



COPYRIGHT CLAIMS BOARD

Docket number: 24-CCB-0273

September 30, 2024

Villalobos O Body

CLAIMANT

v.

Danielle Robertson

RESPONDENT

SECOND ORDER TO AMEND NONCOMPLIANT CLAIM

The Copyright Claims Board (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 amended.

If you wish to proceed with this claim, you must file a second amended claim by **October 30, 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.

Copyright Registration

The “Works infringed” section of your infringement claim lists one allegedly infringed work, titled “Kwame Brown Explosive Interview with Jaguar Wright” (Interview), which you describe as a podcast. It appears that you had not delivered a completed application, deposit, and fee to the Copyright Office seeking to register the copyright for that work before you filed this claim on September 13, 2024. As the September 18, 2024 Order to Amend Noncompliant Claim (September 18 Order) explained: “Copyright Office records show that the application was submitted before you filed this claim, but the Office has not received the required filing fee for the application or a deposit copy of the work.” Therefore, under 17 U.S.C. § 1505(a), the Board cannot hear this claim.

If you believe the above statements regarding the application are in error, you may submit a second amended claim that shows that a complete application for the Interview was submitted with the required deposit and fee before you filed this claim. Otherwise, to move forward with your claims for a declaration of noninfringement and

misrepresentation in *this* proceeding, your second amended claim must omit the infringement claim. You may refile your infringement claim in a *new* proceeding, after the application process is complete with the filing fee and deposit. For more information on registration, please refer to the Copyright Office [Registration Portal](#).

Legal or Beneficial Ownership

The claim does not present facts that indicate how claimant Villalobos O Body (Body) is a proper claimant to bring this infringement claim. In the “Works infringed” section, you name Wolfgang Amadeuz, not Body, as the only author of the Interview. The “Noninfringement” section of the claim includes allegations about “content that’s owned by Villalobos Body and Wolfgang’s Production,” but it does not clearly indicate if that content includes the Interview. A supplemental document filed with the amended claim appears to show an email signed “Villalobos Body” with the user name displayed as “Wolfgang Body,” but no allegations describe the relationship between Body and Wolfgang Amadeuz. It is not clear if they are co-creators or co-owners of the Interview, or if Wolfgang Amadeuz is Body’s alias or performing name, for example.

To bring a copyright infringement claim before the Board, the claimant must be “the legal or beneficial owner of the exclusive right [in a copyrighted work] at the time of the infringement.” 17 U.S.C. § 1504(c)(1). A legal owner is an author of the work who owns the exclusive rights at issue or a person or entity that has received a transfer of those rights, for example, by an assignment or an exclusive license. A beneficial owner is a legal owner who has transferred the rights at issue but retains some of the advantages of ownership, such as the right to receive royalties from the use of the work. A claimant who is not a named copyright owner of the allegedly infringed work must provide some specific details or supplemental documents explaining how the claimant owns, or has an exclusive license to use, the exclusive rights at issue. More information about legal and beneficial ownership is available at page 4 of the [Starting an Infringement Claim](#) chapter of the CCB Handbook.

If Body is an author or co-author of the Interview, you may include that information in a second amended claim. Otherwise, you must include specific factual allegations about how Body owns, or has an exclusive license to use, the exclusive rights at issue in either work. You can do this either by adding facts to the “Describe the infringement” section explaining how Body owned exclusive rights in the work at the time of the infringement, or by submitting supplemental documents. For example, you may state how Body became a *legal* owner or co-owner of the copyright, such as by assignment or exclusive license; or how Body remained a *beneficial* owner after transferring legal ownership, such as by retaining a right to receive royalties from use of the work. If you cannot state such facts, or include supplemental documents that demonstrate Body’s legal or beneficial ownership, then Body cannot be the claimant for this infringement claim.

Access

Your amended claim does not provide facts that indicate how the respondent had access to your work. “Access” means a reasonable opportunity to view or hear your work before the alleged infringement took place.

You do not specify anywhere that the Interview has been distributed or made accessible to the respondent or the public at large.

To address this issue in a second amended claim, you must add allegations that make access by the respondent a reasonable possibility, not just hypothetically or theoretically possible. Acceptable allegations of access may include how 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 respondent; or (c) is so strikingly similar to the respondent's work that it could not have been created independently. Alternatively, you can upload copies of your work and the allegedly infringing work if they demonstrate that the works are so strikingly similar that respondent's work could not have been created independently. If you include copies of the works as supplemental documents, they must be clearly labeled and identified so that they can be properly compared to each other.

Substantial Similarity

Your copyright infringement claim does not include enough facts to indicate how the allegedly infringing work is substantially similar to original, expressive elements of your work that copyright protects. To address this issue, if you file an amended claim, it must include more information about your work, the allegedly infringing work, and how creative elements of the works are similar.

You allege that the respondent "use[s] content owned by me on her youtube channel." However, no allegations in the amended claim describe the Interview or any allegedly infringing work, or how they may be identical or substantially similar. In addition, you have not provided copies of the Interview or the allegedly infringed work as supplemental documents. As a result, the claim does not provide enough information to enable the respondent to understand the claim and respond to it.

