

LSBA and SULC Entertainment Law CLE Conference

**MUSIC
AND THE LAW**

April 13-14, 2023 ♪ 8 a.m. to 12:30 p.m.

Virgin Hotels New Orleans

LSBA and SULC Entertainment Law CLE Conference

MUSIC AND THE LAW

Music Copyright Infringement Claims

This session will explore music copyright infringement disputes in federal court litigation and before the new Copyright Claims Board. The speaker will discuss the requirements of bringing such claims, the pros and cons of each forum, potential damages and other remedies, legal fees and litigation costs, expert witness testimony, and related matters.



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New Orleans, LA



Day One
Plenary Session Two
9:10 a.m. – 10:10 a.m.
1.0 CLE credit hour

What Songwriters, Producers, and Recording Artists Should Know

New Copyright Claims Board was created to try make copyright infringement claims easier, faster, and cheaper to pursue.

Defendants may ***opt out*** of any claim brought to Copyright Claims Board

Pros and Cons

What are the advantages and disadvantages of using this new administrative procedure?

How is the Copyright Claims Board different from, and similar to, federal court litigation?

Copyright Basics

Protects original musical works:

- Songs (compositions/lyrics)
- Sound recordings

Copyright exists at time of creation regardless of registration

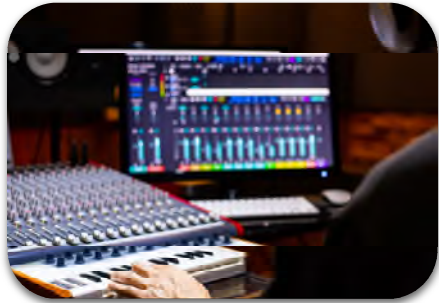


What is Copyright Infringement?

Violating one of the bundle of rights:



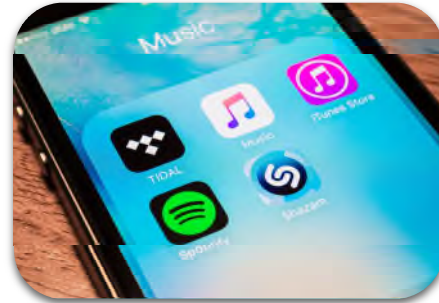
Reproduction
(copying)



Adaptation
(arranging,
translating)



Distribution
(selling)



Audio digital
transmission
(streaming)



Display
(on Internet)

Potential Remedies for Infringement

Injunctions

Actual damages

Infringer's
profits

Statutory
damages

Destruction /
Impoundment

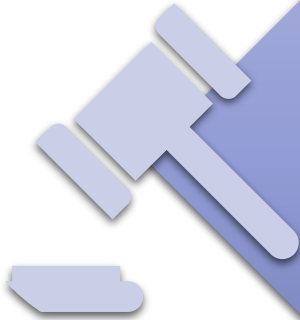
Attorneys' fees

Do You Need a Lawyer for Copyright Claims Board Claims?



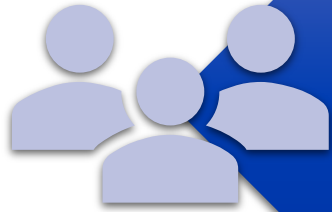
Built for simple claims to be handled by pro se parties

- Questions: asktheboard@copyright.gov.



No lawyer required for individuals.

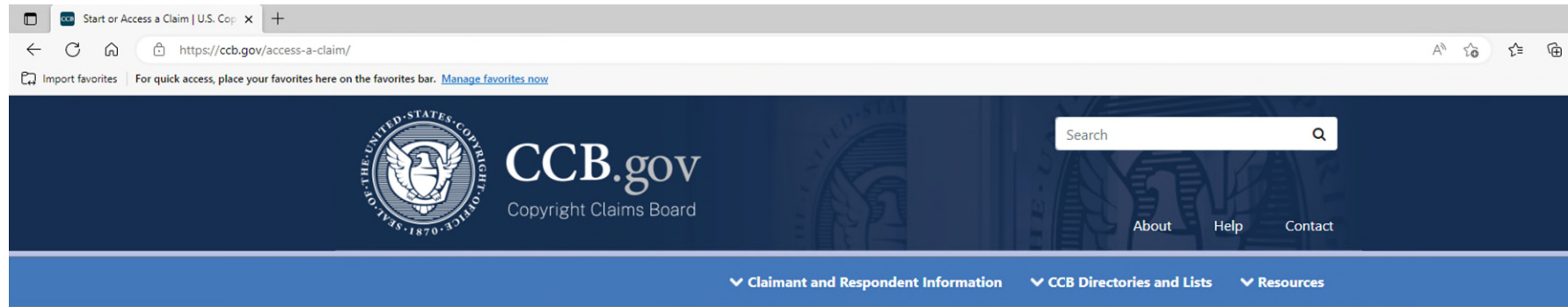
Do Businesses Need a Lawyer for Copyright Claims Board Claims?



