BEFORE THE
U.S. COPYRIGHT OFFICE

WASHINGTON, D.C.

REQUEST FOR ADDITIONAL COMMENTS REGARDING STUDIES ON REMEDIES FOR SMALL COPYRIGHT CLAIMS

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COMMENTS OF THE NATIONAL PRESS PHOTOGRAPHERS ASSOCIATION

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SUMMARY

As both staff photographers and independent photojournalists, members of the National Press Photographers Association (NPPA) are, in many cases, small business owners who create original intellectual property for publication and broadcast in all media. Our members' images and video help Americans — and others — better understand the world in which we live. As the news media have trimmed staff, more and more of our members are now working as independent contractors, licensing their images and footage for editorial use. Copyright infringement of this material has contributed to a devastating economic loss for our members. It takes a direct economic toll on these small business owners, who must shoulder the burden of policing infringements while at the same time seeking and fulfilling assignments, working on self-initiated projects and maintaining all of the tasks of running a 24/7 business. For many, losses due to infringement have been overwhelming.

Visual journalists work on extremely tight deadlines covering events of great national and international importance, including political campaigns, wars, breaking news and sports. The images they create are of interest to a large number of publishers and individuals. Those images are widely infringed as a matter of course. Today, a visual journalist has the capability to transmit an image within moments of taking it. That image can be posted immediately to the Internet by the photographer or the photographer's client. Because of the enormous public appetite in the subject matter documented by visual journalists, the world takes immediate note of a newsworthy or interesting image or recording, and the theft begins.

Within seconds of its creation that image may be downloaded and re-posted becoming "viral" in short order. It is absurdly easy for a digital image to be stripped of its metadata, preventing law-abiding publishers from identifying the rights holder or being able to legally license the work. Under increased competition some publishers use a photo without permission under the premise of "act first, apologize later." As part of that cost/benefit analysis, publications weigh the probability of discovery and resulting litigation against the time and cost involved in obtaining prior permission and licensing.

That ever-increasing misappropriation of member-created content also threatens the country's public health and safety by undermining a profession America has traditionally relied upon to provide the public with compelling images and stories. Most visual journalists view our profession as a calling. No one really expects to become wealthy in this line of work, but most do expect to earn a fair living, support themselves and their family, and contribute to society. Copyright infringement reduces that economic incentive dramatically. This in turn may abridge press freedoms by discouraging participation in this field. It also devalues photography as both a news medium and art form, thereby eroding the quality of life and freedom of expression that are part of the foundation of this great nation.

COMMENTS OF THE NATIONAL PRESS PHOTOGRAPHERS ASSOCIATION

INTRODUCTION

Founded in 1946, the National Press Photographers Association (NPPA) is a 501(c)(6) non-profit professional organization dedicated to the advancement of visual journalism, its creation, editing and distribution in all news media. The NPPA encourages visual journalists to reflect high standards of quality and ethics in their professional performance, in their business practices and in their comportment. The NPPA vigorously promotes freedom of expression in all forms. Its more than 7,000 members include still and television photographers, editors, students, and representatives of businesses serving the visual journalism industry.

For visual journalists, copyright infringement is a pernicious problem. Not only has it reduced the profitability of our clients, resulting in layoffs and budget cuts, but has also created overly burdensome legal costs which act as an impediment to pursuing legal remedies in federal court. Too often, rights holders find it difficult to justify enforcement — and difficult to find or afford an attorney willing to take their cases.

On behalf of the NPPA, we again thank the Register and Chairman Smith for this opportunity to provide our comments regarding the critical need for alternative proceedings that would improve the resolution of small copyright claims. While there are other areas of concern to visual journalists, being able to protect their intellectual property rights is of paramount importance if they are to remain in business. First Amendment protections are undermined when those who create journalistic works, relied upon to inform the nation, are unable to properly and affordably shield those images from widespread copyright infringement; further eviscerating their ability to earn a living.

Subjects of Inquiry

Assuming a system for small copyright claims is created:

1. Nature of tribunal/process. Provide a general description of the small claims system you believe would work best. Should it be a streamlined process within the existing Article III court structure, or an alternative process administered by the Copyright Office, the Copyright Royalty Judges, and/or some other type of tribunal? If an alternative process, should it include a right of review by an Article III court? Should the process be adjudicatory in nature, or instead consist of, or include, arbitration or mediation, or be some combination of these?

In a perfect world the NPPA would prefer a new branch of Article III courts within the federal system. Some aspects of that new structure would be: use of a form complaint, limited discovery, incentives for a stipulated a bench trial before a magistrate, streamlined and expedited scheduling orders and a limit on damages. That said the NPPA recognizes the inherent political, financial and practical difficulties in creating such a new Article III court system. Accordingly, NPPA believes that an alternative worth pursuing, which combines effectiveness and a high likelihood of success, would be a process overseen by an administrative agency in the form of an Article I court. Our comments below are based on that assertion. The NPPA emphasizes that it will likely support any system that the Copyright Office proposes, as we believe the current situation is untenable and nearly any solution would be an improvement. The NPPA has consulted with some of our sister organizations, including the American Society of Media Photographers (ASMP), the Graphic Arts Guild (GAG) and the American Photographic Artists (APA). We are aware of their proposals and stand ready to support whichever system the Copyright Office chooses to endorse.

The NPPA has researched the best options for such an Article I court and have determined several things. To be constitutionally valid, it should include a right of review by an Article III Court. In order for the Copyright Office to run the system, it appears that the Copyright Office would have to pursue becoming an administrative agency, which would require Congress to amend the statutory purpose of the Copyright Office. Given the deep history and importance of the Copyright Office, this may be an unintended result not to mention an extremely difficult task. Therefore, the NPPA proposes establishing an ancillary administrative agency operating under the aegis of the Copyright Office. For the purpose of these comments this new agency will be referred to as the "Intellectual Property Administrative Agency" ("IPAA" or "the agency") The IPAA would be authorized to conduct hearings on copyright small claims in an efficient and cost-effective manner.

One caveat of creating an administrative agency court system is that these Article I courts may only entertain issues involving public rights. As public rights are statutory in basis, Congress's creation of the IPAA would need to include a provision making the IPAA a party in all copyright small claims. As such, the IPAA would serve as a "silent party" with all plaintiffs who bring copyright infringement claims before its court. The IPAA would not become an active party in a claim unless and until an agency court decision is challenged by a party. In the event that a small claims court decision was challenged by the losing party, the IPAA would then be required to act as an active party in defending that claim before an Article III court (because the

challenging party would be appealing the small claims court's decision, which amounts to challenging the IPAA itself). This requirement is premised on the basis that the protection of copyright is a public right (because the public benefits culturally, politically and educationally from the protection of copyrights) and the need for copyright protection is asserted in the Constitution.

In order to pass Constitutional review, IPAA decisions must be subject to appeal by an Article III court while arbitration could not be made mandatory. The court will be limited in scope so as to avoid usurping Article III judicial powers, although it is important that inherently related claims, such as breach of contract, be permitted to be heard.

Alternatively, the copyright office may utilize existing court structure, but in that event the NPPA proposes that litigation of these "small claim" matters be simplified and streamlined. As outlined in the NPPA comments of January 17, 2012, a motion for disposition as a small claims case should be structured to provide among other things: timely scheduling orders; a stay or limited scope of discovery and expedited time in which to respond.

2. Voluntary versus mandatory participation. Explain whether the small claims process would best be structured as a voluntary or mandatory system. Should a prospective plaintiff with a claim that meets the small claims criteria retain the option of choosing the existing federal district court process instead? Should a defendant be permitted to opt out of the small claims forum in favor of federal district court? If one or both parties' participation in the small claims process is voluntary, what incentives--such as damages limitations, attorneys' fees awards, or other features--might be instituted to encourage voluntary participation by plaintiffs and/or defendants?

The NPPA believes that participation in the small claims process should be voluntary for plaintiffs meeting the established criteria. Once that forum is chosen defendants would not be permitted to opt out or seek to have the case removed to federal district court. Based upon the foregoing reasons The NPPA believes that strong incentive already exists for potential plaintiffs to utilize the small claims alternative. Mandatory plaintiff participation would only be counter-productive. Assuming that jurisdictional requirements are met – defendants should be compelled to participate in the process. Providing an opt out would only undermine the small claims system by allowing deep- pocket defendants the opportunity to force plaintiffs back onto the same costly federal district court litigation track that this proposal is seeking to remedy..

The NPPA also proposes that defendants compelled to participate in small claims court be entitled to assert all defenses currently available. Alternatively, any deviations from these prerequisites would necessitate concurrent incentives/disincentives. For example if a defendant had the ability to remove the case to federal district court based upon certain criteria (a counter-claim or defense not available in the small claims court) such removal would trigger a requirement for mandatory payment of plaintiffs' attorneys fees by the defendant should grounds for removal be denied.

3. Arbitration. Explain what role, if any, arbitration might play in the small claims process. Should matters be decided through some sort of specialized arbitration? Would such arbitration be binding? If so, how would the arbitrator's award be enforced

and under what circumstances, if any, could it be set aside (and how might the Federal Arbitration Act, 9 U.S.C. 1 et seq., apply)? How would arbitrators be trained and selected? Are there any existing arbitration models that might be especially useful as a model for arbitrating small copyright claims?

While the small claims system might be structured as some sort of arbitration-like system, the NPPA does not believe that a separate arbitration requirement/alternative should be a part of the system. There is growing concern that arbitration can be as onerous, time consuming and costly as going to trial and its availability would undermine the intent and purpose of the small claims system. For a small copyright holder, arbitration would be too time-consuming and costly to pursue. As previously stated, mandatory arbitration would not pass Constitutional muster for an Article I court. .

4. Mediation. Explain what role, if any, mediation might play in the small claims system. Should parties be required to participate in mediation before proceeding with a more formal process? Would it be useful to offer a copyright-focused voluntary mediation service? How would mediators be trained and selected?

Non-binding mediation could be a useful part of the system and should be offered as long as it is structured in a way that does not add significantly to the burden of the litigation. See further explanation in section 17 below. Any mediation should not require an appearance of more than half a day and appearance should be permit by telephonic or video conference.

5. Settlement. Please comment on how the small claims process might be structured to encourage voluntary settlements in lieu of litigated proceedings. Should a plaintiff be required to make a settlement offer to a prospective defendant before proceeding with a claim? Should the defendant be required to respond?

The NPPA believes that mandatory settlement offers by plaintiffs and required defendant responses would be very useful in spurring a quick resolution of the dispute; but failure to accept an offer or response should not be penalized. If the small claims system is efficiently designed, a dispute over the amount owed (a common problem in copyright claims) could be adjudicated if necessary. Another proposal for encouraging voluntary settlements would be for the IPAA to provide settlement agreement forms to be used by *pro se* litigants along with instructions on the use of such forms. .

