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**ASSESSING THE COPYRIGHT CLAIMS BOARD  
AFTER TWO YEARS**

by KATIE FORTNEY AND DAVID HANSEN\*

*ABSTRACT*

*On June 16, 2024, the U.S. Copyright Office celebrated the two-year anniversary of operations of the Copyright Claims Board (“CCB”), a novel new small claims court housed within the agency. The CCB was preceded by years of debate about the benefits and risks of such a small claims court. Proponents argued that the CCB would offer rightsholders a low-cost, efficient alternative to litigation in federal courts, allowing small creators to more effectively defend their rights. Opponents feared that the CCB would foster abuse, encouraging frivolous lawsuits while creating a trap for unwary defendants. This short article tests those arguments in one of the first detailed empirical reviews of the CCB’s first two years of operations based on data extracted from the CCB’s online filing system for the 880 claims filed with the court between June 2022 and June 2024.*

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*INTRODUCTION*

In June 2024, the US Copyright Office celebrated the second birthday of operations of its new copyright small claims court,<sup>1</sup> the Copyright Claims Board.<sup>2</sup> The CCB, which describes itself as “an efficient, streamlined way to resolve copyright disputes involving claims seeking damages of up to \$30,000 and ... designed to be less expensive and faster than bringing a case in a federal court,” was created through a last-minute addition to the must-pass December 2020

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\* Katie Fortney is the Copyright Policy & Education Officer with the University of California’s California Digital Library. David Hansen is Executive Director of the Authors Alliance. The views expressed here are our personal opinions and not those of our institutions. An earlier version of this paper, assessing the first year of the Copyright Claims Board, is available at <https://ssrn.com/abstract=4563726>.

<sup>1</sup> Holland Gormley, *The Copyright Claims Board Celebrates Its First Year*, LIBRARY OF CONGRESS: COPYRIGHT: CREATIVITY AT WORK (June 26, 2023), <https://blogs.loc.gov/copyright/2023/06/the-copyright-claims-board-celebrates-its-first-year>.

<sup>2</sup> *About the Copyright Claims Board*, COPYRIGHT CLAIMS BOARD, <https://ccb.gov/about/> (last visited June 21, 2024).

Omnibus Coronavirus Relief Bill.<sup>3</sup> The Office spent about eighteen months setting up the new court and first started accepting cases on June 16, 2022.<sup>4</sup>

Debate over the need for a copyright small claims court in the U.S. dates back decades, and while it is not unique to the American system,<sup>5</sup> the CCB is certainly something of an experiment. The idea for the CCB started to pick up steam in 2006 when Congress held a hearing exploring the idea,<sup>6</sup> and then in 2013, the Copyright Office issued a lengthy report<sup>7</sup> on copyright small claims. The Copyright Alternative in Small Claims Enforcement Act (CASE Act) was introduced in 2016 and then,<sup>8</sup> in modified form, finally passed into law in 2020. This paper aims to review some of the most prominent arguments for and against the CCB and evaluate them in light of the data we now have about its first two years of operations.

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<sup>3</sup> Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, 134 Stat. 1181.

<sup>4</sup> The Copyright Office conducted a number of rulemakings with public calls for comments to establish regulations for the operations of the CCB. *See, e.g., Copyright Office Proposes Small Claims Expedited Registration Procedures and FOIA Conforming Amendment*, U.S. COPYRIGHT OFFICE: CLOSED RULEMAKING: CASE ACT, <https://www.copyright.gov/rulemaking/case-act-implementation/expedited-registration/> (last visited July 18, 2024) (discussing Rules and Regulations, 87 Fed. Reg. 24056, 24056-7 (Apr. 22, 2022) (to be codified at 37 C.F.R. pts. 201, 221)); *Copyright Claims Board: Initiation of Proceedings and Related Procedure*, U.S. COPYRIGHT OFFICE: CLOSED RULEMAKING, <https://www.copyright.gov/rulemaking/case-act-implementation/initiating-proceedings/> (last visited July 18, 2024) (discussing Rules and Regulations, 87 Fed. Reg. 24056, 24056 (Apr. 22, 2022) (to be codified at 37 C.F.R. pt. 201)); *Small Claims Procedures for Library and Archives Opt-Outs and Class Actions*, U.S. COPYRIGHT OFFICE: CLOSED RULEMAKING, <https://www.copyright.gov/rulemaking/case-act-implementation/library-opt-out/> (last visited July 18, 2024) (discussing Rules and Regulations, 87 Fed. Reg. 13171, 13171-7 (Mar. 9, 2022) (to be codified at 37 C.F.R. pt. 223)); *Copyright Claims Board: Representation by Law Students and of Business Entities*, U.S. COPYRIGHT OFFICE: CLOSED RULEMAKING, <https://www.copyright.gov/rulemaking/case-act-implementation/representation/> (last visited July 18, 2024) (discussing Rules and Regulations, 87 Fed. Reg. 20707, 20707-15 (Apr. 8, 2022) (to be codified at 37 C.F.R. pts. 201, 232, 234)).

<sup>5</sup> *See generally* Christian Helmers et al., *Who Needs a Copyright Small Claims Court? Evidence from the U.K.'s I.P. Enterprise Court*, BERKELEY TECH. L.J. COMMENTARIES (2018).

<sup>6</sup> *Remedies for Copyright Small Claims: Hearing Before the Subcomm. on the Cts., the Internet, and Intell. Prop. of the H. Comm. on the Judiciary*, 109th Cong. (2005-2006).

<sup>7</sup> *See generally* U.S. COPYRIGHT OFF., COPYRIGHT SMALL CLAIMS: A REP. OF THE REGISTER OF COPYRIGHTS I (2013) [hereinafter COPYRIGHT SMALL CLAIMS].

<sup>8</sup> Copyright Alternative in Small-Claims Enforcement Act of 2016, H.R. 5757, 114th Cong. (2016).

*I. ARGUMENTS FOR AND AGAINST THE CCB*

A wide range of rightsholder organizations such as the Copyright Alliance,<sup>9</sup> Graphic Artists Guild,<sup>10</sup> Authors Guild,<sup>11</sup> and others supported the passage of the CASE Act, along with several non-copyright organizations such as the ABA<sup>12</sup> and the U.S. Chamber of Commerce.<sup>13</sup> Their support was based in large part on the hope that the copyright small claims court created by the CASE Act would make it easier for creators to bring infringement suits without the expense of going to federal court, which was previously the only forum for litigating copyright claims.<sup>14</sup> One of the arguments was that federal litigation can be notoriously time-consuming and costly, making it difficult for some rightsholders to pursue claims unless there are large amounts at stake.

Lex Machina, a legal analytics firm,<sup>15</sup> reports that the average copyright case in federal district court decided at a summary judgment stage (no trial) takes 543 days.<sup>16</sup> For a case that goes to trial, it takes an average of 832 days.<sup>17</sup> In addition

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<sup>9</sup> See generally *CCB Explained: About the Copyright Claims Board*, COPYRIGHT ALLIANCE, <https://copyrightalliance.org/education/copyright-claims-board-explained/> (last visited July 18, 2024) (This entire page is dedicated to help claimants or potential claimants navigate the CCB, including an entire webinar series aimed to help educate creators).

