



**BEFORE THE  
U.S. COPYRIGHT OFFICE**

**CASE Act Study**

**Docket No. 2025–2**

**REPLY COMMENTS OF THE COPYRIGHT ALLIANCE**

The Copyright Alliance appreciates the opportunity to submit the following reply comments in response to the [notice of inquiry](#) (“NOI”) published by the U.S. Copyright Office in the Federal Register on March 10, 2025, regarding the Copyright Office’s study of the Copyright Claims Board (CCB).

The Copyright Alliance is a non-profit, non-partisan public interest and educational organization representing the copyright interests of over 2 million individual creators and over 15,000 organizations in the United States, across the spectrum of copyright disciplines. The Copyright Alliance is dedicated to advocating policies that promote and preserve the value of copyright, and to protecting the rights of creators and innovators. The individual creators and organizations that we represent rely on copyright law to protect their creativity, efforts, and investments in the creation and distribution of copyrighted works for the public to enjoy.

At the outset, it is worth noting that it was encouraging to read that most of the comments submitted to the Copyright Office share similar views to those the Copyright Alliance provided in

our initial submission regarding the features of the CCB that are working well and features that could be improved upon. In particular, most of the comments point out that, while many aspects of the compliance review process are working well, there are aspects of the process that likely could be improved. Most of the suggestions for improvements relate to increased education and assistance aimed at improved literacy about and more guidance on the specific elements necessary to prove an infringement claim or a misrepresentation claim under the Digital Millennium Copyright Act, service of process, and other elements of a CCB proceeding. We support general suggestions to improve those aspects of the CCB process, which we explain in more detail in our initial comments.

The CCB system is not perfect, and there are certainly improvements to be made—that is the point of the Copyright Office’s study. The value of the CCB mainly lies in its ability to provide an affordable, accessible, and streamlined venue to raise small copyright claims, particularly for those who cannot afford to enforce their right in federal court. The CCB is not meant to supplant federal court or replace it.

It was suggested that an increased number of copyright cases filed in federal court could be evidence of the CCB’s inefficiency in reducing that number.<sup>1</sup> That comment indicates a failure to understand the purpose of the CCB vis a vis the federal court system. The CCB is meant to address limited copyright claims where total damages do not exceed \$30,000. A rights holder who can afford to bring their case in federal court is typically much better off doing so, rather than bringing the case in the CCB (due to, for example, potentially higher damage awards, the ability to pursue diverse claims, the ability to seek injunctions, and no risk of the other party opting out, among other things). The fact there may be an increase in the number of copyright infringement cases being brought in federal court is more likely due to decreased respect for copyright rights and increased piracy of copyrighted works. No evidence is presented of a causal connection between an increase in cases brought in federal court and dissatisfaction with the CCB, and such

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<sup>1</sup> Authors Alliance, Comment on CASE Act Study at 4, Docket No. COLC-2025-0002-0014 (May 8, 2025) (stating that “Based on data available about copyright litigation in federal courts, we can say that the growth of federal copyright litigation has continued over the time that the CCB has existed. It is difficult to say whether this growth would have been greater without the existence of the CCB, but the CCB certainly has not reduced the overall number of copyright claims filed in federal court.”).

speculation should have no bearing on this study or the CCB. If the CCB reduces the number of cases filed in federal court, that is an extra benefit—but it is not the reason why the CASE Act was enacted.

Below we address a few other points that were raised in the initial comments which should be rejected and highlight some vital points raised by others.

### **1b: Filing Fee**

The Copyright Alliance supports commenters who believe that the \$40 filing fee should not be raised. As stated in our initial comments, deterring frivolous or noncompliant claims is not the purpose of the filing fee, despite what other commenters think.<sup>2</sup> Deterrence of frivolous claims is not the purpose of a filing fee in federal court, and it should not be the purpose of the filing fee in the CCB. As the majority of other commenters point out, the root cause for noncompliant claims mostly stems from the fact that such claims are substantively deficient due to a misunderstanding of copyright law or CCB requirements—not from an intent to harass the respondent. An increase to the filing fee would do nothing to cure those deficiencies. As we stated in our initial comments, there are other provisions within the CASE Act and CCB regulations, mainly the compliance review process, which are intended to deter the filing of frivolous claims. The best way to address concerns related to noncompliant claims is to improve education and guidance that the CCB provides to claimants, including a pre-filing information session and updating the claims form to illicit more targeted and specific responses. Increasing filing fees would do nothing to solve the noncompliant claims issue and therefore the proposal should be rejected.

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<sup>2</sup> Re:Create et al., Comment on CASE Act Study at 4, Docket No. COLC-2025-0002-0013 (May 8, 2025); Authors Alliance, Comment on CASE Act Study at 6.