6. Location of tribunal(s). Could the small claims tribunal be centrally located, or should there be regional venues? If centrally located, where should it be? If in multiple locations, what should those be?

If there is only one tribunal, then we recommend the proceedings be structured in a way that they can be conducted by paper and perhaps by video conference if needed. The logical location for a single tribunal would be Washington, D.C. due to its proximity to the Copyright Office. Otherwise it seems wise to locate tribunals in major metropolitan areas such as New York, Washington D.C., Atlanta, Houston or Austin, Los Angeles and Chicago. New York and Los Angeles are major media hubs and centers of creative activity. Six of the twenty largest U.S. cities are in Texas. Atlanta is a large southern hub and Chicago is a central location for those

located in the Midwest. Miami, northern California and/or Seattle might be useful additions as well because of their relationship to the creative community. A limited number of small claims tribunals would help to ensure that adjudicators be fully versed in copyright law. Regardless of the number or the location of the venues the NPPA believes it is critical for the success of the program that filings are done electronically with an opportunity for appearance by telephonic or video conferencing.

7. Qualifications and selection of adjudicators. Who should the adjudicators be? If the small claims system is a streamlined process within the Article III court structure, is there a role for magistrate judges or staff attorneys? If it is an alternative process, what qualifications should the adjudicators have, and how should they be selected?

The adjudicators should be attorneys well-versed in copyright law. Operation under an Article III court structure would require adjudicators to be selected by the executive branch with legislative confirmation. Properly trained magistrates or staff attorneys could also be used effectively depending on their existing caseloads. If the tribunals are created under Article I the IPAA could be empowered to make the selections using the same criteria. In either case initial and ongoing training of adjudicators would be imperative to the success of any such initiative.

8. Eligible works. Are some types of copyrighted works more amenable to, or in need of, a small claims system than others? Should the small claims process be limited to certain classes of works, for example, photographs and illustrations, or should it be available for all types of copyrighted works?

The NPPA strongly believes that visual images (photographs and audio-visual recordings) should be included in the class of works eligible for small claims systems. Cases involving these works should be fairly straightforward as the infringement usually involves the reproduction of an identical and self-evident copy of the image(s). The NPPA takes no position as to whether other works are eligible for consideration so long as their inclusion does not unduly encumber the operation of the system.

9. Permissible claims. Discuss the types of claims that could or should be eligible for the small claims process. For example, should the process be limited solely to claims of infringement, or should it be possible to bring a related claim arising out of the same dispute, such as a Lanham Act claim? What about an infringement claim that is tied to a contractual issue, as in the case where the defendant is alleged to have infringed by exceeding the terms of a license? Should issues of copyright ownership be amenable to decision through the small claims process? What about a user's claim that a takedown notice contained a material misrepresentation in violation of the Digital Millennium Copyright Act ("DMCA"), 17 U.S.C. 512(f)?

To best serve our members, the NPPA believes that infringement claims involving contractual agreements must also be eligible to be heard under the small claims process so long as they have a common nexus to the copyright claim. While some photography infringements are purely theft, many involve a client exceeding a license. In addition DMCA claims should be considered. The DMCA allows for claims involving altering copyright management information,

a common event in photographic infringement *see* 17 U.S.C. §1202 (2006). Although this area of the law is not well developed, we think it will grow as the essential need for accurate metadata in digital gains greater importance.

Lanham Act claims would not be appropriate for consideration as they would complicate what should be a streamlined process. However, the small claims system should be structured in a way that any counter-claims can be handled to prevent the defendant from motion practice that would remove the suit from the small claims system. It cannot be overstated that the whole point of these proposals is to remedy the imbalance that makes copyright claims inaccessible for many photographers – as they are often opposed by large corporations with limitless resources and the resolve to complicate and protract a case in hopes that the plaintiff runs out of patience, money or both.

10. Permissible claim amount. Assuming there would be a cap on the amount of damages that could be sought by a plaintiff or counterclaimant in the small claims process, what should that amount be? What is the rationale for the cap proposed? Should there be any independent analysis of the damages claim by the tribunal? Should it be permissible for a copyright owner to pursue multiple claims in the same proceeding provided that, either individually or, alternatively, in the aggregate, they do not exceed the cap? What if, during the course of the proceeding, additional infringements are discovered such that the plaintiff's potential damages exceed the cap? What if a defendant asserts a counterclaim that exceeds the cap?

It is our belief that the majority of small copyright claims will actually fall well under $10,000. However, most copyright attorneys require a retainer in that amount with final costs of bringing an infringement claim in federal court frequently rising above $50,000. Therefore, the NPPA supports a damages cap of $10,000 - $25,000 for cases brought under this new system. The Intellectual Property Law Section of the American Bar Association conducted a survey of IP attorneys. Of 27 respondents, 16 said that litigation of an uncomplicated copyright claim under the current system is economically justifiable where there is a likely award of over $40,000. The rationale for the proposed cap is the need to limit these cases to actual "small claims."

Any award should be based upon the evidence presented at trial and not determined by independent analysis of the tribunal. It should be the plaintiff's sole prerogative whether to pursue multiple claims against the same defendant in one proceeding. That determination should be based upon a cost/benefit analysis with the understanding that should the plaintiff prevail, his award would be capped at the statutory limit regardless of the number of infringements. During the discovery period the defendant would be obligated to disclose any additional infringements or be liable for monetary sanctions (possibly exceeding the cap).

In this manner the tribunal would be permitted some discretion to remedy a small claim cap shortfall in cases where after the discovery period additional infringements are discovered that had not been disclosed by the defendant. The NPPA proposes that defendants counterclaim awards should also be subject to the cap except in cases where defendants are able to prove that the plaintiff brought a frivolous suit. In those situations the plaintiff would also be subject to monetary sanctions that might exceed the award cap. In effect the sanctions would act as both a sword and shield, in promoting full disclosure during discovery while deterring frivolous suits.

11. Permissible defenses and counterclaims. Discuss what limitations, if any, there should be on the types of defenses and counterclaims that could be decided through the small claims process. For example, could a defense of fair use or independent creation be adjudicated through the process? What about defenses or counterclaims arising under the DMCA, such as an assertion that the plaintiff's claim is subject to one of the safe harbor provisions of 17 U.S.C. 512(a) through (d), or that a takedown notice violated 17 U.S.C. 512(f)? To the extent such defenses or counterclaims were not subject to adjudication through the small claims process and would require removal of the action to federal district court, would this provide defendants with a means to "opt out" of the small claims system in a substantial number of cases?

As previously stated NPPA proposes that defendants compelled to participate in small claims court would be entitled to assert all defenses and counterclaims including fair use, independent creation or those claims arising under the DMCA. Should the defendant seek removal to federal district court s/he would then be liable for mandatory payment of plaintiffs' attorneys fees and possible monetary sanctions should grounds for removal be denied. These rules would preserve the defendant's rights while at the same time acting as a deterrent against a "constructive opt out."

12. Registration. Should registration of the allegedly infringed work be required in order to initiate a claim through the small claims process or, alternatively, should proof of filing of an application for registration suffice? Should the process permit claims to be brought for unregistered works? Should the registration status of a work affect the availability of statutory damages or recovery of attorneys' fees, assuming such remedies are available through the small claims process?

The NPPA believes it is acceptable to require registration of the allegedly infringed work as a pre-requisite for bringing a small claim but assert that proof of filing of an application for registration would also satisfy the requirement. We are concerned that potential claimants may be pressured into filing "rush" registrations, which will increase the cost of bringing an infringement claim and may impose additional claims processing burdens. The Copyright Office now charges $760 for expedited processing of registration (*see Copyright Office Fees, Circular 4,* U.S. Copyright Office, *available at* http://www.copyright.gov/circs/circ04.pdf). While the current turnaround rate for registration responses is fairly quick, we are keenly aware that budgetary cuts could easily cause problems in this area in the future. We believe that it would be counterintuitive for copyright holders to be required to pay excessively high registration costs in order to initiate a small claim.

The NPPA also strongly asserts that claims for works which have been infringed prior to registration should not be barred from the small claims process so long as proof of filing of an application for registration has been timely submitted. As previously stated, many visual journalists work under increasingly short deadlines and sometimes insurmountable time constraints making registration an additional and often unachievable task. Registration before publication for most is simply an impossibility. While group registration and the 90-day grace period have improved this situation, our members still face many obstacles to registering their work.

We ask the Copyright Office to recognize that many unregistered works are infringed, at the same time that we acknowledge the goal of Congress and the Copyright Office to encourage registration. While we understand that it would not make sense to permit claims brought for unregistered works we must point out that the "registered before infringement" requirement is part of the current problem we are attempting to remedy. Should the Copyright Office change its position the NPPA would enthusiastically support extending the reach of the small claims process to include unregistered works so long as the filings included certain safeguards such as an attestation and/or a *prima facie* showing of infringement to protect against frivolous claims.

NPPA also proposes that recovery of attorneys' fees by the prevailing party be permitted as well as the availability of a modified small claims statutory damages award for plaintiffs who have made a good faith effort to settle the case.

13. Filing fee. Discuss the merits of requiring a filing fee to pursue a claim through the small claims process and the amount, if any, that would be appropriate. Should the filing fee vary with the size of the claim? Are there existing standards that might be informative?

The NPPA believes that a filing fee is appropriate in order to offset court costs as well as to limit frivolous filings. The current fee for filing a civil action in federal court is $350, which we view as high for a small claim and would be a distinct disincentive to a *pro se* plaintiff. We propose a sliding fee of $100 for claims below $10,000 increasing incrementally to $350 for claims at the $25,000 limit. Regardless of the fee, we believe that a prevailing party would be entitled to recover the filing fee from the losing party thus creating another incentive for participation in the process.

14. Initiation of proceeding. Explain what would be required to initiate a proceeding. Should some sort of attestation and/or a *prima facie* showing of infringement be required of a copyright owner with the initial filing? Should a copyright owner need to establish a *prima facie* case of infringement before the defendant is required to appear and, if so, how would it be determined that this requirement had been met? By what means would the defendant be served or otherwise notified of the action? Should a defendant that is sued in federal district court for copyright infringement be permitted to transfer the matter to the small claims tribunal if the plaintiff's alleged damages are within the small claims damages cap? Should a party who has been put on notice of an alleged infringement be able to initiate an action by seeking a declaratory judgment of no infringement?