<sup>10</sup> See generally Rebecca Blake, *Copyright Office Solicits Feedback on Copyright Small Claims Board*, GRAPHIC ARTISTS GUILD: COPYRIGHT SMALL CLAIMS UPDATES (May 29, 2022), <https://graphicartistsguild.org/copyright-office-solicits-feedback-on-copyright-small-claims-board/> (“The Guild joined the comments submitted by the Copyright Alliance and the Coalition of Visual Artists” to provide feedback to the CCB on their proposed procedures.)

<sup>11</sup> See generally *Copyright Claims Board Opens for Business, Giving Authors a Viable Way to Sue Infringers*, THE AUTHORS GUILD: INDUSTRY & ADVOCACY NEWS (June 14, 2022), <https://authorsguild.org/news/copyright-claims-board-opens-on-june-16/> (“The culmination of a long effort by the Authors Guild and other creator organizations, the CCB is intended to serve as an affordable and practical alternative to federal litigation for resolving smaller copyright claims.”)

<sup>12</sup> See Judy Perry Martinez, *The Case for the CASE Act*, THE HILL: CONGRESS BLOG (Oct. 21, 2019, 3:30 PM), <https://thehill.com/blogs/congress-blog/judicial/466742-the-case-for-the-case-act/>.

<sup>13</sup> See generally Letter from Neil L. Bradley to the Members of the U.S. Congress (May 2, 2019), reprinted in *U.S. Chamber Letter Supporting S. 1273 and H.R. 2426, “Case Act,”* U.S. CHAMBER OF COMMERCE, <https://www.uschamber.com/intellectual-property/us-chamber-letter-supporting-s-1273-and-hr-2426-case-act> (last visited July 19, 2024).

<sup>14</sup> Terrica Carrington & Keith Kupferschmid, *CASE Act Signed into Law: What This Means*, COPYRIGHT ALLIANCE (Jan. 7, 2021), <https://copyrightalliance.org/case-act-signed-into-law/>.

<sup>15</sup> *Lex Machina Releases 2021 Copyright and Trademark Litigation Report*, LEX MACHINA, <https://lexmachina.com/media/press/lex-machina-releases-2021-copyright-and-trademark-litigation-report> (last visited June 21, 2024) (Lex Machina does not report on CCB claims).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*



to the time these suits take, federal district court litigation is complex and expensive.<sup>18</sup> These suits are often accompanied by hundreds of legal filings and attorneys' fees. The average federal copyright lawsuit, according to the American Intellectual Property Law Association, costs more than \$275,000.<sup>19</sup> Thus, the Copyright Alliance, one of the most outspoken supporters of the CCB, has argued that "visual artists, authors, and songwriters are hurt the most by the high cost of federal litigation because the individual value of their works or transactions is often too low to warrant the expense of litigation and most attorneys won't even consider taking these small cases. As a result, these infringements regularly go unchallenged, leading many creators to feel disenfranchised by the copyright system. In effect, these creators have rights but no remedies."<sup>20</sup>

Opponents of the CCB, which included public interest copyright organizations such as Public Knowledge, the Electronic Frontier Foundation, and Authors Alliance,<sup>21</sup> on the other hand, worried that it would foster abuse and frivolous litigation.<sup>22</sup> Copyright trolls are already becoming more prevalent,<sup>23</sup> and adding another tool to their toolbox that lowers the costs of bringing suit seemed unwise. Opponents also objected to the specific design of the CCB. First was that although the CCB has been described as providing a remedy for "small claims," it is empowered to award damages of \$15,000 per incident with a limit of \$30,000 in damages per proceeding, which includes statutory damages where no proof of harm is necessary.<sup>24</sup> Those types of damage awards far exceed what almost any other "small claims" court can provide and could represent a major financial hit for many defendants.<sup>25</sup>

Perhaps most concerning to opponents before the enactment of the CASE Act was that while the CCB is described as voluntary (defendants have the option to "opt out," and plaintiffs can refile in federal court if they choose), if defendants ignore or fail to respond to a suit, the CCB could issue a default determination

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<sup>18</sup> See generally Emery G. Lee & Thomas E. Willging, *Defining the Problem of Cost in Federal Civil Litigation*, 60 DUKE L.J. 765 (2010).

<sup>19</sup> AMERICAN INTELLECTUAL PROPERTY LAW ASSOCIATION, 2021 REPORT OF THE ECONOMIC SURVEY (2022).

<sup>20</sup> *Fees Associated with Bringing or Defending a Case Before the CCB*, COPYRIGHT ALLIANCE, <https://copyrightalliance.org/faqs/fees-bringing-defending-case-ccb> (last visited Aug. 16, 2023) [hereinafter COPYRIGHT ALLIANCE, *Fees Associated*].

<sup>21</sup> Note one of the authors of this paper, David Hansen, is Executive Director of Authors Alliance. Authors Alliance's positions on the CASE Act prior to its passage preceded his tenure as Executive Director and he had no role in formulating them.

<sup>22</sup> See, e.g., Meredith Filak Rose, *The Case Act: Small Claims, Big Risks*, PUBLIC KNOWLEDGE (Nov. 17, 2017), <https://publicknowledge.org/the-case-act-small-claims-big-risks/>.

<sup>23</sup> Matthew Sag, *Copyright Trolling: An Empirical Study*, 100 IOWA L. REV. 1105 (2015).

<sup>24</sup> 17 U.S.C. § 1504(e) (2024).

<sup>25</sup> PUBLIC KNOWLEDGE, *supra* note 22 (noting that the CCB damage awards range is five times higher than most existing small claims courts in the United States).

against them.<sup>26</sup> This and other features prompted concerns that, as enacted, the system could be deeply unfair to unsuspecting defendants—enough so that some experts raised concerns about its constitutionality,<sup>27</sup> which has yet to be challenged in court.

After two years of operation, we wanted to understand how the CCB is doing in relation to these arguments for and against. Is the CCB a bastion for copyright trolls? Have hapless defendants unknowingly fallen subject to costly default determinations? Or has the system made it easier, cheaper or faster for rightsholders to see a resolution to legitimate infringement claims? To try to answer these questions, we looked at publicly available data extracted from the CCB’s electronic case filing system, eCCB.<sup>28</sup> Extracted data and calculations performed using it are available here,<sup>29</sup> and scripts and documentation are available here.<sup>30</sup>

Part III of this paper provides data and some description of CCB operations, with a special focus on aspects of CCB operations that are of most interest for assessing arguments for and against the creation of the CCB, such as the speed and efficiency of the system, the ability of the CCB to effectively resolve disputes, the types of claimants and defendants who participate, and so on. Part IV contains our analysis of this data, looking in particular at what answers we have to the questions identified above. Part V concludes with reflections on the limitations of this study’s limitations and thoughts on what future changes might improve the CCB.