Businesses can be represented by lawyer or “owner, partner, officer, member, or authorized employee of business or organization.”



Beware: Claims dismissed when companies used brand protection, debt collection, or other third-party services to file CCB claims.



Home / Start or Access a Claim

Start or Access a Claim



Access the Electronic Filing and Case Management System (eCCB)

[Login/Register](#)

Overview

eCCB is the electronic filing and case management system for the Copyright Claims Board (CCB).

Participants and their representatives may register for access to eCCB to file, receive, and review documents related to CCB proceedings.

Claimants with eligible copyright infringement, noninfringement, or misrepresentation claims that request relief of \$30,000 or less may register as eCCB users and file a claim through eCCB.

Respondents may opt out without registering as a user, or may register to respond to a claim, file counterclaims, and participate in an active proceeding.

You do not need to register with eCCB to view unrestricted documents and determinations.

About

[Overview](#)
[Key Features](#)

Help

[Pro Bono Assistance](#)
[Copyright Information](#)

Contact

[Contact Form](#)
[Mailing Address](#)



**COPYRIGHT
CLAIMS BOARD**

Copyright Claims Board

- General Info: <https://ccb.gov/faq/>
- More detailed procedures: <https://ccb.gov/handbook/>

Federal Court

- Federal Rules of Civil Procedure
- Local Rules of District Court
- Standing Orders of Judge

Copyright Claims Board: Filing a Claim

Names and Addresses of Parties

Information about copyrighted work

How did infringing party get access to the song or recording?

Detailed description of infringement

- **Copies made?**
- **Played on the internet?**
- **Sampled?**
- **New arrangement?**

Additional Federal Court Complaint Requirements

Also need to allege:

Personal
Jurisdiction
over Defendant



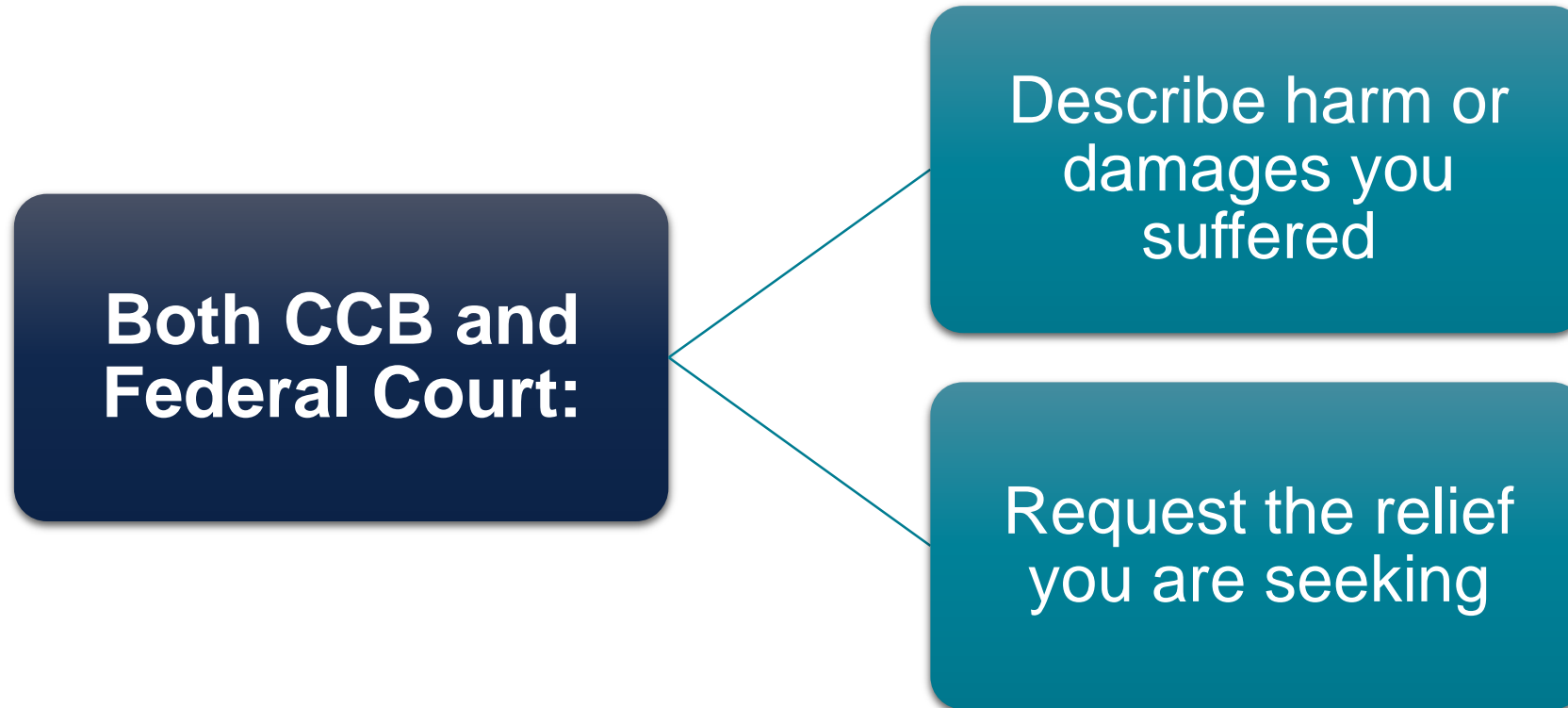
Venue



Subject matter
jurisdiction



Damages You Sustained and Relief You Are Seeking



What About Smaller Claims?

Copyright Claims Board

- Option of “Smaller Claims” procedure for claims of less than \$5,000

Federal Court

- No “small claims” court or procedure

Filing Fees

Copyright Claims Board

- \$40 Filing Fee, upfront
- \$60 more if no Defendant opt-out

Federal Court

- \$402 (\$350 if a “pauper”)

Registration Needed?

Copyright Claims Board

- May file without registration
- Must apply before or with claim

Federal Court

- Must attach to Complaint:
Copyright registration certificate

Exhibits to be filed?

Copyright Claims Board

- Exhibits optional:
 - Copyrighted work itself
 - Evidence of infringement

Federal Court

- Exhibits optional:
 - Copyrighted work itself
 - Evidence of infringement
 - License

What Happens When Claim / Complaint Is Filed?

Copyright Claims Board

Staff checks claim and sends you:

- Notice of Compliance and
 - Directions to Serve Claim
- or
- Order to Amend a NonCompliant Complaint

Federal Court

- Must request Summons
- Arrange for Service of Summons and Complaint according to Federal Rules
- Defendant files motion to dismiss against noncompliant Complaint

Discovery Process

Copyright Claims Board

- Standardized Interrogatories
- Standardized Document Requests
- Requests for Admission “rare”

NO Depositions

Federal Court

- Interrogatories drafted by parties
- Document Requests (same)
- Requests for Admission

Depositions

Expert Witnesses

Copyright Claims Board

- Expert witnesses “disfavored”
- Only allowed in “rare” instances

Federal Court

- Expert witnesses common,
- Especially in music cases

Trial?

Copyright Claims Board

- No Trial
- Decided on paper
- No Rules of Evidence

No jury

Federal Court

- Trial
- Live witness testimony
- Federal Rule of Evidence

Right to jury

Damages

Copyright Claims Board

- \$30,000 Total Damages Cap
- Actual Damages available
- Up to \$15,000 statutory damages
- No additional damages for “willful” infringement
- Up to \$7,500 statutory damages per untimely registered work

Federal Court

- No Total Damages Cap
- Actual Damages available
- Up to \$30,000 statutory damages
- Up to \$150,000 statutory damages for “willful” infringement
- No statutory damages for untimely registered works

Attorneys' Fees

Copyright Claims Board

- Attorneys' fees limited to \$5,000
- Only for “abusive practices”

Federal Court

- Attorneys' fees can be awarded to either prevailing party
- Plaintiff must have registered work before infringement

Non-Monetary Remedies

Copyright Claims Board

- No Injunctions (unless consent)
- No Destruction
- No Impoundment
- Non-Infringement declaration

Federal Court

- Injunctions available
- Destruction
- Impoundment
- Non-Infringement declaration

Who Decides Case?

Copyright Claims Board

- Three-member board of copyright specialists finds facts and applies law
- Decisions are not precedential

Federal Court

- Federal Judge or Jury finds facts
- Federal Judge makes legal rulings
- Decisions set precedents

Any Review?

