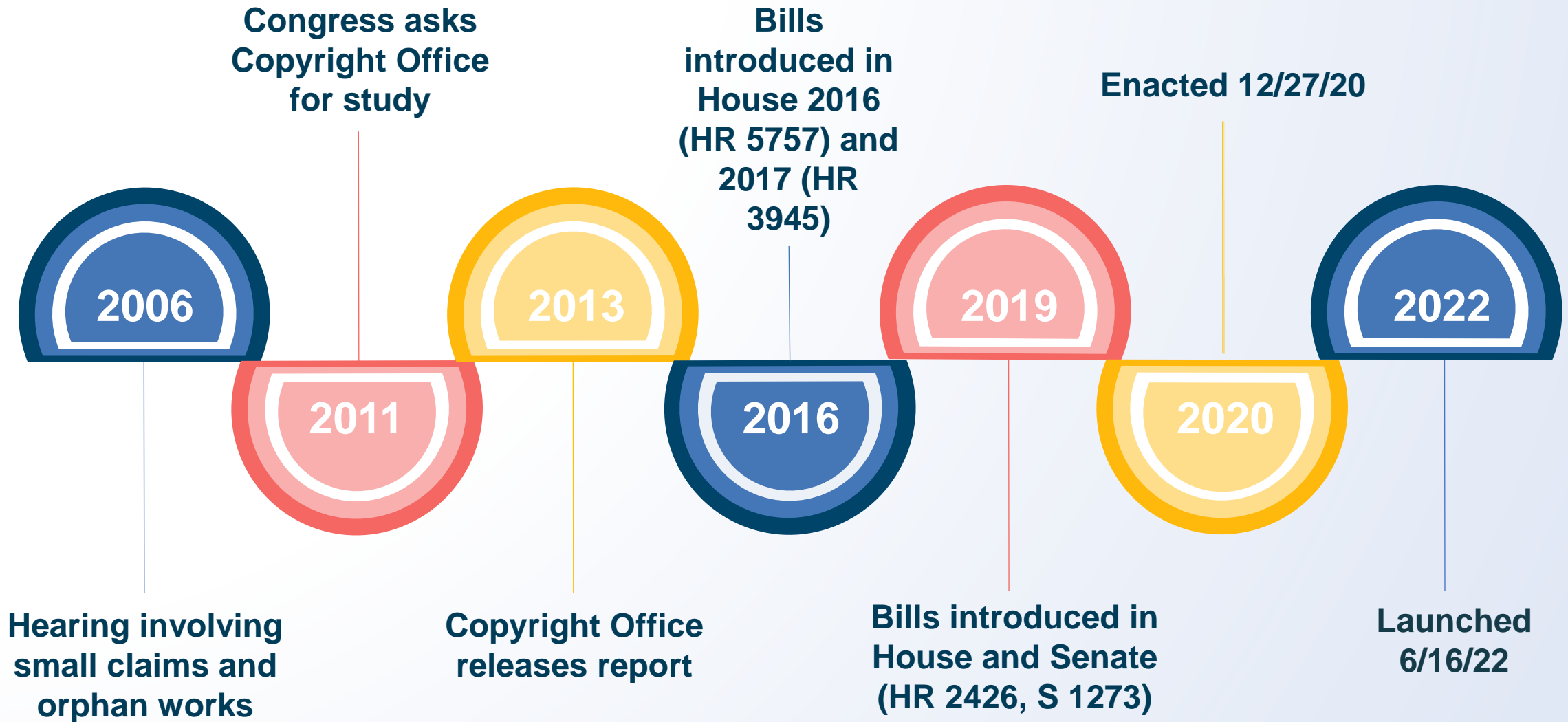
WHY ARE WE HERE?

Problem: Many Copyright Claims Are for Small Monetary Amounts, but Federal Court Is Expensive

- Few attorneys willing to handle small claims
- Small owners felt enforcement was not worth pursuing
- Accused parties felt pressured into settlements
- Judges in small courts had little experience with copyright and juries are unpredictable