### I. WHAT HAS THE CCB DONE AFTER TWO YEARS OF OPERATIONS?

To understand what the CCB has done over the last two years, it is first helpful to understand the process that people who want to use the CCB to pursue copyright claims have to go through. In short, they must navigate a few stages.<sup>31</sup>

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<sup>26</sup> See, e.g., Katherine Trendacosta, *A Bad Copyright Bill Moves Forward With No Serious Understanding of its Dangers*, EFF: DEEPLINKS BLOG (July 18, 2019), <https://www.eff.org/deeplinks/2019/07/bad-copyright-bill-moves-forward-no-serious-understanding-its-dangers>.; The CCB is empowered to enter a “default determination” that includes monetary awards against a respondent that does not appear. 15 U.S.C. § 1506(u). However, the CCB does not have enforcement authority and so for a claimant to enforce a CCB final determination against an uncooperative respondent, the claimant would need to pursue an order through a federal district court. See 15 U.S.C. § 1508 (2023).

<sup>27</sup> Pamela Samuelson & Katherine Hashimoto, *Scholarly Concerns About a Proposed Copyright Small Claims Tribunal*, 33 BERKELEY TECH. L.J. 689 (2018).

<sup>28</sup> *About eCCB*, COPYRIGHT CLAIMS BOARD, <https://dockets.ccb.gov> (last visited Aug. 16, 2023).

<sup>29</sup> Kate Fortney, *Aggregate Data about Claims Filed with the Copyright Claims Board* (July 12, 2024), <https://bibliobaloney.github.io> (This is a data collection site generated by a set of Python Scripts which are run once a week to collect newly available documents from eCCB and analyze the resulting data).

<sup>30</sup> *Id.*

<sup>31</sup> *Claimant Information*, COPYRIGHT CLAIMS BOARD, <https://ccb.gov/claimant/> (last visited July 18, 2024).

- They file a claim online at the CCB’s portal, which includes creating an account;<sup>32</sup>
- their claim must be compliant;<sup>33</sup>
- it must be served on the respondent;<sup>34</sup> and
- the respondent must let the sixty-day opt-out window elapse without opting out of CCB proceedings.<sup>35</sup>

Once the opt-out window has passed, the proceeding becomes “active” and a scheduling order is issued.<sup>36</sup> Then the parties can engage in limited discovery,<sup>37</sup> have hearings and conferences,<sup>38</sup> and eventually receive a final determination where the CCB may award damages.<sup>39</sup>

With that process in mind, the rest of this section presents descriptive data about the claims filed with the CCB from June 16, 2022 to June 15, 2024 (inclusive). Figures reported below are derived from the data reported at <https://bibliobaloney.github.io/>.

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<sup>32</sup> *eCCB*, in COPYRIGHT CLAIMS BOARD A 1 (2024) [hereinafter COPYRIGHT CLAIMS BOARD HANDBOOK] (“eCCB is an electronic filing and case management system for the Copyright Claims Board. Parties and their representatives... must use eCCB in [their] CCB proceeding... absent exceptional circumstances.”).

<sup>33</sup> *Compliance Review*, in COPYRIGHT CLAIMS BOARD HANDBOOK, *supra* note 32 (“When a claim or counterclaim is filed, the Copyright Claims Board (CCB) reviews it to make sure that it provides enough information to enable the respondent or counterclaim respondent to answer it, and it complies with the Copyright Act and the CCB’s regulations.”).

<sup>34</sup> *Service of the Claim*, in COPYRIGHT CLAIMS BOARD HANDBOOK, *supra* note 32 (“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.”).

<sup>35</sup> *Opting Out*, in COPYRIGHT CLAIMS BOARD HANDBOOK, *supra* note 32 (discussing the “opting out” right that a respondent can invoke sixty days after they are served).

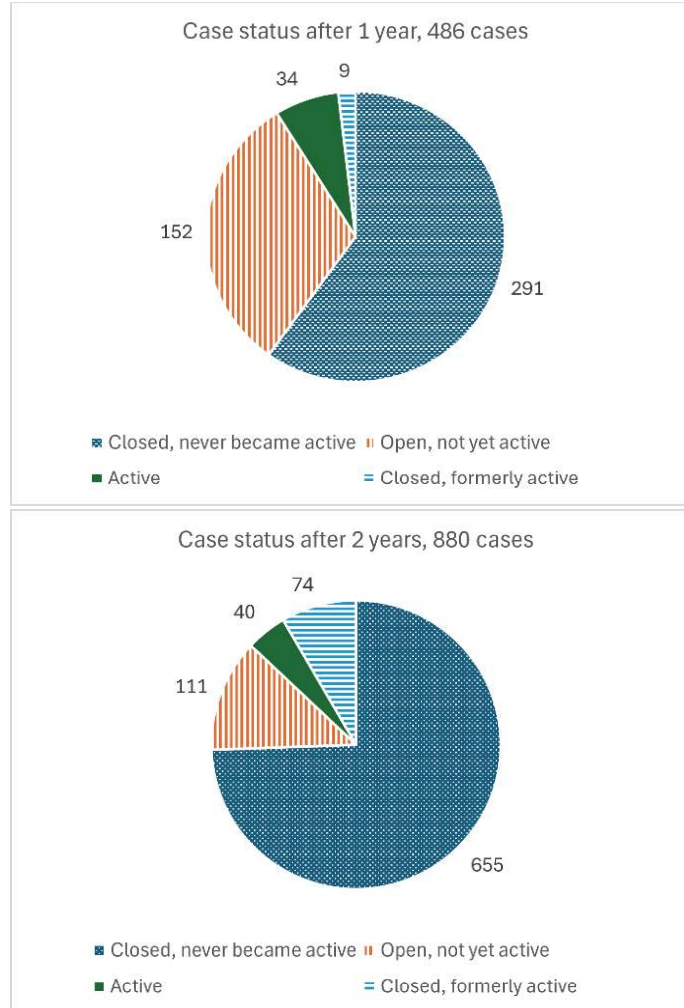
<sup>36</sup> *See The Active Phase*, in COPYRIGHT CLAIMS BOARD HANDBOOK, *supra* note 32 (outlining a brief overview of what parties can expect during the active phase).

<sup>37</sup> *See generally Discovery*, in COPYRIGHT CLAIMS BOARD HANDBOOK, *supra* note 32.

<sup>38</sup> *See generally Hearings*, in COPYRIGHT CLAIMS BOARD HANDBOOK, *supra* note 32.

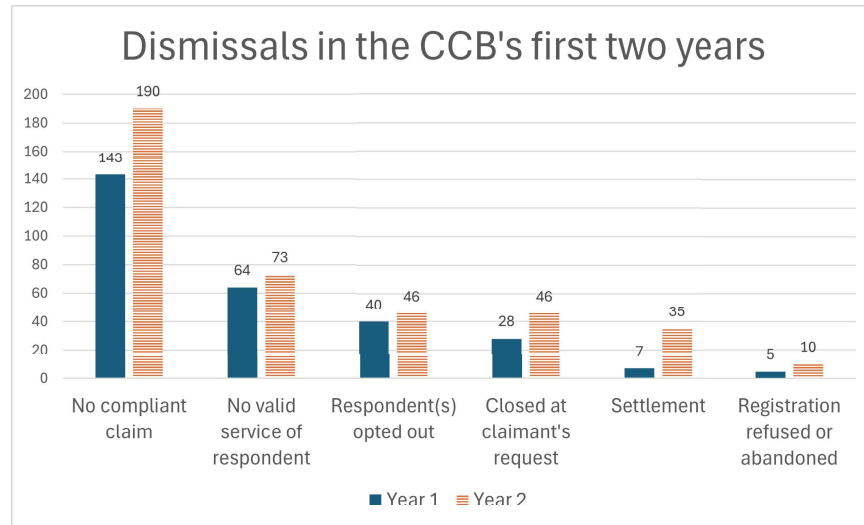
<sup>39</sup> *Damages*, in COPYRIGHT CLAIMS BOARD HANDBOOK, *supra* note 32 (describing the limits and issues parties may want to raise when the court is determining how much to award as damages).