While the NPPA does not propose a *prima facie* showing/attestation of infringement by the plaintiff as a filing requirement, we agree that it would help expedite the proceedings and provide fair notice to the defendant. Because we contend that copyright infringements of most photographs are self-evident we do not believe such a requirement would hamper the ability of visual journalists to bring a claim. If a *prima facie* showing/attestation is required, there should be a mechanism for allowing specified and limited discovery at the discretion of the tribunal to support that finding, especially in cases where the plaintiff has a good faith belief that an infringement has occurred, but has been unable to obtain a copy of the infringing work; or in situations where there is a license or sub-license held by the defendant which the plaintiff does not have access to.

We are also aware of many situations where the scope of the infringement is not clear to a copyright holder until discovery which is why we advocate for a small claims scheduling order that would expedite and streamline that process.

Service upon defendants should adhere to the rules already established for current copyright infringement cases under the FRCP. Defendants sued in federal district court for copyright infringement should be permitted to transfer the matter to the small claims tribunal so long as the alleged damages are within the small claims damages cap. Such transfers would help bolster the jurisdictional reach of this system and encourage participation; although as noted above, plaintiffs do not always know the extent of the infringement, thereby requiring some limited discovery to make that determination as well as establsihing propounded damages. Additionally, a party who has been put on notice of an alleged infringement should be permitted to seek a declaratory judgment of no infringement before the small claims tribunal, so long as the copyright holder retains the right to remove the matter to federal court if it is determined that the amount in controversy is above the damages cap.,

15. Representation. Describe the role of attorneys or other representatives, if any, in a small claims copyright system. Should individual copyright owners be permitted to be represented by an attorney and/or a non-attorney advocate, in addition to appearing *pro se*? Should corporations and other business entities be permitted to appear through employees instead of attorneys?

The NPPA believes that parties should be permitted the choice to appear *pro se* or be represented by counsel, although corporations would continue to be represented by attorneys. The NPPA does not support the idea of allowing non-attorney advocates to represent either party in small claims litigation. It is difficult enough to find attorneys well-versed in copyright law and permitting non-attorneys to represent plaintiffs or defendants would lead to the litigants being poorly advised, as well as encouraging non-attorneys to provide legal advice. The NPPA has been privy to many presentations in various forms on the issue of copyright. Invariably, when a non-attorney is presenting legal information, their presentation contains errors on the law. In addition, there are many important legal consequences to accepting settlement terms related to copyright and we believe it is important that the parties be advised by representatives who have the experience and knowledge to provide complete and accurate information. We do not believe there is any rationale that would justify allowing non-attorneys to litigate these cases.

We envision as small claims systems of reduced costs including attorneys' fees which may lead to a form of specialized legal practice as well as the possibility of predictable flat rates. In those *pro se* cases against, or commenced by, corporations (which must by their nature be represented by attorneys), it would also be unfair to force the other party to move forward without proper legal.

A question remains whether there would be a requirement for separate bar admission to the copyright small claims system. It is our view that an attorney licensed in any state in the U.S. should be admitted to practice in the system. Alternately, any attorneys admitted to practice in federal court should be permitted.

16. Conduct of proceedings. Describe how the small claims proceeding would work. Could the process be conducted by paper submission, without the requirement of personal appearances? Should the tribunal have the option to hold teleconferences or videoconferences in lieu of personal appearances? Should non-party witnesses be permitted to participate and, if so, by what means? Should expert witnesses be permitted? Should the tribunal have any sort of subpoena power? Should there be an established time frame for adjudication of the matter?

The NPPA believes that in most cases, the process could be conducted by paper submission, given that most cases are fairly straightforward; as long as the case load permitted the adjudicators sufficient time to review the cases. One concern with such a process is that adjudicators would be forced to make determinations without the opportunity to research and review the case thoroughly. A system which included staff attorneys would improve the chances that a paper submission system would be successful. This would also streamline and expedite the process while reducing costs.

In addition, an electronic filing system should also be offered. An e-filing system for small claims could provide required forms, answer F.A.Q.s, and make available other documents needed for filing by claimants and attorneys. Although there would be an initial start-up cost, an e-filing system would, in the long term, be more secure, efficient, and cost-effective for the parties and the Copyright Office in handling copyright small claims. It is not uncommon now for courts to require electronic filing and we would not oppose electronic filing being made mandatory.

Given that some cases may require more than motion practice, parties should be able to request a hearing with the option to hold teleconferences or videoconferences in lieu of personal appearances,

We envision a process as follows:

1) Plaintiff files a petition, including attachments to the petition making a *prima facie* showing, or demonstrating part of a *prima facie* showing and a need for specified and limited discovery. The petition should also include either proof of registration or proof of filing of an application for registration.

2) In a timely manner (perhaps 30 days), the court must determine whether specified and limited discovery should be granted. The defendant should have 30 days to comply.

3) Pursuant to an expedited scheduling order, the defendant files an answer and response, which should include more than just a general denial and affirmative defenses. It must include details of any defenses and attachments with evidence demonstrating those defenses, or a request for specified and limited discovery. If a request for specified and limited discovery is granted the plaintiff has 30 days to comply.

4) After receipt of the answer and response, the plaintiff may file a reply.

5) After the time period for filing a reply has expired, the court could order non-binding mediation, which can be held by video conference or telephone. The non-binding mediation could be run by the court unless both parties agree to upon a mediator, who must be certified by the copyright office or by the IPAA. The mediation must be held within 30 days, unless caseload conditions at the copyright office prevent it.

6) If the mediation does not resolve the case, either party may file a motion for a hearing.

7) If either party requests a hearing, it shall be granted. The court would be required to rule within 30 days of the hearing.

8) If neither party files a motion for a hearing, the court may determine the case based on the submitted pleadings. The court shall rule on the pleadings on or before 30 days after the time for filing a motion for a hearing has expired.

9) The prevailing party would have 14 days to file a motion for an award of attorneys' fees.

10) The parties would have 30 days to appeal the ruling of the small claims court to a supervising Article III federal court.

17. Discovery, motion practice and evidence. Explain what types of discovery, if any, should be permitted in the small claims system. For example, should depositions (either oral or by written question), requests for production of documents, interrogatories and/or requests for admission be permitted and, if so, to what extent? Should motion practice be allowed and, if so, to what extent? What types of testimony and/or evidence should be accepted (e.g., written, oral, documentary, etc.), and what standards of admissibility, if any, should apply?

Discovery should be limited and could include interrogatories, requests for admissions, and limited requests for production of documents relevant to the issue of liability and damages. Testimony should be in affidavit form unless a hearing is granted, in which case oral sworn testimony could be allowed. However, evidence submissions should be narrowly tailored to the issues of liability, defense to liability and damages.

18. Damages. Describe the damages that would be available through the small claims system. Should damages be limited to actual damages, or could statutory damages also be awarded? If statutory damages were available, should they adhere to the existing statutory damages framework of 17 U.S.C. 504(c) (subject to any cap applicable in the small claims system), or could an alternative approach be adopted, such as a fixed amount to be awarded in the case of a finding of infringement?

The existing statutory damages structure is too high for to apply in small claims cases. The NPPA supports a tiered statutory damages system or, in the alternative, a minimum damages floor so that successful plaintiffs who have made a good faith settlement offer and participated in mediation can obtain a minimum amount of relief.

19. Equitable relief. Describe the equitable relief, if any, that should be available through the small claims system. Should the small claims tribunal be able to grant declaratory relief, issue an injunction to halt the infringing use of a work, impose license terms (such as for the continued distribution of a derivative work) and/or award other forms of equitable relief?

There are no constitutional barriers to an Article I court issuing injunctive relief and a copyright small claims tribunal should be able to issue equitable and financial relief. For some small claims holders, an injunction may be just as important as monetary damages.[1] As such, a copyright small claims court should, like any other administrative agency or Article III court, be able to award monetary damages, equitable relief, or a combination of both depending upon the circumstances of the case and requests for relief.

20. Attorneys' fees and costs. Explain how attorneys' fees and costs might be handled within the small claims system. Should a prevailing plaintiff and/or defendant be entitled to recover its attorneys' fees and costs? If so, should such fees and costs be awarded according to the standards that have evolved under 17 U.S.C. 505, should they be awarded as a matter of course, or should other criteria apply? Should there be a limit on the amount of attorneys' fees that could be sought and/or awarded in the small claims system?

Given that standards for the awarding of attorneys' fees and costs already exist under 17 U.S.C. §505; the NPPA supports continuing the use of permitting such awards in the small claims system. The NPPA would not oppose a reasonable limitation on attorneys' fees for the small claims system as long as 1) they are determined by surveying the number of hours typically spent on adjudicating such a claim, multiplied by a reasonable hourly rate, 2) they are set by the Copyright Office or the IPAA and subject to regular review, as opposed to being set by statute, and 3) the adjudicator has the discretion to deviate from the limit based on violations of discovery, etc.

A limitation on the amount of recovery of attorneys' fees would be in keeping with providing claimants with predictability regarding the risks of bringing a claim and permitting claimants to represent themselves *pro se*, as many claimants may be unable to afford a retainer fee or the damages sought might make using an attorney cost prohibitive. Copyright holders should be encouraged to bring small infringement claims, rather than thwarted by fear of being assessed unreasonable attorneys' fees in the event that they do not prevail on their claim. A balance between reasonable but realistic fees could provide both the needed limitation of potential risk for claimants and an amount sufficient to entice attorneys to take a case.

21. Record of proceedings. Describe the record of proceedings that should be kept by the tribunal. Should decisions of the tribunal be rendered in writing? Should they include factual findings, legal explanation and/or other analysis? Should the records be publicly available?

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[1] *See e.g., SPLC Sues Anti-gay Hate Group Over Defilement of Couple's Engagement Photo*, SOUTHERN POVERTY LAW CENTER, September 26, 2012, http://www.splcenter.org/get-informed/news/splc-sues-anti-gay-hate-group-over-defilement-of-couple-s-engagement-photo.

Decisions by the tribunal should be rendered in writing, particularly as a party may wish to appeal that tribunal's decision to an Article III court. Ideally, a tribunal's decision should stand as a regular judicial opinion, citing evidence and a legal basis. A tribunal's opinion should be understandable to the parties, particularly given that one or both may lack the assistance of legal counsel. Records of the tribunal, as well as related pleadings, should be public and available on the agency's website. These records will assist other copyright litigants and will also serve as notice to the general public about copyright infringement by providing the names and identifying information of individuals and entities which have been found liable for copyright infringement. In line with the NPPA's commitment to open government principles the hearings themselves should be open to the public and recording of the proceedings should be permitted.