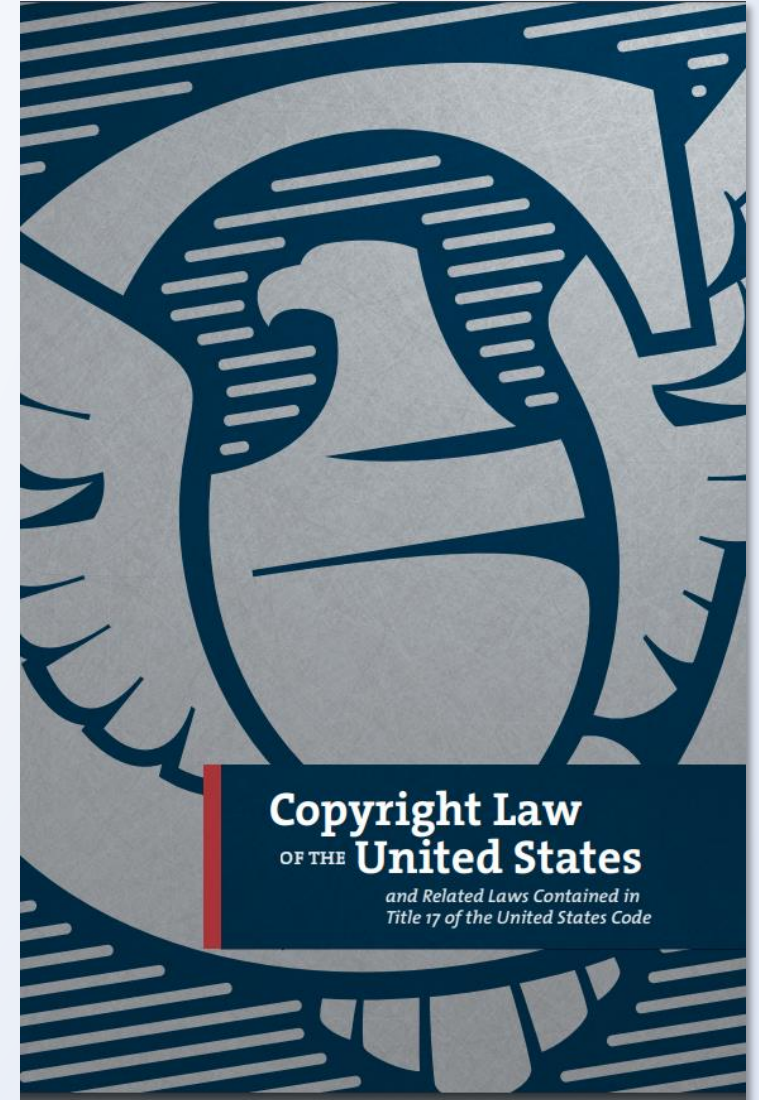
TIMELINE



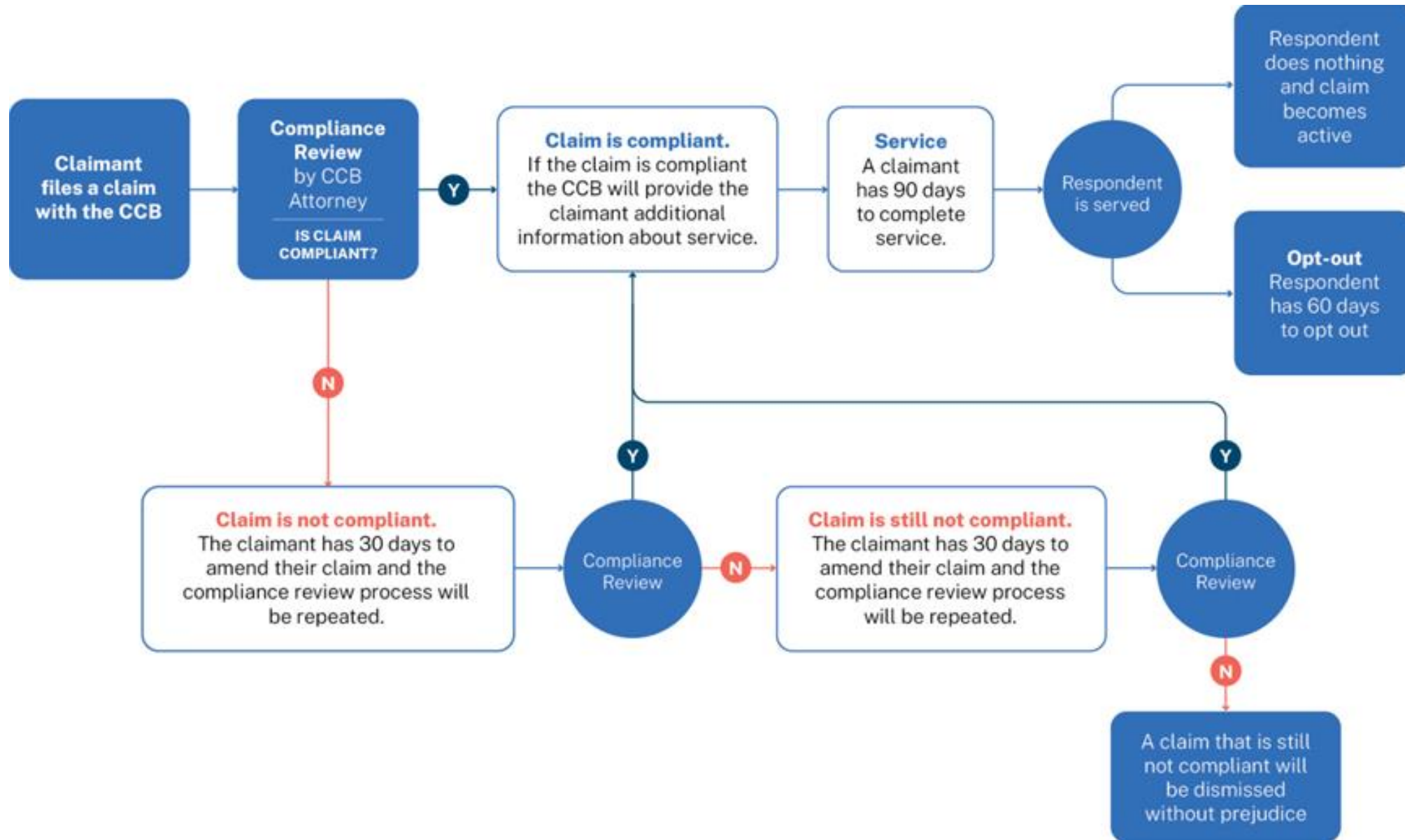
CLAIMS, COUNTERCLAIMS & DEFENSES



- Copyright **infringement**
- Declaration of **non-infringement** (alleged infringer asks the CCB to find that they are not infringing)
- 512(f) **misrepresentation** claims (misrepresentation in a takedown notice or counter-notice)