Figure 1 - CCB Case Status After One Year and Two Years of Operations



In the first two years of the CCB, 880 claims were filed. Only 114 of these 880 claims - about 13% - had been issued scheduling orders and made it to the active phase by June 15, 2024. Meanwhile, 729 cases had been closed, most of them dismissed without prejudice. Dismissed without prejudice means that the merits weren't reached, and the claimant could choose to file a new claim about the same facts. The remaining claims were either awaiting review by the CCB or waiting for action from the claimant, such as filing an amended claim or filing proof of service.

Figure 2 – Dismissals in the CCB's First Two Years



**What's happening with all these closed cases?** Most of them were dismissed because the claimant failed to file a compliant claim, which means they did not comply with some of the procedural or substantive requirements laid out in CCB regulations or in the CASE Act itself. When this happens, the CCB issues an order to amend, a helpful document explaining to the claimant what the problems are with their claim and how to fix them.

Claimants have two chances to try to fix their mistakes in an amended claim (that makes three chances total, counting the initial claim). Still, many don't: in the first two years, fewer than 50 claims were dismissed because their claim was still non-compliant after the third try, but 286 were dismissed for failure to file an amended claim after an order to amend.

**Why can't claimants file a compliant claim, even when given additional chances?** Sometimes, the claimant needs to provide more information to demonstrate the basic elements of copyright infringement. For example, the claimant may not have included facts that would indicate that the respondent had access to the claimant's work to copy it, or they may not have included supporting files to show that the claimant's work and the respondent's were substantially similar. Of the 323 orders to amend the CCB issued in the first year, failure to state facts sufficient to support access and substantial similarity were common problems, showing up about 110 times each (sometimes in the same order to amend). In year two, the CCB issued 385 orders to amend, and the top two reasons were again failure to state sufficient facts to support access and substantial similarity. Copyright parlance like "substantial similarity" isn't necessarily familiar to the average self-represented copyright owner, so the CCB's orders to amend provide helpful guidance about the elements of a copyright infringement claim, how a particular claim falls short, and what kind of additional information

a claimant could provide in an amended complaint in order to remedy deficiencies.

**Many claims have problems that can't be fixed.** At least 64 orders to amend pointed out that claimants were trying to pursue cases against foreign respondents over whom the CCB has no jurisdiction.<sup>40</sup> Over 175 orders cited copyright registration problems. When a claimant files an infringement claim but hasn't submitted an application for registration through the Copyright Office for a work allegedly infringed, the claimant has to abandon the current claim then decide if they want to pursue copyright registration and file a new claim.<sup>41</sup>

**Service is also a problem.** Once a claim is certified as compliant, the claimant needs to properly serve the respondent with the claim and other documents about the proceeding.<sup>42</sup> This step is crucial, but also not one most people are familiar with, and 137 claims were dismissed in the first two years because claimants didn't file documentation showing that they'd accomplished valid proof of service. Other procedural problems were the cause of smaller numbers of dismissals, like the eight dismissed for failure to provide the respondent's address or the ten dismissed because payment for filing the claim failed.

**Some proponents of a copyright small claims tribunal complained about the CCB's opt-out provision,** claiming that it would render the CCB ineffective. In the first two years, only 86 claims were dismissed because respondents opted out, representing about 12% of the 687 cases dismissed. This number is smaller than the number dismissed because of the claimant's failure to serve and dwarfed by the 300-plus dismissed for the claimant's failure to file a valid claim. It's also

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<sup>40</sup> Melissa C. Shannon, *Need-to-Knows of the New Copyright Claims Board for Small-Value Copyright Claims*, FISH & RICHARDSON BLOG (Feb. 10, 2023), <https://www.fr.com/insights/thought-leadership/blogs/need-to-knows-of-the-new-copyright-claims-board-for-small-value-copyright-claims/> (“[T]he CCB cannot hear claims against foreign respondents or government or state entities. The CCB limits the type of respondents that can be sued by requiring each respondent’s U.S. address to file the claim.”).

<sup>41</sup> *See generally About the CCB*, COPYRIGHT CLAIMS BOARD: FREQUENTLY ASKED QUESTIONS, <https://ccb.gov/faq/#:~:text=To%20bring%20a%20claim%20with,simultaneously%20with%20filing%20the%20claim> (last visited July 25, 2023) (A claimant does not need to register their work before bringing a claim, but they must at least be in the process of doing so. According to the CCB, a claimant must either “(1) have a registration from the Copyright Office for the work(s) at issue or (2) have submitted an application to register the work(s) either before or simultaneously with filing the claim.” Additionally, claimants with an active claim may seek expedited review of the application by requesting a “small claims expedited registration” through the eCCB portal. If the application is denied, the CCB will dismiss the claim without prejudice, allowing the claimant to refile their claim once they are able to secure a proper registration for their work.).

<sup>42</sup> *Service of the Claim*, *supra* note 34.

smaller than the number of cases dismissed either at the claimant's request or as the result of a joint request following a settlement, at 116.

**Many cases end up in the “default pipeline,”** which supports concerns from CCB opponents that the CCB may be a trap for unwary defendants. Some respondents don't opt out, but they also don't do anything else. The CCB files an order for them to register for the eCCB, the CCB's online case management system, then, as necessary:

- a second notice to register,
- a first default notice,
- a second default notice,
- an order for the claimant to enter their direct statement and evidence,
- a proposed default determination, and
- a default determination.

Let's call this the default pipeline. At the end of the first year of CCB operation, there were as many open cases in the default pipeline (16) as there were open cases with respondents who had filed something in eCCB (15). Twelve cases that had been issued scheduling orders were later withdrawn or dismissed; in five of those, this was without the respondent ever having filed anything in eCCB.

By the end of the second year of operations, the numbers were not improving much: thirteen (13) of the thirty-nine (39) active cases fell within the default pipeline. Were these respondents not effectively served? Do they not believe the CCB is a real tribunal? Do they not understand how to engage with the system? We don't know, but the lack of participation is troubling from a due process perspective.

Settlement is another potential path to resolution for claimants. Of course, parties are free to reach an agreement about a copyright dispute with or without the CCB, but settlement facilitation is one optional phase of CCB proceedings.<sup>43</sup> Data about settlements as an endpoint for CCB claims is limited. 74 claims were dismissed at the request of claimants in the first two years, and the claimant doesn't have to say whether there was a settlement involved or not. If the parties jointly agree, a claim can be dismissed *with* prejudice following a settlement, which happened 42 times. The parties don't have to disclose the terms of their settlement, but in some cases, they do, and ask to have them incorporated into a final determination if the case has reached the active phase before settlement:

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<sup>43</sup> *CCB Proceedings Phases*, COPYRIGHT CLAIMS BOARD, <https://ccb.gov/proceedings> (last visited July 8, 2024). There is a mandatory pre-discovery conference that covers a wide range of things, and one of them is the potential for a settlement conference. The post-discovery conference covers this as well, but a settlement conference is not mandatory. See *The Active Phase*, *supra* note 36 at 3; 37 CFR § 222.18.