22. Effect of adjudication. Explain the nature and effect of a small claims adjudication. Should a decision of the small claims tribunal constitute a final and enforceable judgment (subject to any further review or appeal)? Should it be published and/or carry any precedential weight? Should it have any res judicata or collateral estoppel effect, or should it be limited to the specific activities at issue and parties in question?

A decision of the tribunal should be final and enforceable, though subject to appeal by an Article III court. Regardless of whether the small claims court is established as an Article I or Article III court, opinions should be published and carry precedential weight. This could be particularly useful if the issue at hand is one that is commonly heard in the copyright small claims court.

23. Enforceability of judgment. With respect to monetary judgments and any equitable or other relief awarded by the small claims tribunal, through what means would such remedies be enforceable? Should there be any special procedures for enforcement? Are there existing judicial or nonjudicial resources that might be useful in this regard?

An administrative agency court technically cannot enforce a judgment because the enforcement of judgments is a violation of powers that, per the Constitution, can only be used by Article III courts. However, adjudicatory decisions rendered by agency courts are typically viewed as having the force of law. For this reason, a party to a small claims tribunal who has a monetary judgment issued in their favor becomes a creditor just as in any other court proceeding and it is then up to the prevailing party to pursue enforcement of the judgment through whatever mechanism is available in the appropriate jurisdiction. While it should not be the responsibility of the tribunal to enforce the decision, a request for treble damages (even if they exceed the cap) should be available as a compliance incentive.

24. Review/appeals. Should there be a right of review or appeal and, if so, under what circumstances, and by or to what body or court? What would be the appropriate standard of review (e.g., de novo, clearly erroneous, abuse of discretion, etc.)? Aside from any applicable filing fee, should there be any conditions for seeking review (such as posting of a bond)? Should a prevailing party in a review or appeal process be entitled to recover its attorneys' fees or costs?

A right of appeal to an Article III court is mandatory in order for the tribunal to withstand Constitutional scrutiny. This Article III court would logically be a federal district court. If a

small claims court is established as an Article III court, then that court would automatically permit litigants the opportunity for appeal. It is typical for an agency decision to be reviewed under an abuse of discretion standard. We support whatever is practical under existing legal precedent, for example, whether the agency had acted within the intent of the statute authorizing the agency's power, or in cases where the agency acted in a manner that is reasonable under the statute.[2]

25. Group claims. Should multiple copyright owners or a trade association or other entity acting on behalf of copyright owners be permitted to pursue multiple infringement claims against a single defendant, or multiple defendants, in a single proceeding? Should there be specialized rules of standing or procedures to permit this within the small claims system?

Although the NPPA does not typically bring legal claims on behalf of copyright owners, we support permitting multiple copyright owners or entities acting on behalf of groups of copyright holders to pursue multiple claims against one or more defendants. If the group litigation process were functioning well, we would investigate participating in it. An administrative agency court can, as seen in the FTC's agency courts, entertain actions brought by large groups of plaintiffs or entities representing large plaintiff groups. In order to permit this, it may be necessary to provide an exception to the jurisdictional limit in such a case or to make the jurisdictional limit a per-plaintiff limit.

26. Frivolous claims. How might the small claims system deter frivolous and unwarranted filings? What measures--such as the awarding of attorneys' fees or other financial sanctions, or the barring of copyright owners that have repeatedly pursued frivolous claims from further use of the small claims process--might be taken to discourage the assertion of bad faith or harassing infringement claims, defenses and counterclaims?

One way to deter frivolous filings in the small claims system is awarding attorneys' fees to the prevailing party as well as imposing monetary sanctions. However, it is important that such an award require a specific finding of a frivolous claim, so as not to automatically penalize a losing plaintiff.

27. Constitutional issues. Comment on whether a small claims system might implicate any one or more of the following constitutional concerns--or any other constitutional issue--and, if so, how the particular concern might be addressed:

- **a. Separation of powers questions arising from the creation of specialized tribunals outside of the Article III framework, including how a right of review by an Article III court might impact the analysis;**
- **b. The Seventh Amendment right to have a copyright infringement case tried to a jury, as confirmed in *Feltner v. Columbia Pictures Television, Inc*., 523 U.S. 340 (1998);**

[2] *See, e.g., Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc*., 467 U.S. 837 (1984).

c. Constitutional requirements for a court's assertion of personal jurisdiction, in particular when adjudicating claims of a defendant located in another state; and/or

d. Due process considerations arising from abbreviated procedures that impose limitations on briefing, discovery, testimony, evidence, appellate review, etc.

A. An Article I court could be created that would not trigger separation of powers issues provided that the Article I court permits plenary review by an Article III court. The Article I court would need to act within the limited powers of the establishing statute (*i.e.*, a small claims court created for copyright claims would exceed its scope of authority by entertaining real property claims), and not be granted powers that are the exclusive province of Article III courts (an Article I court cannot engage in practices such as issuing a writ of mandamus, enforcing a judgment, or convening a jury).

Although an Article I court must permit review of its decisions by an Article III court, such review is seldom likely to overturn the agency tribunal's decision. Under the concept of *Chevron* deference, it is established law that an Article III court will defer to an agency court's decision provided that the agency court acted in accordance with its statutory intent (*i.e.*, the agency court follows the direction and scope set forth in its statute), or that the agency court acted under a reasonable interpretation of its statute.

B. Administrative agency courts, such as Article I courts, are not required to provide jury trials to claimants who seek monetary damages. In addition, the parties are not denied the right to a jury in a literal respect because of the ability to appeal to an Article III court, and with that, request a jury trial.

C. Constitutional requirements for personal jurisdiction are determined not simply by where the two parties reside, but rather by where the action in question occurred and over what area the court has jurisdiction. For a small claims court, personal jurisdiction is overruled to the extent that the agency court in which the claim is filed holds jurisdiction over both parties. The establishing statute should address tribunal jurisdiction. For example, if there are regional tribunals, the jurisdiction of each tribunal should be limited to a predetermined geographic area in that jurisdiction.

D. An Article I court can meet due process requirements even if those elements are shortened in nature and duration. Due process requirements are also protected because the agency decision can be appealed to an Article III court; if a due process violation is then found, the Article III court can provide the appropriate remedy to the aggrieved party.

28. State court alternative. As an alternative to creating a small claims system at a federal level, should the statutory mandate of exclusive federal jurisdiction for copyright claims be altered to allow small copyright claims to be pursued through existing state court systems, including traditional state small claims courts? What benefits or problems might flow from such a change?

This would require eliminating exclusive federal jurisdiction of copyright claims. The biggest problem the NPPA sees with this proposal is that often, state courts – especially small claims courts – don't have the resources to thoroughly research complex copyright issues. The end result could lead to conflicting decisions on important copyright issues. A copyright tribunal should have the required expertise and thus be able create appropriate and consistent caselaw.

29. Empirical data. Commenting parties are invited to cite and submit further empirical data (in addition to the anecdotal and survey information already cited or submitted to the Copyright Office in connection with this proceeding) bearing upon:

a. Whether copyright owners are or are not pursuing small infringement claims through the existing federal court process, and the factors that influence copyright owners' decisions in that regard, including the value of claims pursued or forgone;

b. The overall cost to a plaintiff and/or a defendant to litigate a copyright infringement action to conclusion in federal court, including costs and attorneys' fees, discovery expenditures, expert witness fees and other expenses (with reference to the stage of proceedings at which the matter was concluded);

c. The frequency with which courts award costs and/or attorneys' fees to prevailing parties pursuant to 17 U.S.C. 505, and the amount of such awards in relation to the underlying claim or recovery; and/or

d. The frequency with which litigants decline to accept an outcome in state small claims court and seek de novo review (with or without a jury trial) or file an appeal in a different court.

The NPPA has no empirical data to submit at this time, but we refer you to data being offered by the Intellectual Property Law Section of the American Bar Association and by the Graphic Arts Guild. Additionally, we are including a summary of the key steps already in place to bring a claim through the small claims track in the United Kingdom. We also attach a more detailed note produced by HM Courts and Tribunals Service with further information on the small claims track process, notes on how to complete an N1 form together with an N1 form as well as a list of court fees.

Small Claims Track

The key consideration for courts allocating a claim to the small claims track is financial value, generally claims of £5000 or less will be allocated to the small claims track.

In most cases, the court will not order solicitor's costs to be paid by the losing party in a small claims case. For this reason most small claims cases are dealt with without the help of a solicitor. The courts fees are payable by the claimant however if the claimant wins the case they can recover the court fees together with their claim.

Pre-court

The parties must try to settle the claim before bringing court action, if not they may be penalised by the court. The court will usually expect to see written evidence that the claimant has attempted to settle the dispute and has given warning to the other party that if they do not cooperate that they will take court action.

Court

Any money claim must be issued at the County Court Money Claims Centre. This is an online application available at https://www.moneyclaim.gov.uk/web/mcol/welcome.

Any other claim must be issued at the local county court and requires postal submission of an N1 form. The court will then automatically transfer the case to the defendant's nearest county court if the case is defended, is for a fixed amount and the defendant is an individual rather than company.

Claim

If the claimant is filing its claim with the court (rather than online through the County Court Money Claims Centre) they must file an N1 claim form (http://hmctscourtfinder.justice.gov.uk/HMCTS/GetForm.do?court_forms_id=338). The form will ask for details of the claim which are set out in the particulars. It may be necessary to attach additional documents to the claim, for example if the claim is based on a breach of contract, a copy of the contract should be provided.

The claimant should send two copies of the claim form to the relevant court and should keep an extra copy for themselves. The claimant must also pay the court fee which differs depending on the amount of money claimed, though this may be waived or reduced in cases of financial hardship. A list of court fees is available at www.justice.gov.uk/guidance/courts-and-tribunals/courts/fees.

The court will stamp the claim form and in most cases serve it on the defendant. The claimant will receive a notice of issue containing the case number. The defendant will be deemed to receive the claim on the second business day after the court has posted it.

Defence

If the defendant accepts the claim and does not serve a defence they can pay the claimant immediately and directly. If the claimant does not accept the defendant's offer, they must give their reasons and a court official will decide upon a reasonable arrangement.

If the defendant is defending the claim they must respond within 14 days of the date of service.

When the defence is returned to the court, the court will send an allocation questionnaire to both parties. The allocation questionnaire will include a date of return and will incur a fee, which again may be waived on financial grounds.

Allocation

When the court has decided to allocate the claim to the small claims track the parties will be sent a notice of allocation. The form will tell the parties what they are required to do to prepare for the final hearing, for example, exchange copies of documents they intend to use in court.

Hearing

The date of the hearing is usually specified in the notice of allocation. The claimant may not wish to attend the court hearing, they may write to the court no later than 7 days in advance of the hearing and send a copy of the letter to the defendant.

