



COPYRIGHT CLAIMS BOARD

Docket number: 22-CCB-0021

United States Copyright Claims Board

Catalina M. Jaramillo

CLAIMANT

v.

Apple Inc.

RESPONDENT

ORDER TO AMEND NONCOMPLIANT CLAIM

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

If you wish to proceed with this claim, you must file an amended claim by **August 25, 2022**. If you do not, the Board must dismiss your claim without prejudice, although you may file again in the future before the CCB or in federal court. If you file an amended claim and it is found compliant, you will be notified and directed to proceed with service. There is no extra filing fee for an amended claim. 17 U.S.C. § 1506(f)(1)(B).

To make your 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.

Issue – Copyright Infringement Claim – Clarity

Your claim does not make clear enough factual allegations about the wrongful activities that you accuse the respondent of doing. A claim can be unclear if it does not include enough detail. A claim can also be unclear if the claimant selects options in the eCCB claim form that the rest of the claim does not support. Please consider carefully which options in the claim form actually apply in your case.

Your claim alleges copyright infringement of a work registered as a motion picture. You selected all six of the “Wrongful Activities” listed in the dropdown menu on the claim form, including “publicly perform the work through digital audio transmission.” That right applies only to sound recordings, not motion pictures. 17 U.S.C. § 106(6). Please review the discussion at page 3 of the chapter on [Starting an Infringement Claim](#) in the CCB Handbook and confirm which of those six wrongful activities the respondent engaged in to infringe your copyright. When you file an amended claim, select only the wrongful activities that apply to this respondent.

In the “Describe the infringement” field of the claim form, you state only “the use the audio of my interview and these individual mixed with other material.” You will need to add detailed factual allegations about each wrongful activity that you allege in that field. The claim must provide enough information for the respondent to understand what its allegedly infringing acts were.

Issue – Copyright Infringement Claim – Online Service Provider

Your infringement claim asserts that the respondent is an online service provider; that you are bringing the claim against the respondent “due to their storage of or referral or linking to infringing material posted by others”; and that it failed to expeditiously remove or disable access to infringing material after you sent the respondent a takedown notice as required by section 512 of the Copyright Act.

“Safe harbors” in section 512 shield certain online service providers from paying damages for copyright infringement claims if, among other things, they take steps to quickly remove or disable access to infringing material when a copyright owner notifies them about infringement through a proper takedown notice. To avoid liability, online service providers must follow procedures specified in section 512 when they receive takedown notices alleging infringement, and counter-notices seeking the re-posting of the allegedly infringing material. An infringement claim against an online service provider that is eligible for a section 512 safe harbor must state facts that indicate that the respondent did not follow those procedures.

Your infringement claim does not provide enough information about the respondent’s activities to hold it liable in light of the safe harbor provisions. Supplemental documentation included with your claim indicates that the respondent online service provider complied with section 512. If so, you cannot maintain an infringement claim against the respondent based on a third-party posting.

Your claim includes what appear to be copies of several emails that the respondent sent you in 2021, informing you that the respondent had received counter-notices from the alleged third-party infringers, and might reinstate the allegedly infringing material unless you provided evidence, within ten business days, that you had filed a copyright infringement lawsuit over the material. This appears to contradict your allegations that the respondent failed to comply with section 512. Your claim also includes what appears to be a certified translation of a criminal notice form dated April 23, 2021, in which you apparently stated, “I had to remove the complaint that I made on YouTube.” Evidence that you notified the respondent that you were removing your takedown notice also appears to contradict your allegations that the respondent failed to comply with section 512.

Your infringement claim against the online service provider cannot proceed unless you file an amended claim stating facts that indicate that, despite the evidence provided and discussed above, the respondent is not entitled to the Section 512 safe harbor. Please visit the [section 512 page](#) and the discussion at pages 18-19 of the chapter on [Starting an Infringement Claim](#) in the CCB Handbook for additional information about what is required for an infringement claim against an online service provider protected by a section 512 safe harbor.