- In *Flores v. Mitrakos*,<sup>44</sup> the respondent agreed to change their behavior, but the claimant did not seek, and was not awarded, damages.
- In *Armatus Dealer Uplift, LLC v. Wooden Automotive Consultants LLC*,<sup>45</sup> the respondent agreed to pay \$9000.
- In *Pinwheel Crafts LLC v. Pettit*,<sup>46</sup> the respondent agreed to remove infringing items from Amazon.com and product images from other online retailers. The claimant sought the maximum award available, but no damages were agreed upon in the settlement document.
- *Paramount Pictures Corporation v. JMC POP UPS LLC*,<sup>47</sup> a suit over JMC’s “Coming to America” themed pop-up restaurant. JMC denied all claims of infringement but agreed in the settlement agreement to cease the use of creative elements of “Coming to America” in the future. In its complaint, Paramount sought the full scope of damages available to it, but the part of the confidential settlement agreement that was provided to the Board for inclusion in the final determination included no agreement about payment of damages.
- *Kenna Sato Designs, LLC v. Lisitsa*,<sup>48</sup> a suit against an Etsy reseller who purchased and resold unauthorized stickers from a Chinese manufacturer. The Etsy seller admitted infringement and agreed to pay \$300.

Additionally, in *Ora v. Warner Chappell Music*,<sup>49</sup> the case didn’t exactly settle. Ora tried to withdraw the case, normally resulting in it being dismissed without prejudice. Warner Chappell objected to the notion that Ora could bring his claims again, given that Warner Chappell had already invested months in the CCB process, and they considered the claims to lack “a reasonable basis in law or

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<sup>44</sup> Final Determination, *Flores v. Mitrakos*, No. 22-CCB-0035 (CCB, Feb. 15, 2023).

<sup>45</sup> Final Determination, *Armatus Dealer Uplift, LLC v. Wooden Automotive Consultants LLC*, No. 22-CCB-0269 1 (CCB, July 5, 2023).

<sup>46</sup> Final Determination, *Pinwheel Crafts LLC v. Pettit*, No. 22-CCB-0251 1 (CCB, Oct. 19, 2022).

<sup>47</sup> Final Determination, *Paramount Pictures Corporation v. JMC Pop Ups LLC*, No. 22-CCB-0112 1 (CCB, Oct. 23, 2023).

<sup>48</sup> Final Determination, *Kenna Sato Designs, LLC v. Lisitsa*, No. 23-CCB-0172 1 (CCB, Nov. 14, 2023).

<sup>49</sup> Final Determination, *Scott Douglas Ora, individually, and in his derivative capacity as trustee of the Leo Robin Trust, on behalf of the Leo Robin Trust v. Warner Chappell Music*, No. 22-CCB-0072 1 (CCB, June 27, 2023).

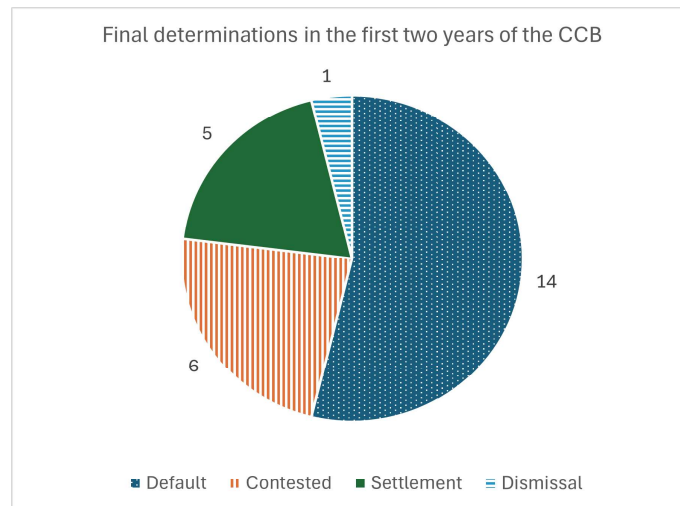


fact.”<sup>50</sup> Both parties subsequently agreed to a dismissal with prejudice. Presumably, no damages were awarded to the claimant.

**Final Determinations.** After the first two years of operations, the CCB has issued twenty final determinations that were not the result of a settlement, six of which were final determinations in cases where both claimant and respondent participated. One of those six is currently pending a review by the Register of Copyrights—the first such test of the CCB’s internal appeal process.<sup>51</sup>

The other fourteen were final determinations in cases where the respondent was in default. Additionally, the CCB formally approved a settlement in five cases (out of the 50 total cases in which parties settled—the remaining 45 without the formal blessing of the CCB) and dismissal with prejudice in one more case—the *Ora* case mentioned above.<sup>52</sup>

Figure 3 – Final Determinations in the First Two Years of the CCB



Across the six final determinations in contested cases, three were decided in favor of the complainant, and three in favor of the respondent.<sup>53</sup> Across these final

<sup>50</sup> Response for Respondent, *id.* at 2.

<sup>51</sup> See Final Determination, *Morly Investments Pty Ltd (imprint: The High Street Publishing Company) v. The Walt Disney Company*, No. 22-CCB-0015 1 (CCB, July 15, 2024).

<sup>52</sup> Final Determination, *Ora*, No. 22-CCB-0072 at 1.

<sup>53</sup> Compare Final Determination, *Shocked v. McInnes*, No. 22-CCB-0263 1, 5-6 (CCB, Feb. 8, 2024) (finding that the Respondent did not satisfy his burden for his affirmative defense of fair use), and Final Determination, *Corjulo v. Mandrell*, No. 22-CCB-0008 1, 6 (CCB, Dec. 14, 2023) (finding that the Respondent did not satisfy his burden for his affirmative defense of fair use and had no other viable defenses for this claim), and Final

determinations, the CCB issued written decisions averaging about nine pages in length explaining its reasoning, including robust discussions of relevant legal concepts such as contributory liability and copyright defenses such as fair use, first sale, and unclean hands. In the four cases where fair use was raised as a defense, the CCB concluded that three of the cases favored the claimant, and one favored the respondent. For the three contested cases where the CCB decided in favor of claimants, the CCB awarded a total of \$4,000 in damages.<sup>54</sup>

For the fourteen final determinations in cases of default, the CCB conducted reasonably detailed analyses of each case, indicating an unwillingness on the part of the CCB to just rubber stamp claims. This is good news for absent respondents, though the analysis was mostly focused on whether the evidence showed adequate substantial similarity and whether the claim showed evidence for damages. The CCB did not, on its own initiative, consider other potential defenses. And, in at least three cases, the CCB dismissed claims against one or more respondents—even with no defense presented—because the claimant failed to produce evidence that the particular respondent was the party at fault. In no default cases, however, did the CCB independently raise any potential defenses, such as fair use.