Sometimes the court will not set a final hearing date. Instead they may, if the parties agree, decide the case on papers only or hold a preliminary hearing. A preliminary hearing is often held where the judge feels that there is no chance of success in the claim and does not want to incur unnecessary time and expenses.

Hearings in the small claims track are informal and strict rules of evidence do not apply. The judge may conduct the case as he considers fair. The judge will give judgment at the end of the hearing.

If the claimant wins the case, they can recover their court fees as well as the claim and certain expenses. If the claimant loses they will not get the court fees back but it is unlikely they will have to pay any other costs.

Appeals

The parties may only appeal if the court has made a mistake in law or there was a serious irregularity in the proceedings.

An appeal must be filed within 21 days of the date of the decision and a fee is payable.

30. Funding considerations. Aside from filing fees, by what means might a small claims system be partially or wholly self-supporting? Should winning and/or losing parties be required to defray the administrative costs of the tribunal's consideration of their matter, in all or in part? If so, by what means? If the system consists of or includes arbitration or mediation, should parties bear the cost of these alternatives?

Any budget is a delicate balance of funding and costs. After an initial start-up outlay the small claims system can reduce costs by utilizing electronic filing and other technological advances. As with any new agency, funding from Congress will be required. In addition to filing fees, other costs can be charged, such as for expedited claim handling, for issuing certified copies of tribunal decisions and for additional fees where a tribunal decision is appealed requiring the agency to serve as a party. The agency can also charge for mediation as well as for outside mediator application fees and certifications. We do not believe it appropriate to impose additional costs upon the parties such as to defray the administrative costs of the tribunal's consideration of a matter, as it may act as a disincentive to participate in the small claims system.

31. Evaluation of small claims system. Should the small claims system be evaluated for efficacy and, if so, how? Should it be subject to periodic review or adjustment? Should it be launched initially as a pilot program or on a limited basis?

It is important for the agency to be periodically evaluated in order to improve its services and efficiency. A one-year experimental pilot program with plans to immediately expand further is recommended as it may be necessary to obtain sufficient party participation and data with which to conduct a proper evaluation.

32. Other issues. Are there any additional pertinent issues not identified above that the Copyright Office should consider in conducting its study?

Regardless of whether the Copyright Office seeks to create an Article I or Article III adjudicatory system, it is vital to the creation of such a system that the Copyright Office, and the resulting agency, receive broad Congressional support. The Copyright Office should discuss with Congressional members what level of support they may count on as they embark on this important new endeavor. The NPPA stands ready to support the Copyright Office in its efforts to reach out to legislators on this important initiative.

CONCLUSION

The NPPA recognizes that the Copyright Office is receiving many proposals. We greatly appreciate the opportunity to be heard on behalf of visual journalists whose small businesses can only survive when copyright law is strong and enforceable and the redress of harms created by copyright infringement involving small claims are affordable, accessible and consistent. We present our recommendations as an effort to continue the conversation about this critical issue.

Thank you for your time and consideration.

Respectfully submitted,

Mickey H. Osterreicher

Alicia Wagner Calzada

Mickey H. Osterreicher, General Counsel
Alicia Wagner Calzada, Attorney, Haynes and Boone, LLP

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EXHIBIT A

HM Courts & Tribunals Service

EX306

The small claims track in civil courts

For people whose dispute has gone to court

About this leaflet

This leaflet is for people involved in a dispute that has gone to court and the claim has been allocated to the small claims track. It explains:

- what happens at court
- the route the case may follow and
- what happens after a case has been heard.

Important information about this leaflet. This leaflet is only intended as a guide. You may wish to get independent legal advice before making decisions based on this leaflet.

If you need this leaflet in an alternative format, for example in large print, please contact your local court.

EXHIBIT B

Notes for claimant on completing a claim form

Before you begin completing the claim form

- You must think about whether alternative dispute resolution (ADR) is a better way to reach an agreement before going to court. The leaflet 'I'm in a dispute - What can I do?' explains more about ADR and how you can attempt to settle your claim.
- Please read all the notes which follow the order in which information is required on the form.
- Before completing this form, consider whether you might prefer to issue online www.moneyclaim.gov.uk
- If you are filling in the claim form by hand, please use black ink and write in block capitals.
- Copy the completed claim form and the defendant's notes for guidance so that you have one copy for yourself, one copy for the court and one copy for each defendant.
- If the claim is for a sum of money then you must send it to the County Court Money Claims Centre, PO Box 527, Salford, M5 0BY.
- If it is a High Court claim or is a claim for anything other than money you should send the form and the fee to a court office.
- You can get additional help in completing this form from the Money Claim helpdesk - phone 0300 1231372. If you need legal advice you should contact a solicitor or a Citizens Advice Bureau.

Further information may be obtained from Direct.gov.uk or from the court in a series of free leaflets.

Notes on completing the claim form

Heading

You must fill in the heading of the form to indicate the name of the court where you want the claim to be issued. If you want the claim to proceed in the county court and it is for money only, you must enter 'Northampton County Court'.

The claimant and defendant

As the person issuing the claim, you are called the 'claimant'. Please enter your name and address. The person you are suing is called the 'defendant'. Please enter their name.

You must provide the following information about yourself and the defendant according to the capacity in which you are suing and in which the defendant is being sued.

Providing information about yourself and the defendant

full address including postcode

You should provide the address including postcode for yourself and the defendant or its equivalent in any European Economic Area (EEA) state (if applicable).

If an address does not have a postcode you will need to ask the judge for permission to serve the claim with this information missing. There is no additional fee for this, but the court will not allow your claim to be served without the postcode, unless you have permission from the judge.

When suing or being sued as:-

an individual:
You must enter his or her full name where known, including the title (for example, Mr., Mrs., Ms., Dr.) and residential address postcode and telephone number. Where the defendant is a proprietor of a business, a partner in a firm or an individual sued in the name of a club or other unincorporated association, the address for service should be the usual or last known place of residence or principal place of business.

Where the individual is:

trading under another name
you must enter his or her full unabbreviated name where known, and the title by which he or she is known and the full name under which he or she is trading, for example, 'Mr. John Smith trading as Smith's Groceries'.

suing or being sued in a representative capacity you must say what that capacity is for example, 'Mr Joe Bloggs as the representative of Mrs Sharon Bloggs (deceased)'.

suing or being sued in the name of a club or other unincorporated association add the words 'suing/sued on behalf of' followed by the name of the club or other unincorporated association.

an unincorporated business - a firm
In the case of a partnership (other than a limited liability partnership) you must enter the full name of the business followed by the suffix 'a firm' for example, 'Bandbox - a firm' and an address including postcode for service. This may either be one of the partners residential addresses or the principal or last known place of business of the firm.

a company registered in England and Wales or a Limited Liability Partnership

In the case of a registered company or limited liability partnership, enter the full name followed by the appropriate suffix (for example, 'Ltd'.) and an address including postcode which is either the company's registered office or any place of business in the UK that has a connection with the claim e.g. where goods were bought.

a corporation (other than a company)
enter the full name of the corporation and any suffix and the address including postcode in the UK which is either its principal office or any other place where the corporation carries on activities and which has a connection with the claim.

an overseas company (defined by s744 of the Companies Act 1985)
enter the company's full name and any suffix if appropriate and address including postcode. The address must either be the registered address under s691 of the Act or the address of the place of business having a connection with the claim

under 18 write '(a child by Mr Joe Bloggs his litigation friend)' after the name. If the child is conducting proceedings on their own behalf write '(a child)' after the child's name.

a patient within the meaning of the Mental Health Act 1983 write '(by Mr Joe Bloggs his litigation friend)' after the patient's name.

Brief details of claim

You must set out under **this** heading:

- a concise statement of the nature of your claim
- the remedy you are seeking e.g. payment of money

Value

If you are claiming a **fixed amount of money** (a 'specified amount') write the amount in the box at the bottom right-hand corner of the claim form against 'amount claimed'.

If you are not claiming a fixed amount of money (an 'unspecified amount') under 'Value' write "I expect to recover" followed by whichever of the following applies to your claim:

- 'not more than £5,000' **or**
- 'more than £5,000 but not more than £25,000' **or**
- 'more than £25,000'

If you are **not able** to put a value on your claim, write 'I cannot say how much I expect to recover'.

Personal injuries
If your claim is for 'not more than £5,000' and includes a claim for personal injuries, you must also write 'My claim includes a claim for personal injuries and the amount I expect to recover as damages for pain, suffering and loss of amenity is' followed by either:

- 'not more than £1,000' **or**
- 'more than £1,000'

Housing disrepair
If your claim is for 'not more than £5,000' and includes a claim for housing disrepair relating to residential premises, you must also write 'My claim includes a claim against my landlord for housing disrepair relating to residential premises. The cost of the repairs or other work is estimated to be' followed by either:

- 'not more than £1,000' **or**
- 'more than £1,000'

If within this claim, you are making a claim for other damages, you must also write:

'I expect to recover as damages' followed by either:

- 'not more than £1,000' **or**
- 'more than £1,000'

Preferred Court

You may be asked to send this claim to a court centre that is not convenient for you to attend. If attendance is required the court will transfer the case to make it easier for one or all of the parties to attend. A list of county courts can be found at: hmctscourtfinder.justice.gov.uk State your preferred court where indicated. The court will take it into account if transfer is required.

Defendant's name and address

Enter in this box the title, full names, address and postcode of the defendant receiving the claim form (one claim form for each defendant). If the defendant is to be served outside the UK or any other state of the EEA, you may need to obtain the court's permission.

Particulars of claim

You must set out under this heading:

- a concise statement of the facts on which you rely
- a statement (if applicable) that you are seeking aggravated damages or exemplary damages
- details of any interest which you are claiming
- any other matters required for your type of claim as set out in the relevant practice direction

Statement of truth

This must be signed by you, your solicitor or your litigation friend.

Where the claimant is a registered company or a corporation the claim must be signed by either the director or other officer of the company or (in the case of a corporation) the mayor, chairman, president or town clerk.

Address for documents

Please note that the service regulation provides that cross-border service by any direct means including fax or email is not permitted within the EEA.

HM Courts & Tribunals Service

EX50

Civil and Family Court Fees

High Court and County Court - From April 2011

Important information

This leaflet sets out a selection of civil and family court fees. It is not the full list, neither is it the authority on fees.

The full lists of all court fees are contained in Statutory Instruments (SI's) known as fees orders and can be found on our website www.hmcourts-service.gov.uk

The court fees set out in this leaflet apply to, and are the same in, both the High Court and county court, unless otherwise stated. Your local court will be able to help you identify any fee not contained in this leaflet.