## **1c: Compliance Review Process**

We urge the Copyright Office to reject notions that the CCB should impose limits on the number of times repeat claimants are allowed to amend claims.<sup>3</sup> There is no basis for why this suggestion must be implemented and why claimants should be held to a stricter compliance review standard based on prior use of the CCB. It has not been shown that repeat claimants abuse or misuse the compliance review process to unnecessarily prolong the compliance review process, such that limiting their opportunities to amend their claims would streamline the CCB process. There is already a limit of two times to amend through the claims review process, and that applies across the board. It is unnecessary to apply a stricter standard for the compliance review process simply on the basis of having previously used the CCB. Disparate treatment of claimants at the compliance review process would only serve as a de facto limit on the number of claims a claimant can bring and therefore risks shutting out certain individual creators from the CCB.

## **1d: Service of Process**

As we previously stated, we do not believe service of process requirements should be modified at this time. Many initial comments point out that the service of process stage for claimants is proving to be a major hurdle due to its intricacies and costs. While we do not dispute those criticisms, we reiterate that the better approach at this time is to first try to provide improved education, awareness, and guidance related to service of process requirements.

At least one commentor suggested that certain types of service, like publication, are not sufficient for due process concerns.<sup>4</sup> The CASE Act specifies that claimants must follow certain aspects of the particular state's laws related to service of process.<sup>5</sup> Thus, the service requirements are determined by the states, not the CCB. If there is a concern with a particular state's service requirements, that should be raised to officials in the state or challenged within that state's court.

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<sup>3</sup> Authors Alliance, Comment on CASE Act Study at 3.

<sup>4</sup> *Id.* at 6-7.

<sup>5</sup> 17 U.S.C. § 1506(g)(4)(A).

Perhaps, a change to the CASE Act to make service of process rules uniform regardless of the state in which a respondent is served would be appropriate because it would likely make it easier to navigate service of process. But that approach would require a change in the law, and as we stated above, we believe the more prudent approach at this time is to improve education, awareness, and guidance with regard to the CCB's service of process requirements.

#### **1e. & 4: Opt-Out System and Default Determinations**

The majority of commenters agreed that the CCB's opt-out system is working as intended. To the extent issues were raised about the relationship between the efficacy of opt-outs and the number of default final determinations, we again note that those comments concern due process issues which are adequately addressed by other features within the CCB system such as service of process requirements. Due process is also not a one-way street. Just treatment is also denied for a claimant who properly followed all procedural requirements if a respondent could opt out at any time past currently prescribed deadlines.

As reflected in the dockets, the CCB has been remarkably careful throughout many proceedings to ensure that respondents' due process rights are upheld. For instance, the CCB has, in the interests of justice, issued extensions to the opt-out period. Some comments point to the proceeding *Oakes v. Heart of Gold Pageant System, Inc.* to accuse the CCB of bias towards claimants and taking rigid approaches to opt-outs that result in insufficient due process protections.<sup>6</sup> But as discussed in our initial comments, what the *Oakes* proceeding actually illustrates is that the CCB went the extra mile to accommodate a respondent by reaching out to them to provide thorough information about the CCB and their rights. Additionally, in default final determination analyses, the CCB analyzes the legal issues on behalf of a defaulting respondent party and calculates damages based on applicable case law from the jurisdictions in which the claims would have been filed in federal

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<sup>6</sup> Authors Alliance, Comment on CASE Act Study at 2; Re:Create et al., Comment on CASE Act Study at 5.

court.<sup>7</sup> It is clear the CCB is invested in ensuring due process is afforded to all parties in a CCB proceeding.

Some commenters voiced concerns about the high rate of default final determinations relative to the number of other final determinations. Given the infancy of the CCB and the pendency to reach these final determinations (16 months), it is far too early to make any accurate and logically sound conclusions or predictions about the significance of the proportion of default final determinations.

### **1f: Streamlining and Reducing Complexity of CCB Proceedings**

We generally support comments that would help streamline and reduce the complexity of CCB proceedings and reiterate the recommendations made in our initial comments. Particularly regarding pendency of CCB claims, we know of creators who have been extremely frustrated with how much time it takes to move through each step of a CCB proceeding, particularly when claims reach the one-year mark with no major developments or determinations made in the proceeding. For these creators, the CCB process is so time consuming that they begin to question the value of bringing CCB claims at all. We reiterate the suggestions made in our initial comments to help streamline and reduce the complexity of CCB proceedings, particularly the pre-filing information session. This session is a great first step to improving the CCB process as it would lead to CCB claimants making a more informed decision as to whether the CCB is a desirable venue for their case and for the remedies they are seeking. For example, if a CCB claimant understands that the CCB does not grant injunctive relief, they can weigh the considerations to decide whether to file their claims with the CCB. Moreover, the information session could help reduce pendency times of a CCB proceeding by reducing the rate of preventable mistakes and saving claimants the time they would have spent fixing those mistakes.