Default respondents were largely held liable for damages, however. Across all fourteen default cases with final determinations, the CCB awarded a total of \$54,150 in damages, which averages to \$3,868.<sup>55</sup> Generally, when the CCB finds

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Determination, *Oppenheimer v. Prutton*, No. 22-CCB-0045 1, 10 (CCB, Feb. 28, 2023) (finding that the Respondent did not satisfy his burden for his two affirmative defenses of fair use and unclean hands), *with* Final Determination, *Shocked v. Billington*, No. 22-CCB-0058 1, 7 (CCB, Apr. 3, 2024) (dismissing the original claim with prejudice due to the claim being meritless and the claimant found to be in bad faith), *and* Final Determination, *Comedy Spotlight Productions, Inc. v. Store on Sunset LLC, et al.*, No. 23-CCB-0035 1, 6-7 (CCB, Mar. 8, 2024) (dismissing the claim with prejudice due to the affirmative fair use defense), *and* Final Determination, *Morly Investments*, No. 22-CCB-0015 at 9 (dismissing the claim with prejudice due to insufficient evidence that would give rise to direct, contributory, or vicarious liability).

<sup>54</sup> Final Determination, *Shocked*, No. 22-CCB-0263 at 10 (awarding Claimant \$750 in statutory damages); Final Determination, *Corjulo*, No. 22-CCB-0008 at 10 (awarding Claimant \$2,250 in statutory damages); Final Determination, *Oppenheimer*, No. 22-CCB-0045 at 10 (awarding Claimant \$1,000 in statutory damages).

<sup>55</sup> Final Determination, *Say It Visually, Inc. v. America's Real Estate Brokers, Inc.*, 23-CCB-0134 1, 12 (CCB, May 28, 2024) (awarding Claimant \$8,400 in statutory damages); Final Determination, *Say It Visually, Inc. v. America's Real Estate Force Corporation*, No. 22-CCB-0245 1, 12 (CCB, May 28, 2024) (awarding Claimant \$10,200 in statutory damages); Final Determination, *Schirmacher v. Allora*, No. 22-CCB-0183 1, 9 (CCB, Feb. 16, 2024) (awarding Claimant \$7,000 in statutory damages); Final Determination, *Hirsch v. Southern Chinese Daily News, LLC*, No. 22-CCB-0255 1, 9 (CCB, Feb. 14, 2024) (awarding Claimant \$3,600 in statutory damages); Final Determination, *Oakes v. Heart of Gold Pageant System Inc., et al.*, No. 22-CCB-0046 1, 15-6 (CCB, Jan. 24, 2024) (awarding Claimant \$4,500 in damages, of which \$2,250 is awarded jointly and severally against both Respondents and the remaining \$2,250 solely to Repondent Heart of Gold); Final Determination, *Bronner v. EssayZoo*, No. 22-CCB-0012 1, 10 (CCB, Nov. 20, 2023)

in a claimant's favor, and a claimant provides evidence sufficient to persuade the Board that the actual damages were of a given amount, the CCB awards three times that amount.

**Trolls. The CCB system is being used by aggressive and prolific copyright litigants,** but we haven't seen the volume of copyright-troll litigation from them as we've seen in the past in federal district courts. In other words, while known copyright trolls are using the CCB, at least so far, we don't see evidence of rampant abuse or trolling within the CCB itself. This may be in part because the CASE Act took these concerns seriously by allowing the Copyright Office to create rules to discourage it, such as limiting the number of claims a plaintiff can file within one year.<sup>56</sup> The number of repeat filers was low – only sixteen filers had five or more claims.<sup>57</sup> The first two years' filings include, however, 21 claims filed by Higbee and Associates (sometimes referred to as a "troll" though the label may not exactly fit),<sup>58</sup> and 20 by David C. Deal (another known and aggressive serial copyright litigant).<sup>59</sup> The very first case in which the CCB issued a final determination on the merits was in favor of David Oppenheimer, who has separately filed more than 170 copyright suits in federal courts (though he has only filed one claim before the CCB).<sup>60</sup>

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(awarding Claimant \$1,200 in statutory damages); Final Determination, Dermansky v. Rule 62, Inc., No. 22-CCB-0005 1, 12 (CCB, Nov. 1, 2023) (awarding Claimant \$1,350 in statutory damages); Final Determination, Urbanlip.com Ltd. v. Faviana International Inc., No. 22-CCB-0137 1, 9 (CCB, Nov. 1, 2023) (awarding Claimant \$2,600 in statutory damages); Final Determination, Joe Hand Promotions, Inc. v. The Village Restaurants LLC d/b/a Indian Village Restaurant & Lounge, et al., No. 22-CCB-0100 1, 14 (CCB, Oct. 4, 2023) (awarding Claimant \$3,300 in statutory damages); Final Determination, Joe Hand Promotions, Inc. v. Arif Skyline Cafe LLC, et al., No. 22-CCB-0098 1, 13 (CCB, Sept. 22, 2023) (awarding Claimant \$3,000 in statutory damages); Final Determination, Hursey v. Hakimian Global LLC, No. 22-CCB-0219 1, 9 (CCB, Sept. 22, 2023) (awarding Claimant \$3,000 in statutory damages); Final Determination, Hursey v. QUINNEY, No. 22-CCB-0163 1, 9 (CCB, Aug. 31, 2023) (awarding Claimant \$3,000 in statutory damages); Final Determination, Hursey v. Lavaca LLC, No. 22-CCB-0056 1, 9 (CCB, Aug. 24, 2023) (awarding Claimant \$3,000 in statutory damages).

<sup>56</sup> 17 U.S.C. § 1504(g) ("The Register of Copyrights may establish regulations relating to the permitted number of proceedings each year by the same claimant under this chapter, in the interests of justice and the administration of the Copyright Claims Board.").

<sup>57</sup> Fortney, *supra* note 29 (Under the section titled "Claimants," a list of claimants appearing on 3 or more claims is available).

<sup>58</sup> Matthew Sag, *So, you got a copyright infringement demand letter from Higbee & Associates?*, MATTHEW SAG BLOG (Aug. 20, 2019), <https://matthewsag.com/so-you-got-a-copyright-infringement-demand-letter-from-higbee-associates/>.

<sup>59</sup> Allison Dunn, *Thanks to Trolls, Photo Copyright Lawsuits and Lawyers Face Reputational Hurdles*, LAW.COM (Mar. 24, 2023), <https://www.law.com/2023/03/24/thanks-to-trolls-photo-copyright-lawsuits-and-lawyers-face-reputational-hurdles/>.

<sup>60</sup> Jeffrey Bilman, *Is This Asheville Photographer a Wronged Artist or a 'Copyright Troll'?*, THE ASSEMBLY (July 17, 2023), <https://www.theassemblync.com/politics/photography-copyright-infringement-lawsuit/>.

*Table 1 – Claimants Who Brought Five or More Claims Through the CCB*

Claimants	Cases
Joe Hand Promotions, Inc.	48
Michelle Shocked	15
Games Workshop Limited	12
Amy Do	10
Keith F. Bell	10
Julie Dermansky	9
David Bibiyan	9
World Media Alliance Label Inc	9
Langston M Childs	8
Dana Hursey	8
Jean M Guerrero	8
Pinwheel Crafts LLC	6
Floatsup, LLC	5
William Grecia	5
Helen Walters	5

*Table 2 - Representatives Who Brought Five or More Claims Through the CCB<sup>61</sup>*

Law Firm	Cases
Jekielek & Janis	48
The Law Office of David C. Deal, P.L.C.	20
The Law Firm of Higbee and Associates	21

<sup>61</sup> Note that some firms file with name variants, such as “The Law Firm of Higbee and Associates” versus “Higbee & Associates.”