- All legal or equitable **defenses** that you can use in federal court, including fair use



INITIATING PROCEEDINGS



STRUCTURE: ACTIVE PROCEEDINGS

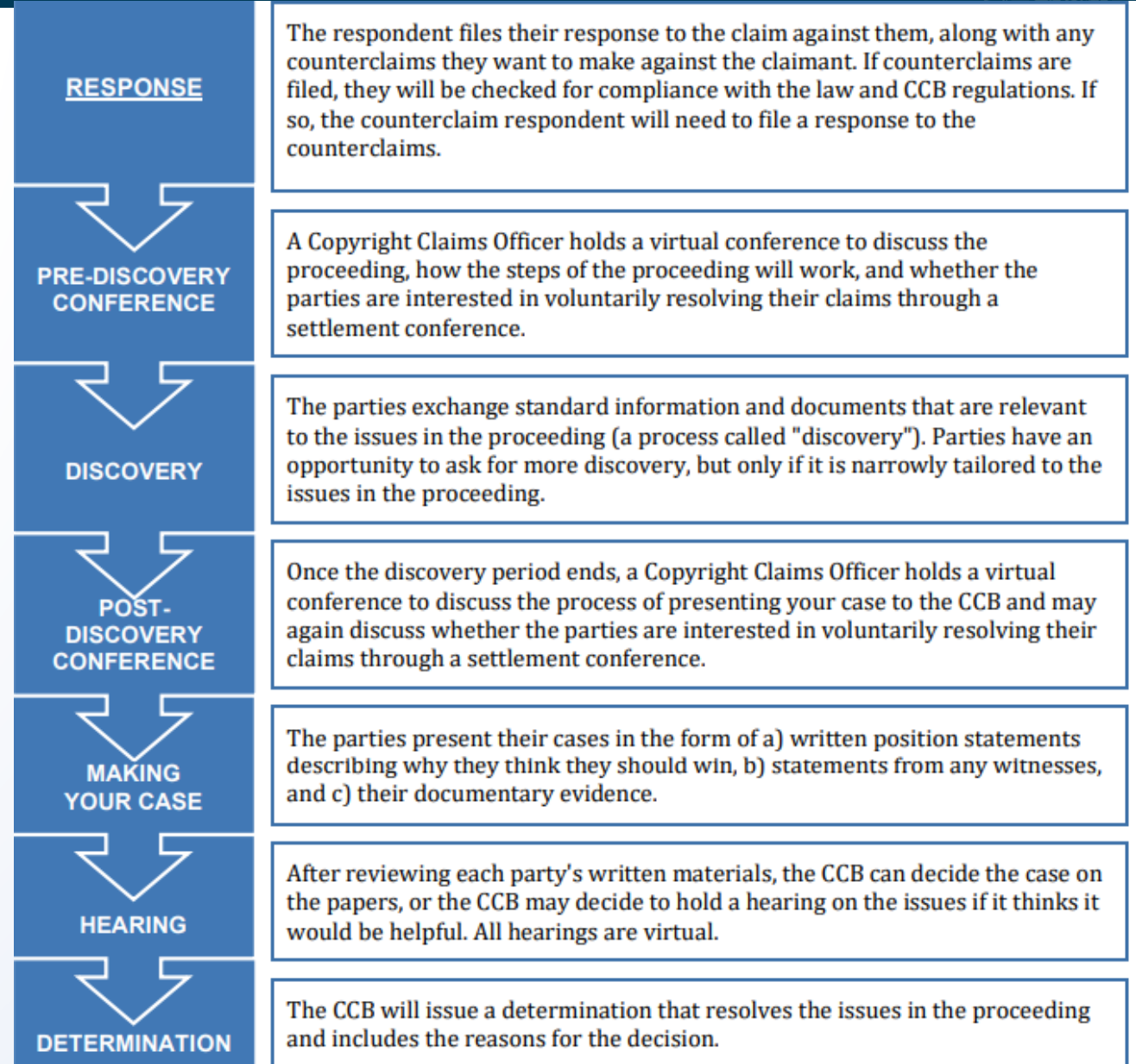


Settlement can be accomplished at any time;
the CCB will facilitate settlement conferences

