

Kluwer Copyright Blog

Assessing the U.S. Copyright Small Claims Court After One Year

Dave Hansen (Authors Alliance) and Katie Fortney (California Digital Library) · Thursday, September 14th, 2023

In June 2023 the U.S. Copyright Office celebrated the one-year anniversary of operations of the Copyright Claims Board (“CCB”), a novel new small claims court housed within the agency with a budget request for \$2.2 million in ongoing yearly costs. Though not entirely unique (e.g., the UK’s IP Enterprise court has been described as filling a similar role since 2012), the CCB has been closely watched and hotly debated (see [here](#), [here](#), and [here](#)).



Photo by Maria Oswald on Unsplash

The CCB was preceded by years of argument 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 (which can easily cost over \$100,000 to litigate), 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.

We set out to assess these arguments in light of data on the CCB’s first year of operation, which is explored in more detail in our article [here](#), forthcoming in the Journal of the Copyright Society of the USA, and the data used for this article available [here](#). The post summarizes from that article, which is itself based on an empirical review of the CCB’s first year of operations using data extracted from the CCB’s online filing system for the 487 claims filed with the court between June 2022 and June 2023.

How the CCB Works

To assess the work of the CCB, it's first important to understand how the new court works. For claimants to successfully pursue a claim, they must first pass three hurdles:

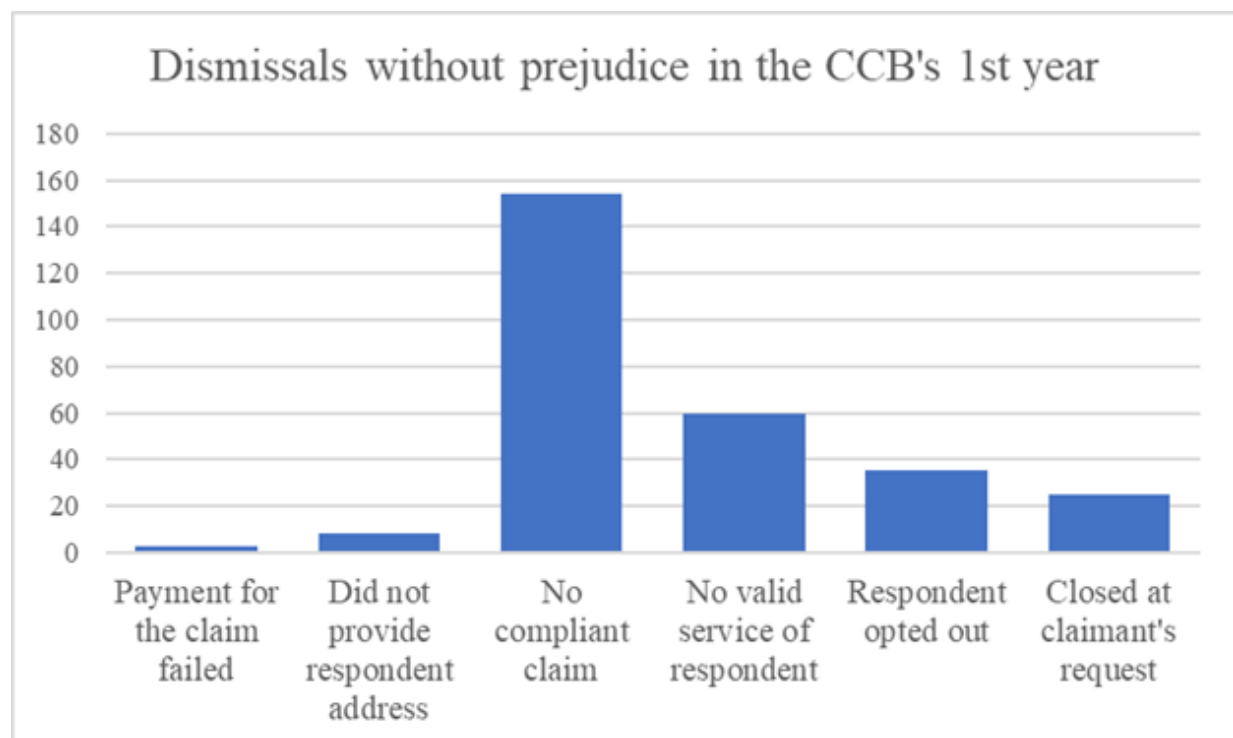
- their claim must be compliant, which means that it must include some key information regarding, e.g., ownership of a copyright, access to the work by the respondent in order to copy it, and substantial similarity between the allegedly infringing copy and the original;
- their claim must also be properly served or delivered to the respondent, following [the specific procedures that the Copyright Office has established](#);
- the claimant must wait 60 days to see if the respondent decides to opt-out of the proceedings (in which case the claimant can refile in the more expensive, but more robust federal district court).