If you submit a second amended claim, it must include factual allegations that support the element of substantial similarity. Please provide more details and background regarding this element, including a clear statement regarding whether the allegedly infringed work took your entire podcast or only a portion, and which portions, or documents that are sufficient to show substantial similarity in material that copyright protects. If you include copies of the works at issue as supplemental documents, then as discussed above, they must be clearly labeled and identified so they can be properly compared to each other.

Noninfringement Claim – Clarity

As the September 18 Order explained, your noninfringement claim does not clearly state facts that indicate that there is an "actual controversy" between the parties over whether you infringed the respondent's copyright: "It does not clearly detail how the respondent Danielle Robertson (Robertson) has accused you of infringement. . . . You must present facts in an amended claim that indicate that there is an actual controversy between you and the respondent over whether your acts infringed the respondent's copyright, or your noninfringement claim cannot go forward." You have not stated facts or shown how Robertson accused you of infringing her copyright. Instead, a

document filed with the amended claim indicates that she denied that her acts infringed *your* copyright.

In addition, your noninfringement claim indicates that respondent asserted that the Interview was infringed, though that is the work that you state respondent infringed in your infringement claim. As the September 18 Order stated, “[t]he work listed in the ‘Work(s) respondent says you have infringed’ field should be the respondent’s work, not your work.”

Your second amended claim must either resolve these issues or omit the noninfringement claim.

Misrepresentation Claim – Reliance by Online Service Provider

Your amended claim also includes a claim of misrepresentation in connection with a counter-notice under 17 U.S.C. § 512(f). That kind of misrepresentation has a very specific meaning under copyright law that only applies to false statements made to an online service provider (OSP) related to a copyright-protected work posted online. Your claim must make enough factual allegations to support each “element” of the claim. The elements of misrepresentation that apply to your claim are:

1. The respondent sent an OSP a counter-notice denying the claim of infringement in a takedown notice, 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 counter-notice,
3. The respondent knew the misrepresentation was false or incorrect,
4. The misrepresentation was important to the OSP’s decision to repost the content, and
5. You were harmed as a result of the OSP’s decision to repost the content.

17 U.S.C. § 512(f). “Safe harbor” provisions in section 512 of the Copyright Act protect certain OSPs from paying damages for infringement claims if they restore allegedly infringing material, ten to fourteen business days after receiving a proper counter-notice, unless they first receive notice of an infringement claim filed against the alleged infringer in court or before the Board. More information is available on the Copyright Office’s [section 512](#) page.

A misrepresentation in a counter-notice only violates section 512 of the Copyright Act if the OSP relies on it to restore the allegedly infringing content. Information in your claim indicates that the alleged misrepresentation could not have been a factor in any decision by the OSP to restore the content because the OSP had not restored the material at issue at the time you filed your claim. You state that a takedown notice was sent to YouTube (the OSP) on August 29, 2024. The document filed with your amended claim shows that on September 15, 2024, YouTube informed you that it had received a counter-notice (dated September 7, 2024), and YouTube informed you then: “You have 10 US business days to reply to this counter notification. . . . After 10 US business days, if we don’t get a response from you, the content at issue may be reinstated to YouTube.” The document also shows that you responded to YouTube on September 17, 2024. You filed this claim on September 13, 2024, and you amended the claim to add the misrepresentation claim on September 20, 2024. The timing of the counter-notice and the claim

suggests that YouTube had not reinstated the material at the time you filed your claim or your amended claim, and there is no allegation in your amended claim that YouTube did restore it.

If YouTube had restored the allegedly infringing material by the time you raised the misrepresentation claim on September 20, 2024, your second amended claim must state facts about that restoration. However, if YouTube had not restored the allegedly infringing material in reliance on the counter-notice by that date, your misrepresentation claim cannot move forward.

Because your misrepresentation claim is based on an alleged misrepresentation that does not appear to have been relied on by an OSP before the claim was filed, we have not reviewed the remainder of your misrepresentation claim to determine whether it complies in all other respects with the legal and formal requirements for a claim before the Board. If you submit a second amended claim that resolves the issue, the Board will engage in a full compliance review, so you should review the [CCB Handbook](#), including the [Starting an Misrepresentation Claim](#) chapter, and make sure the rest of your second amended claim is compliant.

Relief Sought

The Board is only authorized to grant certain kinds of relief. In the “Description of harm suffered and relief sought” section of the misrepresentation claim, you request several forms of relief that the Board cannot provide.

You request an “[i]njunction: A court order demanding the infringing content be removed from all platforms and prohibiting further unauthorized use of my work.” The Board cannot grant injunctive relief. Unlike a federal court, the Board cannot order a respondent to stop or modify activities (sometimes called an “injunction”) unless the respondent notifies the Board that, if found liable, they will stop or modify the wrongful activity.

You also request “Statutory damages: \$30,000 per infringement, or up to \$150,000 if the infringement was willful.” Monetary awards granted by the Board cannot exceed \$30,000. Statutory damages are a form of relief available for copyright infringement, but not for misrepresentation. Moreover, the Board does not enhance damages awards based on willfulness. The Board will not consider willfulness when making an award of statutory damages for infringement, and all misrepresentation claims must show that the misrepresentation was made knowingly.

If you file a second amended claim, it may not state that you are seeking remedies that the Board cannot grant.

Final Amendment

Your amended claim does not resolve the issues raised in the September 18 Order, and raises additional compliance issues discussed in this order. **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.

Copyright Claims Board