There are safeguards against Defaults

DISCOVERY

- Standard interrogatories and document requests
- You may request more discovery if you wish
- No depositions
- No third-party subpoenas
- Expert testimony rarely granted



DAMAGES



- Monetary awards **cannot exceed \$30,000**.
- Maximum **reduced to \$5,000** for a smaller claims proceeding.
- For claims for infringement claimant may get:
 - Actual damages and the alleged infringer's profits attributable to infringement

OR

- Statutory damages
 - \$15,000/work or \$7,500/work depending on registration status



SMALLER CLAIMS



- Standard track – up to \$30,000
- Smaller claims track – up to \$5,000
- More streamlined than the standard track
- Less discovery
- Focus on conferences between parties and a Copyright Claims Officer
- Only the presiding Officer makes the final determination (unless there is a default by the respondent)

	Standard CCB Proceeding	Smaller Claims Proceeding
Damages	Damages are limited to \$30,000 per proceeding.	Damages are limited to \$5,000 per proceeding.
Managing a Proceeding	All three Copyright Claims Officers will hear the case. Two conferences will be held, 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.
Scope of Discovery	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 expert witness , 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.
Presenting the Case	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 findings of fact and provides the parties an opportunity to respond if they believe the Officer has gotten any of them wrong.
Making a Determination	All three Officers consider the evidence involved in the claim and make a final determination .	Only the presiding Officer makes the final determination. The only time all three Officers will do so is if there is a default by the respondent.



Benefits of the CCB

- Limited damages
- Lower cost due to streamlined procedures
- Lawyer is not required
- Lower risk of defaults as compared to federal court
- Close monitoring of bad faith actors
- Findings more consistent
- Impartial officers with substantial copyright experience

eCCB: Electronic Filing and Case Management System

- The online filing system for the CCB.
- Participants and their representatives will be able to register for eCCB to file, respond, receive, and review documents related to CCB proceedings.
- Anyone will be able to view unrestricted documents through the public case search feature without registering.

Designated Service Agent Database

- Under the CASE Act, corporations, partnerships, or unincorporated associations may elect to receive CCB claim notices and other documents via a designated service agent.
- The CCB maintains a public directory of service agents for these business entities at **agent-directory.ccb.gov**.



eCCB and CCB Resources



REGISTERING ON ECCB AS AN ATTORNEY



Dashboard

Start a claim

Complete started claims

Respond to claim

Respond to counterclaim

Amend ▾

File in existing case

Filing permissions

My activity history ▾

Dashboard

Start a claim

Complete started claims

Respond to claim

Respond to counterclaim

Amend ▾

File in existing case

Filing permissions

My activity history ▾

Ongoing copyright proceedings

Closed copyright proceedings

Docket number ▾	Caption ▾	Last filing ▾	Filed by ▾	Filing date ▾	Payment status ▾
22-CCB-0012	Clearwater v. Andersen	Order Granting Request to Link Steve Zissou with the Octavia Clearwater party 	Copyright Claims Board	10/03/2022 9:15 AM EDT	Initial payment complete, second payment not due yet

FILING A CLAIM ON ECCB



Dashboard

Start a claim

Complete started claims

Respond to claim

Respond to counterclaim

Amend ▾

File in existing case

My activity history ▾

If you started and saved, but did not submit a filing, you can quickly access the incomplete filings here.

Claim type selection

You have 4 incomplete filings. [Continue filing...](#)

When filling out your claim, all starred fields are required. If you see a that is a "tooltip." You can over hover it and get more information.

Please identify the claims you are asserting. You must choose at least one of these categories, but may choose more than one.

Type *

☒ A claim for infringement

☒ A claim for a declaration of noninfringement

☒ A claim for misrepresentation under 17 U.S.C. 512(f)

Cancel

Continue

Use this button to file requests and upload documentation in claims that have already been submitted

Hover over tooltips for more information.

Submit a copyright claim

Smaller claims proceeding

A standard CCB small claims proceeding, limited to monetary claims of up to \$30,000, has required discovery and specific formal steps along the way. The CCB also has an even "smaller claims" proceeding, where monetary claims are limited to no more than \$5,000. In a smaller claims proceeding, there is less discovery and fewer steps, with most issues handled through virtual conferences. [i](#)

Would you like to proceed as a "smaller claims" proceeding (including the \$5,000 monetary limit) instead of the standard CCB small claims proceeding? *

☐ Yes ☐ No



Please note there will be limited opportunity to change this decision after filing your claim.