Time for payment of fees

Court fees are payable at the time you file any document or commence any process requiring a fee, unless otherwise stated.

Methods of payment

Courts accept payment by debit or credit cards, cash, postal orders or cheques, which should be made payable to 'HM Courts & Tribunals Service'. If you pay by cheque and it is dishonoured, the court will take steps to recover the money. Non-payment will result in your case being stayed or even struck out.

You can pay by debit or credit card if you use either of the on-line services.

What if I cannot afford to pay a court fee?

If you cannot afford the fee, you may be eligible for a fee remission in full or in part. The combined booklet and application form **'EX160A Court Fees - Do I have to pay them?'** gives all the information you need. You can get a copy from any court office or from our website www.hmcourts-service.gov.uk

On-line services

HM Courts & Tribunals Service has two internet based services: Money Claim Online (MCOL) for any money claim up to the value of £99,999.99, and Possession Claim Online (PCOL) for possessions concerning rent or mortgage arrears. You can use either of these simple, convenient and secure processes and pay a reduced fee.

For more information ask court staff or visit our websites:

www.moneyclaim.gov.uk

www.possessionclaim.gov.uk

Civil court fees

Starting your claim

Money claims

To issue a claim for money, the following fees will be payable based on the amount claimed, including interest:

	Court Issued Claim	Money Claim Online (MCOL)
up to £300	£35	£25
£300.01 - £500	£50	£35
£500.01 - £1,000	£70	£60
£1,000.01 - £1,500	£80	£70
£1,500.01 - £3,000	£95	£80
£3,000.01 - £5,000	£120	£100
£5,000.01 - £15,000	£245	£210
£15,000.01 - £50,000	£395	£340
£50,000.01 - £100,000	£685	£595*
£100,000.01 - £150,000	£885	N/A
£150,000.01 - £200,000	£1,080	N/A
£200,000.01 - £250,000	£1,275	N/A
£250,000.01 - £300,000	£1,475	N/A
more than £300,000 or an unlimited amount	£1,670	N/A

*Maximum amount for money claims on MCOL is £99,999.99

Non-money claims

To issue a claim for something other than money, including possession, the following fees will be payable based on where you start your claim:

- High Court £465
- County Court £175
- Possession Claims Online (PCOL) £100

(PCOL can only be used for possessions concerning rent or mortgage arrears).

Certain non-money claims will attract the multi-track allocation, pre-trial checklist and hearing fees, set out on page 3 and 4. Check with the court to see if your case is affected.

Counterclaims

- **Money claims** - the court fee payable (set out on page 2) is based on the value of the counterclaim and where the original claim was issued. If the original claim was issued in a court, the court issue fee applies, if the claim was issued through MCOL or County Court Bulk Centre, the reduced MCOL fees apply.
- **Non-money claims** - the court fee payable is based on where the original claim was made, either in the High Court or county court. The court fees are set out on page 2.

Costs proceedings

For court fees relating to the issue of costs only or cost assessment proceedings, go to pages 7 and 8.

General fees for civil proceedings

The fees on page 3 and 4 are payable by the claimant. Where a case proceeds on a counterclaim alone, the fees are payable by the defendant.

Allocation to track

• Small Claims Track (where the claim is more than £1,500) (No fee payable for small claims £1,500 and under)	£40
• Fast Track and Multi Track Claims	£220

The fee is paid at the same time the allocation questionnaire is filed. If allocation questionnaires are not required, the fee must be paid within 28 days (whichever is the sooner) of:

- all defences being filed; or
- the last date all defences had to be filed.

The allocation fee is based on the track you specify in the allocation questionnaire. If your case is allocated to a different track than the one specified, a higher fee will be payable. Where the track attracts a lower fee than the one you have paid, you can apply to the court for a refund of the difference.

Pre-Trial Checklist and Hearing fees

Small Claim Track where the amount claimed is:	Hearing Fee
up to £300	£25
between £300.01 and £500	£55
between £500.01 and £1,000	£80
between £1,000.01 and £1,500	£110
between £1,500.01 and £3,000	£165
more than £3,000	£325

	Pre-Trial Checklist	Hearing Fee
Fast Track Claim	£110	£545
Multi Track Claim	£110	£1,090

Both fees must be paid at the same time the pre-trial checklist is filed. If pre-trial checklists are not required, or the case is on the small claims track, the fees must be paid within 14 days of:

- the despatch of the notice of the trial date or trial week; or
- the date when you are told of the trial date or trial week, if no written notice is given.

Warning: If you do not pay the allocation, pre-trial checklist or hearing fees when required, the court can make an order which may lead to your claim, counterclaim or defence being struck out, meaning you cannot continue with your claim or counterclaim.

Refunding Hearing fees

Small Claim hearing

You could get a full refund of the hearing fee if you notify the court in writing, at least 7 days before the trial date or start of the trial week, that the case is settled or discontinued.

Fast Track, Multi Track or Non-Money Claim hearing

You could get a refund of some or all of the hearing fee if you notify the court in writing that the case is settled or discontinued. The following amounts will be refunded where the court is notified:

- more than 28 days before the hearing, 100% of fee;
- between 28 and 15 days before the hearing, 75% of fee;
- between 14 and 7 days before the hearing, 50% of fee;
- fewer than 7 days before the hearing, no refund.

General applications

• Application on notice where no other fee is specified	£80
• Application to set aside a County Court Judgment	£80
• Application by consent or without notice where no other fee is specified	£45
• Application to vary a judgment, suspend enforcement or suspend a warrant of possession	£40
• Application for a summons or order for a witness to attend	£40
• Application for a certificate of satisfaction of a judgment debt	£15

No fee is payable for an application by consent for an adjournment of a hearing if received by the court at least 14 days before the date of the hearing.

Appeals

On filing an appellant's notice or respondent's notice in the:

• High Court	£235
• County Court	
- Small Claims Track	£115
- All other claims	£135

Other fees are payable in appeal proceedings where applications are made. These fees do not apply on appeals against a decision made in detailed cost assessment proceedings (see page 8).

Insolvency proceedings

Bankruptcy and company winding-up petitions

• Entering a petition to declare yourself bankrupt (debtor's petition)	£175
• Entering a petition to make someone who owes you money bankrupt (creditor's petition)	£220
• Entering a winding-up petition (companies only)	£220
• Any other petition where no other fee is specified	£220

These are just the court fees. An additional sum, known as the Official Receiver's deposit, is payable in cash at the same time as the court fee. The court processing your application will tell you how much the deposit is.

Note: Some insolvency proceedings are automatically allocated to the multi-track and will attract the multi-track listing and hearing fees set out on page 3 and 4. Check with the court to see if your case is affected.

Other applications

• Application to convert a voluntary arrangement into a bankruptcy or winding up	£155
• Application on notice in existing insolvency proceedings where no other fee is specified	£70
• Application by consent or without notice in existing insolvency proceedings where no other fee is specified	£35
• Request for a certificate of discharge from bankruptcy	£70
• Request for a copy of a certificate of discharge from bankruptcy	£5

Bankruptcy searches

On a search in person, including where a court officer undertakes the search, of the bankruptcy and companies records in the:

• High Court, for each 15 minutes or part of 15 minutes	£7
• County court	£45

Civil and Family court fees

Copy documents

If you ask the court to make copies of documents, receive or send a fax on your behalf, or provide a copy of a document already provided:

• For between 1 and 10 pages of any document	£5
• For each subsequent page of the same document	50p per sheet
• For copies of documents provided on computer disk or other electronic form	£5

Costs-only proceedings

Where parties have agreed a dispute without having issued a claim or petition, but the issue of costs has not been agreed, either party can issue a claim for costs only proceedings.

• Starting costs-only proceedings	£45

Costs assessment proceedings

Where a client is legally represented and there is a dispute over the amount of costs payable to the solicitor, the client can make an application for the costs to be assessed by the court.

• Application for an order under Part 3 of the Solicitors Act 1974 for the assessment of costs	£45

Determination of costs

On filing a request for a detailed assessment:

• Where the party who files the request is legally aided or funded by the Legal Services Commission (LSC)	£145

Where the following applications are made, the fee payable depends on the amount of costs being claimed:

- Filing a request for a detailed assessment where the party filing the request is not legally aided or funded by the LSC; or
- Request for a hearing date for the assessment of costs following an order under Part 3 of the Solicitors Act 1974

where the costs claimed are:

up to £15,000	£325
£15,000.01 - £50,000	£655
£50,000.01 - £100,000	£980
£100,000.01 - £150,000	£1,310
£150,000.01 - £200,000	£1,635
£200,000.01 - £300,000	£2,455
£300,000.01 - £500,000	£4,090
more than £500,000	£5,455

• Appeal against a decision made in detailed assessment proceedings	£205
• Request to issue a default costs certificate	£60
• Request or application to set aside a default costs certificate	£105
• Application for approval of a costs certificate payable from the Community Legal Service Fund	£50

Enforcement proceedings

If the court has ordered someone to pay you a sum of money or to return your goods, property or land, and they have not done so, you can issue enforcement proceedings.

Order to obtain information from a judgment debtor

• To issue an application for an order for a judgment debtor or other person to attend court to provide information	£50
• To request bailiff service of an order for a judgment debtor or other person to attend court to provide information	£100

Warrants (County Court only)

• To issue a warrant of execution (recovery of a sum of money)	£100
• To issue a warrant of delivery (for goods)	£110
• To issue a warrant of possession (recovery of a property or land)	£110
• To request a further attempt to execute a warrant at a new address, except where a warrant has been suspended	£30

Writs (High Court only)

• Sealing a writ of execution (recovery of a sum of money)	£60
• Sealing a writ of delivery (for goods)	£60
• Sealing a writ of possession (recovery of a property or land)	£60

Where a warrant or writ of delivery or possession also includes a claim for money, no additional fee is payable.

Attachment of Earnings (County Court only)

• Application for an attachment of earnings order (A fee is payable for each defendant against whom the order is requested)	£100

On a consolidated attachment of earnings order, a fee of 10p for every £1, or part £1, of money paid into court, is deducted from the money before it is paid out to the creditors under the order.