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

CCB By the Numbers

In the first year of the CCB 487 claims were filed. However, only 43 of these 487 claims—less than 9%—had been issued scheduling orders and made it to the active phase by June 15, 2023.

Meanwhile, 302 cases had been closed, most of them dismissed without prejudice (meaning the case did not reach the merits and the claimant could choose to file again). The remaining claims were either awaiting review by the CCB, or waiting for an action from the claimant like filing an amended claim or filing [proof of service](#).



Though the CCB gives claimants multiple opportunities to amend their complaint to fix problems with it (even offering detailed and helpful suggestions on how to fix those problems), over 150 claims were dismissed because the claimant did not file a proper claim. Failure to state facts sufficient to support Access and Substantial Similarity were common problems, showing up about 110 times each in CCB orders to amend (sometimes in the same order to amend). In some cases, however, there was no way to fix the complaint. For example, 35 claims were trying to pursue cases against foreign respondents, over whom the CCB has no jurisdiction. And over 100 claims were copyright infringement claims where the claimant hadn't filed for copyright registration of the work allegedly infringed (a prerequisite to filing).

Claimants also had problems with service: 60 claims were dismissed in the first year because claimants didn't file documentation showing that they'd accomplished valid proof of service. Finally, opt-out (which some proponents of the CCB feared would undermine the court) is an important but much smaller pathway out of the CCB: it accounted for 35 dismissals.

Perhaps because copyright is technical and complicated, it may not be surprising to find that having a lawyer helps avoid dismissal: 90% of claims from represented claimants had been certified as compliant; for claims from self-represented claimants, only 46% were compliant. Unregistered claimants account for over 70% of claims filed, but only 40% of those that make it to the active phase.

Looking more closely at the claimants themselves, we do see that the CCB system is being used by aggressive and prolific copyright litigants, but we haven't seen the volume of copyright-troll litigation seen in the past in federal district courts. This may be in part because the Copyright Office took these concerns seriously and created rules to discourage it, such as limiting the number of claims a plaintiff can file within one year. The number of repeat filers was low – only nine filers had more than five claims. Those include, however, 17 claims filed by Higbee and Associates (sometimes referred to as a “troll” though the label may not exactly fit), and 20 by David C. Deal (another known and aggressive serial copyright litigant). And the only case in which the CCB had issued an order was in favor of David Oppenheimer, who has separately filed more than 170 copyright suits in federal courts.

Because the process has been so slow, it's difficult to evaluate how the CCB is working for respondents. Opponents of the CCB feared that its ability to make default determinations (issuing monetary awards when the respondent never shows up) could be a trap for the unwary. The CCB has issued only two such determinations so far (both in August 2023, for \$3000 each), and only one final determination that wasn't the result of a default, withdrawal, or settlement. So, it's too early to tell how common defaults will be. However, they will continue to be an issue to watch: in the first year, respondents were as likely to end up on the path to default as they were to participate in a proceeding.

Our Takeaways and Conclusion

On the one hand, we haven't seen rampant abuse of the system. To be sure, serial copyright litigants are actively using the CCB, but in numbers far fewer than previously seen even in federal district court. And damage awards have been modest.

However, it also seems that the CCB has not achieved its promised efficiency for small litigants—for most claimants the system seems to be too complicated and slow, with the CCB only issuing a final determination in a single case in its entire first year, and the vast majority of claims dismissed for failure to adequately comply with CCB rules. The CCB has already gone to great lengths to explain the process and to help complainants correct errors early in the process. It may be hard for the CCB to adjust its rules to lower barriers unless it is willing to sacrifice basic procedural safeguards for respondents (something we think it should not do). Despite the hope of advocates and legislators and the admirable efforts of those working at the CCB, the early results lead us to think that it may just be that complex copyright disputes are ill-suited for a self-service small claims tribunal.

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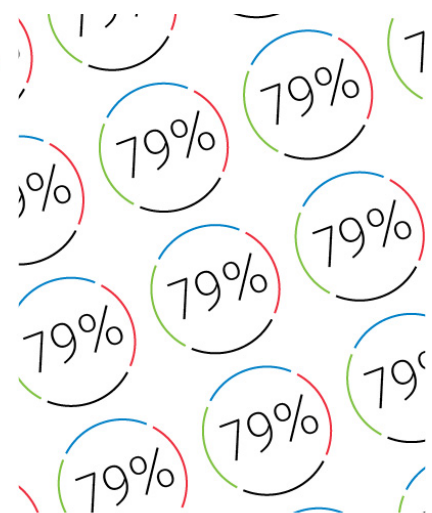
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