Continue →

Cancel

FILING A CLAIM ON ECCB



Submit a copyright claim

STEP 1:
Claimant(s)

STEP 2:
Respondent(s)

STEP 3:
Claim type

STEP 4:
Infringement

STEP 5:
Noninfringement

STEP 6:
Misrepresentation

STEP 7:
Documentation

STEP 8:
Review & Pay

Claimant(s)



The information you include here will be viewable by the general public on eCCB. However, for contact information, only the claimant's city and state will be viewable by the general public, not the street address, phone number, or email address.



Claimant is the person or entity asserting the claim. Even if you file for multiple claimants, each claimant will be required to participate in the proceeding.



The claim needs at least one claimant added.

[+ Add claimant](#)

[Save & continue →](#)

[Save & exit](#)



Copyright Claims Board Filing System (eCCB)

COPYRIGHT CLAIMS BOARD

Payment Information

Payment Amount \$40.00

I want to pay with my

- ☐ Bank account (ACH)
- ☐ Amazon account
- ☐ PayPal account
- ☐ Debit or credit card

[Continue](#) [Cancel](#)

Copyright Claims Board Filing System (eCCB)

COPYRIGHT CLAIMS BOARD

Please provide the payment information below. Required fields are marked with an *

Agency Tracking ID

404:2022-07-12 17:0

Payment Amount

\$40.00

* Cardholder Name

* Cardholder Billing Address

Billing Address 2

City

RESPONDING TO A CLAIM ON ECCB



Dashboard

Start a claim Complete started claims Respond to claim Respond to counterclaim Amend File in existing case My activity history



Use this button to file a response to a claim after the CCB issues a scheduling order

Respond to claim

Claim *

Please select a claim...

Will you be filing any counterclaims? *

☐ Yes ☐ No

Cancel Continue

OPTING OUT ON ECCB



A keycode will be provided in the Initial Notice and the Second Notice sent to the respondent

Opt out of proceeding

Docket *

Nothing selected

Opt-out keycode *

Respondent name or organization *

Respondent's address

Street address *

Street address 2

City *

State *

Nothing select...

Postal code *

☐ *

I certify under penalty of perjury that I am the respondent, the legal counsel, or an authorized representative of the respondent, identified in this claim and listed above. If I am the legal counsel or authorized representative of the respondent, I have been **directed and** authorized by the respondent to opt out of this proceeding.

I affirm that the respondent identified in this claim and listed above is opting out of this proceeding and will not appear before the Copyright Claims Board with respect to this claim.

Please certify your identity *

☐ I certify that I am the respondent identified in the claim.

☐ I certify that I am the legal counsel or an authorized representative of the respondent identified in the claim.

Email for receipt *

example@example.com

Signature

Your typed signature, affirming your desire to opt out of the proceeding and your authority to opt out on behalf of the respondent, is required. Please enter your full name below. *

s/ /

If there are multiple respondents in one claim, each respondent will receive their own keycode to opt out

USING THE CCB WITH OR WITHOUT ATTORNEY



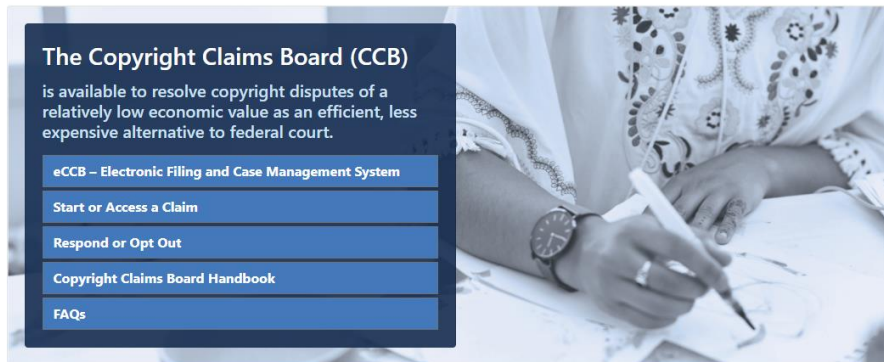
The CCB is excited to work with you all to assist parties with their CCB matters!