Copyright Claims Board

Reconsideration only for:

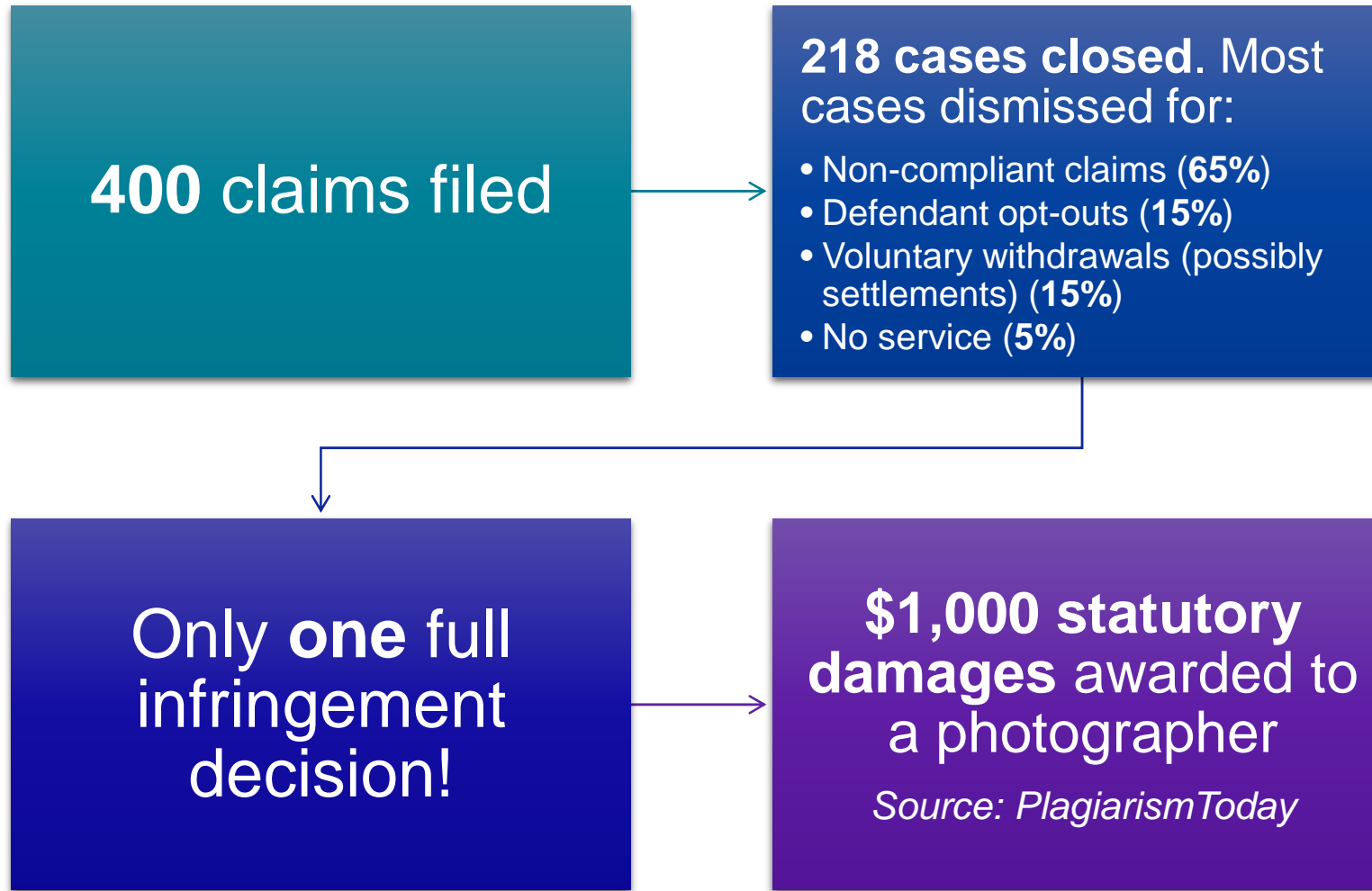
- clear error of law
- clear error of fact material to outcome
- technical mistake

Register of Copyrights only if CCB abused discretion to deny reconsideration

Federal Court

- Appeal Right to Court of Appeals
- Writ of Certiorari to U.S. Supreme Court (review discretionary)

CCB Track Record (June 2022 – March 2023)



Recap: *Pros* of Opting Into Copyright Claims Board

Cheaper

Avoid Making Bad Precedents

Do Not Need Registration

Limited Damages (“Pro” if defendant)



Recap: *Cons* of Opting Into Copyright Claims Board

Limited Damages (“Con” if Plaintiff)

Cannot set precedent for later cases

Limited appellate review

Uncertain Constitutional Basis



Takeaways

Best for simple small dollar claims

Cheaper

Defendants can opt out

Riskier for claims that are not obvious

Thank you.

Questions?



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