Enforcing an Award in the County Court

• Application for the enforcement of an award for a sum of money or other decision made by any court, tribunal, body or person other than the High Court or county court, unless where exceptions apply	£40

Enforcing an Award in the High Court

• Request or application: - to register a judgment or order; or - for permission to enforce an arbitration award; or - for a certificate or certified copy of a judgment or order for use abroad.	£60

Charging Order

• Application for a charging order (A fee is payable for each charging order applied for)	£100

Third Party Debt Order

• Application for a third party debt or garnishee order (A fee is payable for each party against whom the order is requested)	£100

Judgment Summons

• Application for a judgment summons	£100

Family court fees

Not all county courts can deal with family cases. To find your nearest family court, ask at your local county court or visit our website at www.hmcourts-service.gov.uk

Marriage and civil partnership proceedings

• Filing an application for a matrimonial or civil partnership order, including for divorce, dissolution, annulment and judicial separation	£340
• Filing an application for a second or subsequent matrimonial or civil partnership order with permission granted under Family Procedure Rules 2010 rule 7.7 (1)(b)	£90
• Filing an answer to an application for a matrimonial or civil partnership order	£230
• Filing an amended application for a matrimonial or civil partnership order	£90
• Filing an application to start proceedings where no other fee is specified	£230
• Filing an application to make a decree nisi, absolute (divorce), or a conditional order, final (dissolution)	£45

Financial orders

• Application for a financial order, other than by consent	£240
• Application by consent for a financial order	£45

Applications for injunctions

Family homes and domestic violence applications:

• Application for a non-molestation order	£70
• Application for an occupation order	£70

Forced marriage applications:

• Application for a forced marriage protection order under Part 4 or Part 4A of the Family Law Act 1996	£70

An applicant can apply for any combination of these orders. Where an application is made for more than one of these orders at the same time, only one fee is payable.

Children

The court leaflet, **'CB1 - Making an Application – Children and the Family Courts'** provides more information on the types of Children Act applications and who can make them. A selection of the more common applications are set out below:

Applications under the Children Act 1989

• Application for permission, or an order, in respect of:	
- Section 8 Order (contact, prohibited steps, residence and specific issue)	£200
- Enforcement Order (in respect of a s.8 contact order)	£200
- Parental responsibility	£200
- Financial provision for children	£200
- Special Guardianship	£160
- Contact with a child in care	£170

Adoption and wardship

• On an application for permission, or an order, made under any provision in Part 1 of the Adoption and Children Act 2002, except s.22	£160

Children Act and Adoption applications

When applying for permission, no fee is payable on filing the subsequent application.

Where an application is made or permission is sought under two or more provisions of the Children Act 1989, or the Adoption and Children Act 2002, or the Children and Adoption Act 2006, only one fee is payable, and if the fees are different, the highest fee is paid.

Maintenance orders

• Application for a maintenance order to be registered	£40
• Application for a maintenance order to be sent abroad for enforcement	£40

Applications within proceedings

• Application on notice where no other fee is specified	£90
• Application by consent or without notice where no other fee is specified	£45
• Application for breach of an enforcement order	£90
• Application for revocation of an enforcement order	£90

Appeals to the High Court and county court

On filing a notice of appeal:

• Of any decision in family proceedings made by a district judge in the High Court or county court	£115
• Of any provision of the Children Act 1989, from a Magistrates' Court (except care and supervision orders): - the appeal fee is the same as the issue fee payable under each separate provision of the Children Act.	
• Against a care or supervision order from a Magistrates' Court	£170
• Against a contribution order	£170

Searches

Index of decrees absolute or final orders

On a search in the index (for any specified period of 10 calendar years, or the ten most recent years) kept at:

• the Principal Registry of the Family Division; or	£60
• any designated county court or District Registry	£40

The fee includes a certificate of a decree absolute or final order, if appropriate.

Index of parental responsibility agreements

• Search of the central index kept at the Principal Registry of the Family Division.	£40

The fee includes a copy of the agreement, if appropriate.

EXHIBIT C

What are the different routes a case can follow?

The route that a case follows is decided by the judge and is based on the value of the claim and how complex the case is. It affects everything from how a case should be prepared to the length of the hearing, and even the type of judge.

There are three routes, called tracks (small claims track, fast track and multi-track):

Small claims track – generally for lower value and less complex claims with a value of up to £5,000 (although there are some exceptions).

Fast track – claims with a value of between £5,000 and £25,000.

Multi-track – very complex claims with a value of £25,000 or more.

This leaflet only deals with the small claims track; for more information about the fast and multi-tracks read our leaflet Fast and multi-track claims in civil courts. See page 16 for details on how to access our range of leaflets.

Further information is also available at **www.direct.gov.uk**

Where can I get legal advice?

If you want independent legal advice, contact Community Legal Advice on 0845 345 4 345 or at **www.direct.org.uk/contactcla**

You may also get free legal advice from a Law Centre or a Citizens Advice Bureau at **www.adviceguide.org.uk** (see 'Where can I get more information?' on page 20).

What happens first?

When a claim is defended, the court will send you and the other party involved in the dispute a form called the Allocation Questionnaire. The information the parties provide in the Allocation Questionnaire will help the court to decide the route that the case will follow. It is therefore important to complete the form very carefully. Please read the notes for guidance on the back of the form before you start to complete it.

Always make sure that the claim number is on the top of the form with the names of the parties. At the end of the form, before the guidance notes, is the personal information section. Please complete this section fully and include all of your contact details such as mobile telephone number and email address, as this will allow the court office to contact you urgently if necessary.

Sending the Allocation Questionnaire back to the court

You should make contact with the other party involved in the dispute to discuss the information you are going to provide in the form before returning it to the court.

The form **must** be returned to the court within 14 days of receiving it, or the court may impose a penalty. Even if the other party will not co-operate, you should not let this delay your own completion of the Allocation Questionnaire and its return to the court. Please check carefully the address of the court to which the form should be returned (it will be contained in the notice that a defence/counterclaim has been filed.

When returning the Allocation Questionnaire the claimant must ensure that the relevant fee (or fee concession/remission application) is enclosed. For more information on court fees, read our leaflet **Court fees – Do you have to pay them?** Which is available online from **hmctsformfinder.justice.gov.uk.**

Do I have to discuss the form with the other party?

The judge will expect you and the other party involved in the case (or your solicitor(s)) to co-operate with each other when filling in the form. Both sides should ensure that they have made contact with each other to discuss completion of the Allocation Questionnaire.

The court might expect you have to discussed, and where possible agreed:

- if the case can be settled or not
- which is the most appropriate track for the claim
- how long you think the hearing will last, and
- if possible, how long you think you will need to prepare your case and the arrangements for exchanging evidence.

Can we settle the case and avoid a hearing?

The Allocation Questionnaire asks you whether you are trying to settle your dispute before the court hearing and, if so, whether you would like the judge to allow the court case to be put on hold for one month while you attempt to settle.

If the judge agrees, the court will send both parties an order stating that the claim has been put on hold. This is called staying the claim for settlement. The order will also explain what should be done when the stay comes to an end, for example:

- notify the court that the case has been settled
- request a further stay of one month, or
- tell the court that no settlement has been reached.

If no settlement is reached during this time and both you and the other party involved in the dispute think that more time is needed, you can ask the judge to put the case on hold for a further month. If you ask for more time, you must explain why you need it and who is helping you to settle the dispute. The court will usually only give one further stay of a month. If you cannot settle the dispute after this, the case will continue towards a hearing.

The Small Claims Mediation Service

The Allocation Questionnaire asks whether you would like the court to arrange a mediation appointment to help you to settle the dispute. Mediation is a way of resolving disputes without a court hearing. It is a voluntary process that, with the assistance of an impartial mediator, helps the parties involved to reach an agreement that is acceptable to both sides.

The Small Claims Mediation Service is provided by the court free of charge. If you want to use this service to help you settle your dispute, you should say so on the Allocation Questionnaire.

During mediation, you and the other party involved in the dispute make the decisions about settlement, and if you can't agree then you can still have a court hearing.

What happens when the court receives the Allocation Questionnaire?

When the court receives the completed Allocation Questionnaire from both parties, the judge will look at the information that has been provided. The judge will then decide how the case should proceed by considering which route it should follow. The judge will take account of what has been said in the Claim, Defenceand Allocation Questionnaires and will look specifically at the amount in dispute, the timetable and the evidence needed. All these things will help the judge to decide whether the case should be allocated to the small claims track, the fast track or the multi-track.

What if the judge wants more information?

Sometimes, the judge may ask for more information before they can reach a decision on allocation. You may receive a court order asking you to send further information to the court in writing. If this happens, you will be sent a form called an **Order for Further Information (allocation)**, which will explain what additional information the judge needs. The form will also tell you the deadline for sending the information to the court.

Alternatively you may be asked to attend a hearing to tell the judge more in person. This is called an allocation hearing. If the judge decides to hold an allocation hearing, you and the other party involved will be sent a Notice of Hearing, which will set out the time, date and place of the hearing.

In many cases the judge will be able to decide the route the case will follow based on the information provided by the parties in the Claim, Defence and Allocation Questionnaires, so there will be no need for an allocation hearing.

How will I know which track the claim has been allocated to?

Once the judge has decided, the court will send you and the other party a Notice of Allocation. This sets out which track the claim has been allocated to and what the court expects you to do next. The steps you are both required to take by the court are known as 'directions'.

What happens when my case is allocated to the small claims track?

The Notice of Allocation will tell you what you have to do to prepare for the final hearing. These instructions are called ‘directions’. They may include:

- Instructions to send a supporting document to the court and to the other parties involved in the claim, and when you need to do this by.
- Permission to use an expert at the hearing.
- Information about mediation if either you or the other party has asked for mediation, or the judge thinks the case is suitable for mediation.
- Information about the date and place of the hearing and how long the judge thinks it will take.

If you are the person making a claim, the Notice of Allocation will also tell you the date by which you should pay your hearing fee. If you do not pay the hearing fee by the due date, the court may not hold the hearing. For more information on fees, the combined leaflet and form **Court fees – do you have to pay them?** Which is available from **hmctsformfinder.gov.uk** or from the court.

Preliminary hearings

In some situations, a judge might not set the final hearing date at the allocation stage. Instead the judge might decide to hold a preliminary hearing. This usually only happens if:

- The case requires special or unusual steps to be taken that the judge wants to explain to you personally.
- The judge feels that either party has no real prospect of winning the case and wants to close the case as quickly as possible to save everyone time and money.
- The person who has made the claim does not show any reasonable grounds for bringing the claim, or the defendant’s defence does not show any reasonable grounds for defending it.

Your Notice of Allocation or Listing Hearing will tell you if you need to attend a preliminary hearing.

Will there always be a hearing?

No. If the judge wants to deal with your case without a hearing, you will be sent a **Notice of Allocation to the small claims track (no hearing)**. The notice will tell you that the judge thinks that your case can be dealt with without a hearing, using only written evidence. The notice will ask you to tell the court if you object, and will give you a date by which you must reply. If you or the other party objects, your case may be dealt with at a hearing. If you do not reply by the date given, the judge may treat your lack of reply as consent.