Areas where assistance may be helpful:

- Registration
- Strategy in types of claim or counterclaims to bring
- Filing a claim or response
- Deciding whether to file a Smaller Claim
- Discovery and gathering evidence
- Preparing written testimony
- Submitting witness statements
- Appearing at conferences and hearings
- Preparing a request for reconsideration



RESOURCES



Features

Who We Are

The Copyright Claims Board (CCB) is a three member tribunal with extensive expertise in copyright matters that provides a streamlined alternative to

Procedures

The Copyright Office has issued several Notices of Proposed Rulemaking (NPRMs), which set forth the proposed rules for how a case before the CCB will be

Learn About Copyright: Exclusive Rights



Website and Handbook

The CCB has its own website, which has the following information:

- Portal to eCCB
- Designated Service Agent Database
- Libraries and Archives Opt-Out List
- Handbook (ccb.gov/handbook)
- Educational resources, graphics, and tutorials
- Regulations (ccb.gov/rulemakings)

Statistics and Compliance Issues

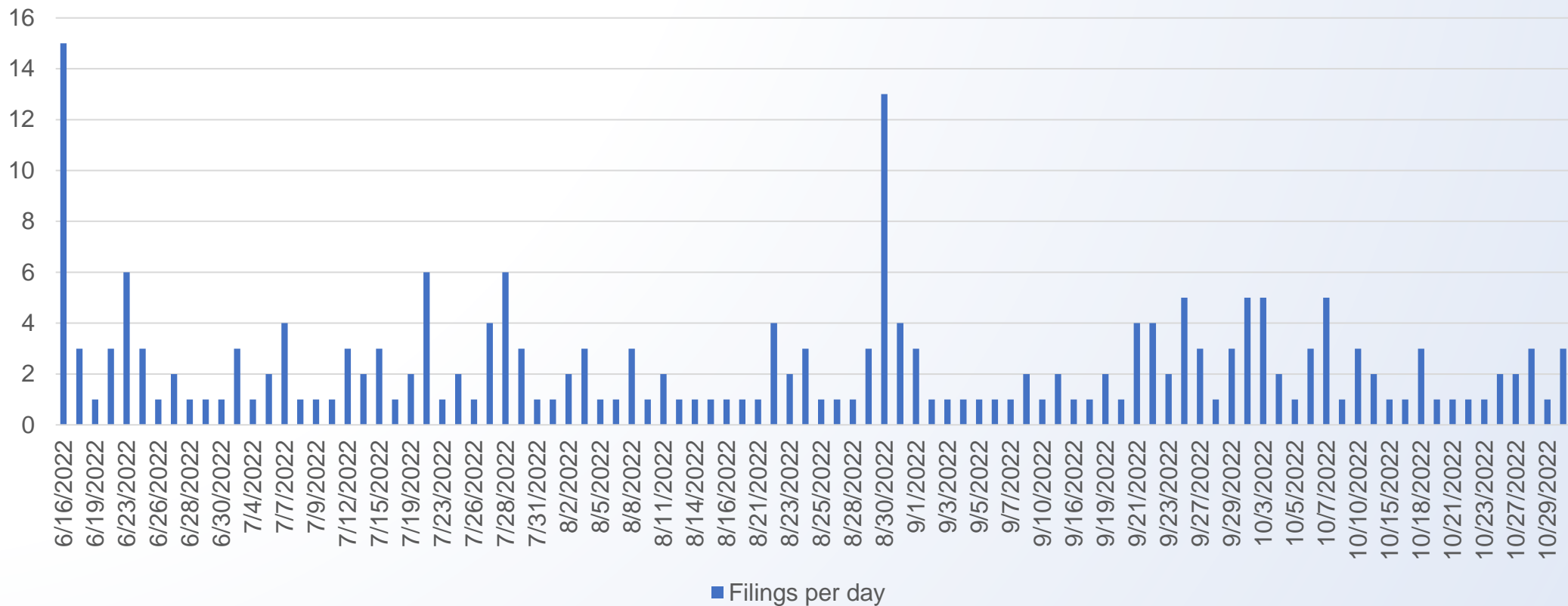


NUMBER OF FILINGS



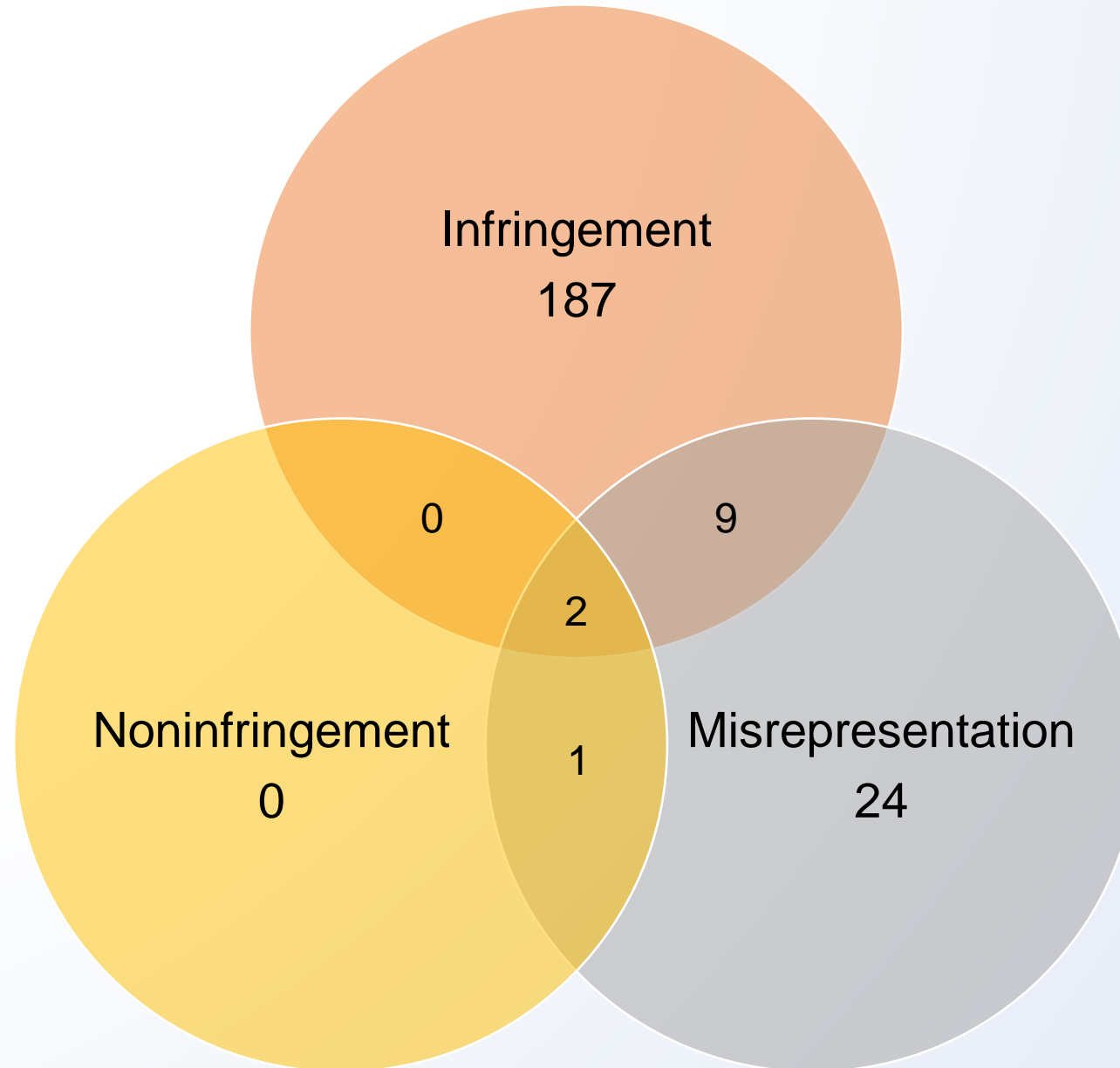
Number of claims filed
in total: 225

CCB Filings June 16, 2022 – October 31, 2022



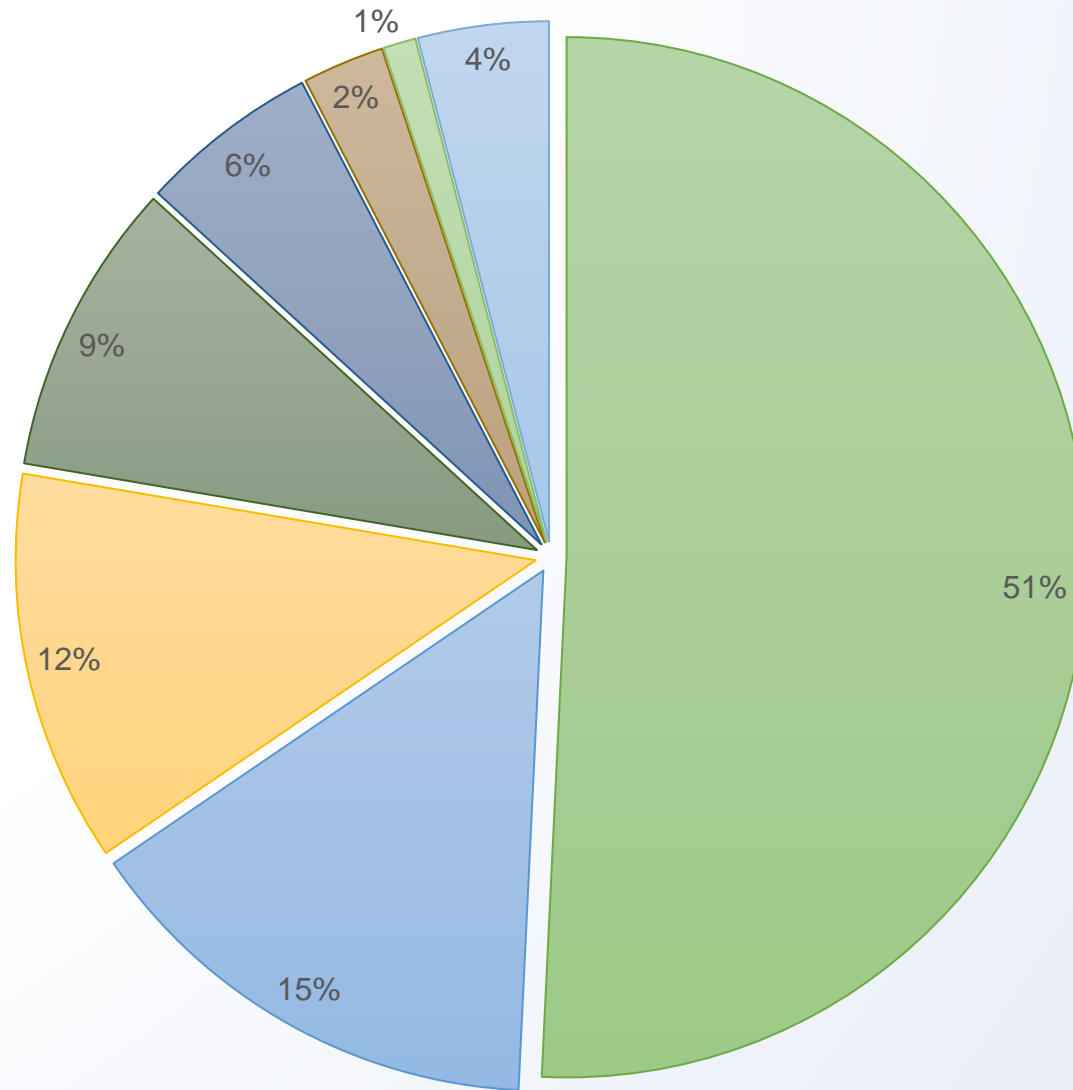
Data covers period from
6/16/22-10/31/22