<b>Law Firm</b>	<b>Cases</b>
H. Roske & Associates LLP	12
Leichtman Law PLLC	10
Doniger / Burroughs	6
Burns the Attorney, Inc.	6
The Brickell IP Group, PLLC	5

The biggest repeat claimant is Joe Hand Promotions, who—represented by Jekielek & Janis—filed forty-eight claims in the CCB’s first two years. The CCB seems to be working for them: by the time of this writing, Joe Hand had obtained \$6,300 in damages awards, and 11 cases have been dismissed with prejudice following a settlement. Joe Hand has also been a prolific filer in federal court, with 433 cases filed in federal district courts in the same time period as the first two years of operations of the CCB.<sup>62</sup>

Whether the CCB is a winning strategy for claimants like Joe Hand remains to be seen. Joe Hand seems to persist—of its total 48 claims: 29 were filed in the first year of the CCB and another 19 in the second year. Of those 48 total, 11 were dismissed without prejudice, and 22 were dismissed with prejudice. As of the two-year anniversary, eight were waiting for the expiration of the opt-out window, three were waiting for proof of service to be filed, and one was awaiting initial review. Of the dismissed cases, there were a few where Joe Hand didn’t properly serve the respondent, or the respondent opted out, but most were either a settlement or were dismissed at the request of the claimant (which indicates but doesn’t confirm some type of out of court settlement).

We don’t yet know how the CCB influences behavior outside of the formal process. As mentioned above, there have been 42 cases so far in which the parties reached a settlement and either jointly requested dismissal with prejudice or asked the Board to include the terms of that settlement in a final determination. Parties can also settle and request a dismissal *without* prejudice, which has happened five times.<sup>63</sup> We have also seen 74 cases closed at the claimant’s request. In four of these occasions, a claimant has mentioned a settlement in their request to have their claim dismissed. We don’t know for sure but suspect that more of the dismissals at claimants’ request are the result of some sort of agreement between claimant and respondent. However, because so many of the claims filed have either incurable problems or would need a lot of revision to become compliant,

<sup>62</sup> LEX MACHINA, *supra* note 15

<sup>63</sup> *E.g.* Notice of Settlement and Joint Request for Dismissal at 1, Nina Designs Ltd. v. Skemp, No. 23-CCB-0348 (Jan. 25, 2024).

it's also possible that some claimants are requesting dismissal rather than investing more time in pursuing a claim that they have learned may be weak. Encouraging settlement without using judicial resources is typically viewed as a positive, but so far, the CCB-to-settlement pathway is actually far lower than what we see in federal district courts (about 82% of copyright cases brought before a federal district court settle, based on Lex Machina reports).<sup>64</sup>

Large-scale copyright shakedowns—basically, demand letters with a threat of legal action if potential defendants don't pay a large financial fee upfront—have been a hallmark of troll operations in the past.<sup>65</sup> For savvy recipients of those letters, they've realized that litigation is costly for plaintiffs and that most troll operations have no real interest in actually filing suit. Now that the CCB has minimized at least some of the financial barriers to filing suit, it remains to be seen how potential defendants are responding. It's probably impossible to tell just by looking at CCB filing data, but other research might reveal what's going on.

## II. LESSONS LEARNED

Though it is still very early in the CCB's operations, we can see some emerging trends that are worth watching:

**Defaults may be a real concern**, though we do see evidence of the CCB itself mitigating the effect of nonresponsive respondents by addressing concerns with initial filings—rejecting or partially rejecting claims in at least three cases that reached a final determination on default. But still, more than half of the final determinations issued by the Office were in cases of default, and in all but one of those cases, at least one respondent was held liable for damages. Though it has only happened once so far, the CCB has also not indicated it will take a lenient approach to respondents who choose to participate in the process too late or who do not opt out in the correct way—the one instance in which the defendant later filed with the CCB asking the CCB to reconsider its decision, it declined.<sup>66</sup>

**It's also too early to tell if the damage awards from the CCB will be high or low.** Opponents feared that the \$30,000 damage cap per case would be too high, inviting claimants to file frivolous cases that could be financially ruinous for unsuspecting defendants. So far, the CCB has awarded damage awards ranging from a maximum of \$10,200 to a low of \$750 (it also approved of two settlements

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<sup>64</sup> LEX MACHINA, *supra* note 15 at 23 (Copyright cases “settle 82% of the time, one of the largest proportions of settlements in any Lex Machina practice area.”).

<sup>65</sup> Lindsey M. Mead & Mikhail Murshak, *Under the Bridge - The Rise of Copyright Trolls in the Intellectual Property Space*, BIZTECH LAW BLOG (Feb. 5, 2024), <https://www.michiganitlaw.com/rise-of-copyright-trolls-in-intellectual-property> (“The ask in a demand letter can often exceed \$10,000 - even \$30,000, depending on the circumstances.”).

<sup>66</sup> Dave Hansen, *A Copyright Small Claims Update: Defaults and Failure to Opt Out*, AUTHORS ALLIANCE (Feb. 1, 2024), <https://authorsalliance.substack.com/p/a-copyright-small-claims-update-defaults>.

with damage awards of \$9,000 and \$300). But, this is only across a few dozen cases, and we are unsure what future cases will hold. It's hard to say what claimants are expecting based on the data we have (demands are made in a free text field). However, we can say that in the first two years, there were a fair number of claims (378 of 880), where claimants opted for a lower damages range (less than \$5000) in exchange for a more streamlined process.

**The CCB (or maybe just copyright in general) is hard for unrepresented claimants to navigate.** The CCB's online doors have been open for anyone in the world who can meet the requirements to file a valid claim since June of 2022. The CCB employs six full-time attorneys (three as CCB Officers and three as copyright claims attorneys) and has a website full of guidance, including a comprehensive handbook and its own electronic filing and case management system. And yet, the vast majority of CCB claims in the first two years have been dismissed because claimants without attorneys have a hard time filing a valid claim and figuring out the service of process. Data has improved on respondents participating—in the first year, roughly half of respondents in active cases did not participate at all, but at the two-year mark, about two-thirds are participating through written filings. That's a pretty good improvement, but it's still concerning that so many respondents fail to participate at all. As a point of reference, for copyright cases in federal district court, Lex Machina indicates that only about 7% of copyright cases end in default judgments (which indicates little or no participation from defendants).<sup>67</sup>

Of the claims that the CCB had reviewed in the first year, 90% of claims from represented claimants had been certified as compliant; for claims from self-represented claimants, only 46% were compliant. In the first two years, unrepresented claimants accounted for over 75% of claims filed, but only 22% of those that made it to the active phase. Copyright is a specialized area. Even lawyers, when they aren't copyright specialists, can find it confusing. So, we don't think it should be surprising that the CCB's goal of being "accessible to anyone, with or without an attorney"<sup>68</sup> is a difficult one.

