



COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0395
December 11, 2023

Terrell Lipscomb

CLAIMANT

v.

David Ellison, Dana Goldberg, and Amazon Prime

RESPONDENTS

SECOND ORDER TO AMEND NONCOMPLIANT CLAIM

The Copyright Claims Board finds that your claim, as amended, still does not comply with the requirements of the CASE Act and related regulations. The claim cannot move forward unless it is properly amended.

If you wish to proceed with this claim, you must file a second amended claim by **January 10, 2024**. If you do not, the Board must dismiss your claim without prejudice, although you may file again in the future before the Board or in federal court. There is no additional filing fee for an amended claim. If you file a second amended claim and it is found compliant, you will be notified and directed to proceed with service. However, if your second amended claim also is found not to comply, the Board will dismiss the proceeding without prejudice. 17 U.S.C. § 1506(f)(1)(B); 37 C.F.R. § 224.1(d).

To make your second amended claim compliant, you must resolve the issues identified below. 37 C.F.R. § 224.1(c)(2). You may also choose to correct or edit any errors or other information in your claim before you file it again. You do not need to provide a legal argument in your claim – just a statement of facts and circumstances. Being specific in your description gives the other party and the Board more information about your claim. There is no character limit, so please be as detailed as possible.

Access

The December 1, 2023 Order to Amend Noncompliant Claim stated:

Your claim does not provide enough facts about how the respondents had access to your work. “Access” means a reasonable opportunity to view your work before the alleged infringement took place.

Your claim does not provide enough information about where your work was available to the respondents, or how it was provided to the respondents, before any alleged infringement. . . .

To address this issue, you must file an amended claim with allegations that make access a reasonable possibility, not just hypothetically or theoretically possible. Acceptable allegations of access may include that your work (a) was sent directly to the respondent or a close associate of the respondent; (b) was widely disseminated or was available to the public or respondent; or (c) is so strikingly similar to the respondent’s work that they could not have been created independently.

Alternatively, you can upload copies of your work and the allegedly infringing work as supplemental documents if those copies show that the works are so strikingly similar that they could not have been created independently. You have uploaded a copy of “The War Hero,” but not the allegedly infringing script or movie. If you include copies of the works at issue as supplemental documents, they must be clearly labeled and identified so they can be properly compared to each other.

Your amended claim does not provide additional allegations related to access. If you file a second amended claim, to address this issue, you must include more details about when and how your work was provided to the respondents or publicly available before the alleged infringement. You allege that your “script was getting read by agents and sent out to screenwriting competitions.” Be specific in stating facts identifying those agents and competitions, when your work was provided to them, and when the respondents’ work was created and released.

Substantial Similarity

In the “Describe the infringement” section of the amended claim, you assert that your “script and [the respondents’] movie are really similar.” However, you have not stated facts or provided materials that indicate that the respondents’ work is substantially similar to elements of your work that is protected by copyright.

Your amended claim includes your script as a supplemental document. Its lead character is a Navy SEAL whose wife dies while he is overseas on a mission; a female character assists him in a later mission. You state that the respondents “stole the main selling point of the part where his wife died and he went back to action. Both script and movie have a female actress who plays the wife that died and has a supporting actress to the star actor who loses his wife.” However, the plot elements of a widowed man returning to work and meeting another woman are too general for copyright protection. “No one can own the basic idea for a story. General plot ideas are not protected by copyright law; they remain forever the common property of artistic mankind.” *Berkic v. Crichton*, 761 F.2d 1289, 1292 (9th Cir. 1985). As a result, you have not identified copyright-protected material in your work that is substantially similar to the respondents’ work. The test for substantial similarity “compares, not the basic plot ideas for stories, but the actual concrete elements that make up the total sequence of events and the relationships between the major characters.” *Id.* “[T]he test focuses on ‘articulable similarities between the plot, themes, dialogue, mood, setting, pace, characters, and sequence of events’ in two works.” *Kouf v. Walt Disney Pictures & Television*, 16 F.3d 1042, 1045 (9th Cir. 1994) (quoting *Berkic*, 761 F.2d at 1292).

If you file a second amended claim, you must describe or show such similarities for the claim to go forward. As stated in the December 1, 2023 Order to Amend Noncompliant Claim, “you must provide more specific allegations about how the allegedly infringing work is similar to expressive material in your work that copyright protects.”

You may upload a copy of the allegedly infringing screenplay, along with the screenplay of your work that you have already provided, to make it easier to compare the works and see any expressive similarities. When filing the amended claim, you uploaded a supplemental document with hyperlinks that may lead to copies of the allegedly infringing screenplay and film, but you have not uploaded either of those allegedly infringing works as supplemental documents. When reviewing claims, the Board does not take into account material that is solely referred to in a hyperlink and not uploaded as supplemental documentation, in part because hyperlinks can lead to material that is no longer available online. As a result, the claim still does not provide enough information to enable the respondent to understand the claim and respond to it. Please note that if you do file the respondents’ screenplay with the second amended claim, you must add specific allegations identifying main points in each screenplay that are

substantially similar and pointing the Board and respondents to those similarities within the attachments so that the Board and respondents can easily compare the actual works to your descriptions.

Final Amendment

Your amended claim resolved some, but not all, of the compliance issues raised in the December 1, 2023 Order to Amend Noncompliant Claim. **This is your third and final opportunity to submit a compliant claim in this proceeding. If your claim remains noncompliant, the entire proceeding will be dismissed.** 17 U.S.C. § 1506(f)(1)(B).

To submit a second amended claim, log into your eCCB account and take the following steps:

1. From your dashboard, click the “**Amend claim**” button and select your docket number from the dropdown list.
2. Your claim will unlock for editing. The information you originally entered will appear in the same order as in your original claim.
3. Make the necessary edits. If you have filed supplemental documents, you must re-upload any documents you wish to include in the amended claim on the “**Documentation**” page. Please include only documents directly related to your claim, and label them clearly.
4. Once you have completed your edits, continue to click through the fillable claim form until you reach the “**Review**” page. The Review page includes all the information that you have provided in the claim up to this point. Carefully double-check the information on this page. If you have any corrections, you can select “**Edit**” to revise any entries necessary. Each section of information has an “**Edit**” button, which will take you back to that section so you can make changes. After you make changes, you can click “**Save & review**” to return to the Review page. Please review your claim carefully. Once you submit your amended claim, you will be unable to edit the claim while it is in compliance review.
5. Once you have completed your review and any revisions, you must confirm that the information in your claim is accurate and truthful to the best of your knowledge. To complete the declaration, type your full name into the “**Digital signature**” box near the bottom of the “**Review filing**” page and click “**Agree & submit.**”

If you have questions, please contact asktheboard@ccb.gov. Include your docket number in the subject line. The Board is unable to provide legal advice. We can only provide legal information and assistance concerning Board procedures and requirements. If you would like to seek further guidance from a lawyer or a law student at reduced or no cost, please visit the [Pro Bono Assistance](#) page on ccb.gov. You may also refer to the [Compliance Review](#) chapter of the CCB Handbook for more assistance.