NATURE OF CLAIM



Data covers period
from 6/16/22-10/31/22

Type of Work



Data
covers
period from
6/16/22-
10/25/22

■ Pictorial, Graphic, Sculptural ■ Motion Picture ■ Literary Work ■ Sound Recording ■ Musical Work ■ Dramatic ■ Software ■ Other

REPRESENTATION



Self-Represented	126
Represented by Attorney (Outside Counsel)	67
Represented by In-House Attorney or Authorized Company Representative	21

Data covers period from
6/16/22-10/25/22

POST-COMPLIANCE ACTIVITY



Opt Out: Claims with single respondent	8
Opt Out: Claims with multiple respondents but not all respondents opted out	0
Opt Out: Claims with multiple respondents and all respondents opted out	1
Cases in Active Phase	3
Referrals from District Court	1

Data covers period from
6/16/22-10/31/22

COMPLIANCE REVIEW



Round 1 Notices of Compliance	75
Round 1 Orders to Amend Noncompliant Claim	69
Round 2 Notices of Compliance	14
Round 2 Orders to Amend Noncompliant Claim	9
Round 3 Dismissal for Noncompliance	4
Dismissed for Failure to File Amended Claim	18

Data covers period from
6/16/22-10/31/22

STATE OF RESIDENCE OF CLAIMANT



U.S.

California	48	Oregon	4	Minnesota	1
New York	18	New Jersey	3	Mississippi	1
Pennsylvania	18	Virginia	3	Montana	1
Washington	14	Wisconsin	3	Oklahoma	1
North Carolina	10	Illinois	2	South Dakota	1
Florida	9	Massachusetts	2	Tennessee	1
Georgia	9	Michigan	4		
Texas	9	Missouri	2		
Connecticut	6	Ohio	2		
Louisiana	7	DC	1		
Nevada	9	Indiana	1		
Arkansas	5	Iowa	1		
Colorado	7	Kentucky	1		
Delaware	4	Maryland	1		

Data covers period from
6/16/22-10/31/22

COUNTRY OF RESIDENCE OF CLAIMANT



International

United Kingdom	7
Ukraine	5
Georgia	4
Ireland	6
Australia	3
Germany	5
Austria	1
Brazil	1
China	1
Czech Republic	1
France	1
Hungary	1
Malaysia	2
Canada (Ontario)	1
Singapore	1
Sweden	1

Data covers period from
6/16/22-10/31/22

Infringement

- Access and substantial similarity
- OSP and secondary liability
- Legal or beneficial owner
- Registration

Misrepresentation

- Misrepresentation is about copyright
- Misrepresentation is in a notice or counter notice
- Respondent is party that sent the notice or counter notice (rather than OSP)
- Harm due to misrepresentation (rather than related infringing activity)

Damages

- CCB **cannot order a party to stop or modify** infringement or misrepresentation activities. If a party agrees to stop or modify the activities if the CCB finds them liable, the CCB can make that part of its order.
- No monetary awards granted outside the above limits. For example, no monetary awards granted for punitive damages, interest, claims of physical or mental harm, lost wages, or harm to a brand.
- The CCB cannot take into account “willfulness.”

Thank You!



Thank you for attending. We look forward to working with you.

Any questions?