We also don't think this is due to the CCBs lack of effort from the CCB. A quick read of non-compliant cases that have been kicked out of the system shows an almost extraordinary effort by the CCB to explain to complainants how they can address legal and procedural deficiencies.

**The CCB Process is slow.** One of the chief goals of the CCB is to be streamlined and efficient. Discovery is limited, and hearings are held online.<sup>69</sup>

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<sup>67</sup> Using Lex Machina data for copyright cases filed in the ten years between June 1, 2014 and June 1, 2024, which shows 53,574 copyright cases filed and 3,536 resolved through default judgments.

<sup>68</sup> COPYRIGHT CLAIMS BOARD, *supra* note 2.

<sup>69</sup> See generally *Discovery*, *supra* note 37; See also *Hearings*, *supra* note 38 ("Toward the end of the proceeding, the CBB may decide to hold a virtual hearing with the parties to discuss the merits of the case.").

However, after one year, the CCB had only issued one final determination on the merits, *Oppenheimer v. Prutton*,<sup>70</sup> and that was in a case that skipped over initial CCB procedural steps by being transferred from a district court.

After two years, the CCB's pace had not improved: it had issued final determinations in twenty cases (twenty-six if you count approved settlements), with the average length from filing to resolution of 413 days, still longer than a year. For the five contested cases that both started and ended at the CCB, the median time to resolution was 546 days, and the average time was 530 days. Default cases fared better, but not much—though the respondents did not participate, these cases still took an average of 440 days to resolve, with a median of 423 days. Compared to Federal District Court, this is not a favorable result; Lex Machina indicates that for the 3,526 default judgments in copyright cases filed over the last ten years, the median time to resolution was 239 days.

Maybe that's the best hope for a CCB claimant attracted by the CCB's promise of efficiency: that the respondent doesn't show up, and after twelve-fourteen months of filing paperwork with the CCB, they get a default determination. Compared to an average of about eighteen months in federal district court to get a decision on summary judgment, the CCB so far does not seem to be much faster. We also do not know whether these default determinations result in actual dollars paid to claimants. Though the CCB is empowered to issue default determinations with damage awards, it does not have the authority to issue the kinds of enforcement mechanisms that federal courts do, such as garnishment, writ of execution, or judgment lien.<sup>71</sup> Unless a default respondent agrees to pay the damage award against it, claimants would be forced to initiate another judicial proceeding in another court to actually enforce their damage award.<sup>72</sup>

That said, we won't really know what kind of a time commitment a claimant should expect until we have *several* cases that start out with a claim filed with the CCB, continue to an active phase where the respondent engages in the process, and result in a final determination on the merits. After two years, we only have five such cases.

**The CCB is cheap for claimants but an expensive system, given early results.** Looking at efficiency from another angle, we can conclude that across the 880 claims filed, the Office collected at least \$35,200 in initial filing fees (\$40 initial filing fee) and \$6,840 from the additional \$60 fee the CCB charges after a scheduling order is issued (114 cases have had scheduling orders after the first two years).<sup>73</sup> This is a fraction of what these claimants would have paid if they pursued their claims in federal court, which typically has filing fees of several

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<sup>70</sup> *Oppenheimer*, No. 22-CCB-0045 at 10.

<sup>71</sup> 28 U.S.C. §§ 3201-3206 (2024).

<sup>72</sup> 17 U.S.C. § 1508(a) (2024) (outlining the process for applying to a federal district court to confirm and enforce relief awarded by the CCB by reducing the award to judgment).

<sup>73</sup> For an in-depth discussion on the fees associated with filing a claim, see COPYRIGHT ALLIANCE, *Fees Associated*, *supra* note 20.



hundred dollars, not to mention many other court costs associated with litigation.<sup>74</sup> So, the system is surely cheaper for claimants and seems to achieve its objective of lowering financial barriers that are otherwise high with traditional federal litigation.

However, the costs of operating the CCB far exceed the fees it collects and the damages it has awarded to claimants. The Copyright Office, in its budget request for 2021, requested \$2.2 million in ongoing yearly costs for the CCB (plus \$1 million in start-up costs).<sup>75</sup> Ignoring annual mandatory salary increases that would be reflected in future years, that amounts to about \$5,000 for each of the 880 claims filed in the first two years. That figure doesn't seem *so* bad, but it looks much worse when judged in terms of results: that same \$4.4 million in operations costs over two years has resulted in only \$4,000 total awarded to claimants through a final determination on the merits by the CCB, with an additional \$54,150 awarded in cases of default. For a system that was touted as "a venue where small creators can actually enforce their intellectual property rights and finally bear the fruit of their work,"<sup>76</sup> the CCB has borne little fruit in terms of actual dollars to creators. As we've noted, the shadow of the CCB may be influencing other enforcement actions, such as out-of-court settlements, and it could be influencing copyright usage norms more broadly. But whether that's true is, at this point, just speculation without a much larger study of awareness of and response to the CCB among both rightsholders and users of copyrighted works. It seems that unless the CCB rapidly begins to resolve more suits, its operating costs are destined to far exceed the damages it is expected to award for at least a while to come.

### CONCLUSION

Our data looks at just the first two years of operations of the CCB, so we acknowledge it may be premature to fully judge the success of the CCB based on the limited data available. And, presumably, the CCB is still working out the kinks in a new system. We do see some concerning signs that copyright troll-like actors are leveraging the system, but the numbers are still small compared to what has been seen in federal district courts in the past.

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<sup>74</sup> See COPYRIGHT SMALL CLAIMS, *supra* note 7, at 8 (citing AMERICAN INTELLECTUAL PROPERTY LAW ASSOCIATION, REPORT OF THE ECONOMIC SURVEY 2011, at 35 (2011)) (The median cost for copyright claims of relatively low economic value, less than \$1 million, is an estimated \$350,000).

<sup>75</sup> *Senate Budget: Testimony Before the Subcomm. on the Legis. Branch of the S. Comm. on Appropriations*, 117th Cong. 1-10 (2021) (Statement of Shira Perlmutter, Register of Copyrights and Director, U.S. Copyright Office).

<sup>76</sup> Tillis Introduces Bipartisan Legislation to Protect Middle-Class Creators From Copyright Infringement, THOM TILLIS: PRESS RELEASES (May 2, 2019), <https://www.tillis.senate.gov/2019/5/tillis-introduces-bipartisan-legislation-to-protect-middle-class-creators-from-copyright-infringement>.

The biggest challenge so far has been getting complainants to file compliant claims, and it seems to us that this may be a difficult area for the CCB to improve on. The CCB has already gone to great lengths to explain the process and to help complainants correct errors early in the process, and many of these errors are due to failure to comply with basic requirements that cannot be changed unless the CCB is willing to sacrifice basic procedural safeguards for respondents (something we think it should not do). The one area the Copyright Office and the CCB may be able to do some work to save more non-compliant claims is by making it easier for claimants to simultaneously file for copyright registration when filing (175 orders to amend cited registration issues as a reason a claim was non-compliant). This would not, however, rescue the many other claims that were deemed non-compliant for a variety of other less procedural problems. Despite the hope of advocates and legislators and the admirable efforts of those working at the CCB, the early results from the CCB lead us to think that it may just be that complex copyright disputes are ill-suited for a self-service small claims tribunal.