Additionally, to reduce the complexity of the CCB, we suggest that that more flexibility be provided for when a CCB claimant or counterclaimant can elect actual or statutory damages.

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<sup>7</sup> See e.g., Final Determination, Joe Hand Promotions, Inc., v. Dawson, No. 23-CCB-0071 (Jan. 2, 2024), <https://dockets.ccb.gov/document/download/6482>; see also Final Determination, Comedy Spotlight Prod. Inc., v. Store on Sunset LLC, No. 23-CCB-0035 (Mar. 8, 2024), <https://dockets.ccb.gov/document/download/7431>.

Many individual creators do not understand the difference between actual and statutory damages and the pros and cons of electing one type over the other. We suggest changes in the law so that a CCB claimant or counterclaimant can make their election of damages after the CCB makes a finding on the amounts it would award for both statutory or actual damages. This practice already occurs within the federal court system, and the same flexibility should be afforded at the small-claims level, particularly as small claims proceedings typically involve a small number of works and actual damages could more accurately reflect the value lost by the copyright owner arising from harms caused by the infringement.

### **3a: Improving CCB Forms, Processes, and Procedures**

Our initial comments detailed ways the forms must be improved, and we note that a majority of initial comments agree that technical fixes and improving the specificity of questions in the claims forms can result in increased rates of compliant claims.

### **3b: CCB Educational Resources**

We reiterate our initial comments that it is vital to improve educational resources and offerings which can increase the rate of compliant claims and increase public and courts' awareness and understanding of the CCB and its proceedings. Increased literacy about the CCB and its purposes and goals helps both claimants and respondents make more informed decisions in whether to participate in CCB proceedings. Continued educational efforts and outreach to increase public awareness and literacy of the CCB is vital to the CCB's success.

### **10a. CCB Claims as Notice of Contesting DMCA Counterclaims**

The Computer & Communications Industry Association (CCIA) suggested amending the CASE Act so that the filing of a CCB claim is itself not sufficient for contesting counter notices under Section 512(g)(2)(C), and so only claimants who receive a notice of compliance and permission to

serve from the CCB are allowed to do so.<sup>8</sup> The Copyright Office should reject this suggestion for the following reasons: (i) to follow CCIA's recommendations would result in CCB claimants having to meet a higher bar than they currently do under the federal court system, undermining the CCB's goal of accessibility to creators with smaller copyright claims, because when a rights holder files in federal court there is no requirement that the rights holder do anything other than file the case within the ten-to-fourteen day DMCA window; (ii) most CCB claimants do not receive a notice of compliance and permission to serve process within the DMCA window; and lastly, (iii) CCIA's suggestion would entirely undermine the compliance review process and the goals of the process, which does not immediately punish individual creators for failing to make compliant claims from the very outset, but instead endeavors to make the CCB accessible to individual creators by providing the opportunity and education to file compliant CCB claims.

### **Additional Responses to Initial Comments**

At least one commentor suggested the CASE Act should be repealed because of how much it costs to run the CCB.<sup>9</sup> Given the overwhelming feedback to the NOI was that many elements of the CCB work well, and many can also be improved, the cost of running an important public benefit like the CCB has no bearing on its true value, and the Copyright Office should not consider this suggestion.

Lastly, the comments submitted by Re:Create, Engine, American Library Association, Association of Research Libraries, and R Street Institute attack the manner in which the CASE Act was enacted and in doing so engage in significant revisionist history that suggests the copyright community was divided on the CASE Act and that there was tremendous opposition to the CASE Act.<sup>10</sup> It is not worth relitigating these issues. We simply mention their comments here to caution anyone reading them now or in the future that they are not a reliable or accurate reflection of the

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<sup>8</sup> Computer & Communications Industry Association, Comment on CASE Act Study at 3-4, Docket No. COLC-2025-0002-0015 (May 8, 2025).

<sup>9</sup> Re:Create et al., Comment on CASE Act Study at 1.

<sup>10</sup> *Id.* at 1-2.



CASE Act history. We do think it bears mentioning that, to the extent there was opposition to the CASE Act, that opposition was primarily based on misguided statements that the CCB would be used as a haven for so-called copyright trolls and that years later, as we see in the initial and reply comments and elsewhere, those sky-will-fall predictions never came true.

## **Conclusion**

We thank the Copyright Office for its tremendous work and efforts in launching and running the CCB to ensure its success. We will continue to support the Copyright Office in its efforts to improve the CCB and are happy to discuss anything raised in our initial or reply comments in further detail.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Kupferschmid', with a stylized flourish extending to the right.

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