Do I have to attend the hearing?

No. If you don't want to attend the hearing, you can ask the court to deal with the claim in your absence. You must write a letter to the court, stating your claim number, the date of the hearing and the reason why you will not be attending. You should also ask the court to make a decision on the case in your absence using any written evidence you have provided to them. The letter must arrive at court no later than seven days before the hearing date.

You should also send a copy of the letter to the other party in the dispute.

What if the hearing date is inconvenient?

If you want to attend the hearing but the date is inconvenient, you can apply to the court for a later date to be set. You may have to pay a fee to apply to change the date.

What should I do to prepare for the hearing?

To prepare for the hearing, you should make sure you do everything you are told to do in the Notice of Allocation to the small claims track.

If you have been told to send documents to the other party involved in the dispute and to the court, do not send the originals of these documents. Send copies, but bring the originals with you to the hearing.

Remember, you will only have a limited amount of time to put your case to the judge. Make sure that any documents you want to make reference to are in the right order. It is also a good idea to write down the things you want to say. If you do this, you will be less likely to forget something that is important and more likely to explain things in the right order.

If a witness or an expert is giving evidence for you at the hearing, make sure they know where the court is and when the hearing will start. Arrange to meet them at the court some time before the hearing is due to start.

You might find it useful to read our leaflet **Coming to a court hearing? Some things you should know**. Your witness, if you have one, might want to read the leaflet **I have been asked to be a witness – what do I do?** See page 16 for details on how to access our range of leaflets.

Can I ask someone else to speak for me at the hearing?

Yes. If you do not have a solicitor, you can take someone with you to speak for you. This person is called a 'lay representative' and can be anyone you choose, such as a husband or wife, a relative, a friend or an adviser. Your lay representative cannot go to the hearing without you, unless you have permission from the court.

Advice agencies cannot generally provide a lay representative to help you at hearings. If you are thinking of asking an agency, contact them as soon as you know your hearing date. They will tell you whether or not they can help. Some lay representatives may want to be paid for helping you at the hearing and you must make sure you know exactly how much this will be. You will have to pay for a lay representative yourself, even if you win the case.

Remember, Lay representatives who charge for helping you may not belong to a professional organisation. This means that if you are not satisfied with their help, there is nobody you can complain to.

Can I use an expert to help me prove my claim?

If you want to use an expert, you should say so in the Allocation Questionnaire. You must say what the expert's evidence will deal with and whether you would like the expert to give evidence in a written report, orally at the hearing, or both. If at all possible, both parties should use the same expert as this will save you costs.

Your Notice of Allocation will tell you if you have been given permission to use an expert. It will also tell you when you should send a copy of the expert's report to the court and to the other party involved in the dispute.

Where will the hearing take place?

Small claims hearings can be held in a courtroom or often in the judge's room (sometimes called the judge's chambers) with the parties sitting around a table. The hearings are generally less formal and held in public. This means that members of the public can attend and hear the case.

A judge might agree to hear your case in private, where no members of the public can attend:

- if both parties have agreed to this
- where the hearing takes place on site, for example a home or a business premises because the claim relates to work done there
- where publicity would defeat the object of the hearing
- where the interests of a child or a protected party need to be considered
- where it includes confidential information, or
- where the court considers that it is necessary in the interests of justice.

The hearing is normally recorded.

What will happen at the hearing?

The judge will speak first, to check who you are and whether you are the claimant or the defendant. When responding to the judge, you should address a male judge as 'Sir' and a female judge as 'Madam'.

The judge will then invite the claimant and the defendant to be seated. The judge may then explain how the hearing will be conducted. This may vary from case to case. The judge may ask the claimant to speak first to set out any reason or evidence to support their claim. Then the defendant will be given an opportunity to ask the claimant about the statement and the evidence. Each party will then be given an opportunity to ask other questions.

At the end of the hearing the judge will tell you the decision the court has reached (the judgment) and give brief reasons for it.

What happens after the hearing?

After the hearing, you and the other party involved in the dispute will be sent a copy of the judgment. It will set out the judge's decision and any order for costs that was made. If the claim was for an amount of money, the order will include the arrangement for payment.

If you told the court that you would not be attending the hearing, you will also get brief reasons for the decision.

If the other party has been ordered to pay you a sum of money, but does not pay, you should remember that the court will not take any action unless you ask it to. This is called 'enforcing your judgment'. You may have to pay a fee for this. For more information on enforcement, read our leaflet **I have a judgment but the defendant hasn't paid – what can I do?** See page 10 for details on how to access our range of leaflets.

Can I appeal against the decision?

If you lose your case and you want to appeal against the judge's decision, you will need to get permission to do so. If the decision was made without a hearing or the decision was made in your absence because you gave notice requesting the court to deal with the claim in your absence. Application for permission to appeal can be made in your appeal notice. If you attended the hearing at which the decision was made, you can ask the judge for permission at the end of the hearing.

You must have proper grounds and cannot appeal because you think the judge's decision is wrong.

If you decide you want to appeal, you must act quickly against the court's decision as the time within which you must issue your appeal is limited.

For more information on making an appeal, read our leaflet **I want to appeal – what should I do?** See page 10 for details on how to access our range of leaflets.

What if I wasn't present at the hearing?

If you were neither present nor represented at the hearing, and did not request the court to del with the matter in your absence you may apply for judgment made at that hearing to be set aside and the case re-heard. You must make the application within 14 days of receiving the judgment. If you want to make an application for the judgment to be set aside, you should ask the court for an **Application Notice.** You may have to pay a fee.

After you have submitted an Application Notice, the court will tell you when you must come to court for the hearing of the application before a judge.

The judge will only re-hear a case if:

- you have a good reason for not attending the hearing, or
- you have a reasonable prospect of being successful at a re-hearing.

If the judge agrees to re-hear the case, the court will fix a new hearing date for the case. If the claim is straightforward, the judge may decide to deal with the case immediately after the hearing of the application.

Court fees and what do I do if I can't pay them?

You may be required to pay a fee. Court fees are payable at the time you file any document or commence any process requiring a fee, unless otherwise stated.

Courts accept payment by cash, postal orders or cheques, which should be made payable to 'HM Courts & Tribunals Service (HMCTS)'. If you pay by cheque and it is dishonoured, the court will take steps to recover the money. Non-payment will result in your case being stayed or even struck out. You can pay by debit or credit card if you use either of the on-line services (Money Claim Online or Possesion Claim Online).

You will find a list of civil and family court fees at **hmctsform.justice.gov.uk** or court staff will be able to let you know the amount you have to pay.

However, you will not have to pay a court fee if:

- you receive Income Support
- you receive Pension Guarantee Credit
- you receive income-based Jobseeker's Allowance
- you receive Working Tax Credit provided you are not receiving Child Tax Credit, or
- income related employment and support allowance within the Welfare Reform Act 2007
- your gross annual income does not exceed a specified limit.

Also, if you can show that the payment of a court fee will involve undue hardship, you may be eligible for a part remission. The amount of fee you pay will be based on a detailed means test to assess your financial situation.

For more information, or to apply for a fee remission, the combined leaflet and form **Court fees – Do you have to pay them?** Which is available from **hmctsformfinder.justice.gov.uk**

You will have to make a separate application each time you have to pay a court fee.

Where can I get more information?

For general information about solving legal disputes, visit www.direct.gov.uk/courtanddebt

For advice on court procedures, to get the forms you need or for help filling them in, speak to the court staff. But remember, they cannot give you legal advice. For example, they cannot tell you if you have a good claim or who you should be claiming from.

For free legal information and advice, contact Community Legal Advice on 0845 345 4 345 or at **www.direct.gov.uk/contactcla**

You may also get free legal advice from a Law Centre or a Citizens Advice Bureau at **www.adviceguide.org.uk**

To read our other leaflets in this series, visit hmctsformfinder.justice.gov.uk

For information on consumer issues, contact Consumer Direct on 08454 04 05 06 or visit **www.consumerdirect.gov.uk**

For issues relating to water, contact the Consumer Council for Water on 0121 345 1000 or 0845 039 2837 (this will redirect you to your local committee) or by email on **enquiries@ccwater.org.uk**

For issues relating to landline telephones, mobile phones and the internet, contact Ofcom on 020 7981 3040 or you can send an email to Ofcom through their website at **www.ofcom.org.uk**

For issues relating to gas and electricity, contact Ofgem on 020 7901 7295 or by email on **consumeraffairs@ofgem.gov.uk**

For information on how to contact Ombudsman services, contact the British and Irish Ombudsman Association on 020 8894 9272 or by email on **secretary@bioa.org.uk**

For contact details of all our courts, visit hmctscourtfinder.justice.gov.uk

For people with a disability

If you have a disability that makes going to court or communicating difficult and/or you require any information in an alternative format, for example large print, please contact the court concerned who will be able to help you. You can find contact details for all of our courts online at hmctscourtfinder.justice.gov.uk

How a dispute might progress to court

The diagram below shows how a dispute claim can progress through court.
This leaflet covers the part of the process that is highlighted.

Being in a dispute
A dispute is when someone is involved in a disagreement with another person or organisation, for example over money owed.

Finding an alternative to court
The court requires you to try to settle the dispute using ways other than going to court. These are generally cheaper and faster. If an alternative way is successful, you leave the process here.

Starting the court process
The court process starts when a claim is made through the courts. The claim can then either be defended or admitted.

The claim is defended
If the claim is defended or if you or the other party cannot agree on the money owed, the dispute will go to court.

or

The claim is admitted
If the claim is admitted, the person whom it was made against should pay what is owed. The dispute then ends and you leave the process here.

Small claims track
Claims for £5,000 or less are likely to be dealt with by the small claims track. These cases will usually last less than six months.

or

Fast or multi-track
Claims for more than £5,000 are likely to be dealt with by the fast or multi-track. These cases can be complicated and therefore can take longer than six months to complete.

Appealing against a court decision
If you or the other party disagree with the judge's decision, you can appeal. You must have proper grounds and permission from the judge to make an appeal.

The small claims track in civil courts

HM Courts & Tribunals Service is an agency of the Ministry of Justice. The agency is responsible for the administration of the criminal, civil and family courts and tribunals in England and Wales and non-devolved tribunals in Scotland and Northern Ireland. It provides for a fair, efficient and effective justice system delivered by an independent judiciary.

HM Courts & Tribunals Service aims to ensure that all citizens receive timely access to justice according to their different needs, whether as victims or witnesses of crime, defendants accused of crimes, consumers in debt, children at risk of harm, businesses involved in commercial disputes or as individuals asserting their employment rights or challenging the decisions of government bodies.

For more information see www.justice.gov.uk/about/hmcts