Issue – Copyright Infringement Claim – Relief Sought

Your description in the “Describe the harm suffered and the relief sought” field of your infringement claim does not indicate what relief you seek from the Board. Your infringement claim is not compliant because it requests remedies that the Board does not have the power to grant.

The Board is only authorized to grant certain kinds of relief. Unlike a federal court, the Board cannot order the respondent to stop or modify activities (sometimes called an “injunction”) unless the respondent notifies the Board that, if found liable for infringement, they will stop or modify the activity. (Respondents may agree to stop or modify their infringing activity because, if they are found liable, the CCB may consider that agreement when it decides how much to award as damages.) While you can state in your claim that you would like the respondent to stop or modify their activities, you cannot demand it as part of your claim.

If you seek damages in an infringement claim, you can seek either (1) actual damages, and the respondent’s profits attributable to the infringement, or (2) statutory damages, but not both—although you may state in your claim that, at this time, you have not decided between the two. Actual damages are money damages awarded based on the proven harm or loss you suffered. An example of actual damages may be the amount of lost sales revenue you experienced. Statutory damages are money damages awarded to a successful claimant within a range set by law, without the need to provide proof of the actual amount of harm or loss.

In addition to describing the nature of the harm that you suffered due to the infringement, your claim must include at least a general statement about the kind of relief you are seeking. Please review the discussions at pages 6 and 15 of the chapter on [Starting an Infringement Claim](#) in the CCB Handbook for more information about the kinds of relief that the Board can grant.

Issue – Misrepresentation Claim – Proper Respondent

You are bringing a claim of misrepresentations in connection with a takedown notice or counter-notice under section 512(f). Your claim must make enough factual allegations to support each “element” of the claim. The elements of a misrepresentation claim are that:

1. The respondent sent an online service provider either
 - a. a takedown notice claiming online content or activity was infringing, or
 - b. a counter-notice denying infringement and claiming the online content was removed or disabled due to a mistake or a misidentification.
2. The respondent made a misrepresentation (a false or incorrect statement of fact) in the takedown notice or counter-notice.
3. The respondent knew the misrepresentation was false or incorrect.
4. The misrepresentation was important to the online service provider’s decision to take down or repost the content.
5. The online service provider relied on the misrepresentation.
6. You were harmed as a result.

17 U.S.C. § 512(f). Your claim is not compliant because it does not provide enough information about how the respondent, rather than someone else, made a misrepresentation in a takedown notice or counter-notice to an online service provider. Your claim alleges that people other than the respondent sent the counter-notice (“different people Sebastian Lugo Xibile (Adolfo X), Mateo Velásquez”), and that “[t]he individuals who published the material claimed my work with fake notification.” A misrepresentation claim must allege a misrepresentation made *by* the respondent. Your allegations of misrepresentations made *to* the respondent do not support holding the respondent liable under section 512.

If you believe that the respondent was responsible for sending the counter-notice, you may file an amended claim that includes factual allegations that explain in what way the respondent made a misrepresentation. If you believe that a different person, residing within the United States, made the misrepresentation, you may add that person as a respondent and assert an amended misrepresentation claim against that person when you submit an amended claim. Please note that you cannot bring a claim against a individual or entity residing outside the United States before the CCB. 17 U.S.C. § 1504(d)(4). More information about the elements required to assert a claim of misrepresentation is available in the [Starting a Misrepresentation Claim](#) chapter of the CCB Handbook.

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.

To submit an 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. To edit the “**Wrongful activities**” information, click the blue bar to show the fields. To add or change factual information about your claim, add your text to the “**Describe the infringement**” section.
4. Once you have completed your edits, continue to click through the claim flow 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 CCB is unable to provide legal advice. We can only provide legal information and assistance concerning CCB procedures and requirements. You may also refer to the [Compliance Review](#) chapter of the Copyright Claims Board Handbook for more assistance.

Sincerely,

Copyright Claims Attorney

July 26, 2022