



COPYRIGHT CLAIMS BOARD

Docket number: 22-CCB-0023

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 **October 19, 2022**. 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. 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.

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. 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.” If you submit an amended claim, you must include facts in the claim form that more fully explain how your work was infringed.

Your claim alleges that the respondent is an online service provider that did not “expeditiously remove or disable access” to “infringing material posted by others” after you sent the respondent a takedown notice. Such a claim must state enough facts to show how that material posted by others infringed your copyright. If you submit an amended claim, it must therefore provide enough information for the respondent to understand what the allegedly infringing acts were. The amended claim must also provide enough information to enable the respondent to understand your allegation that it did not expeditiously remove infringing material upon the receipt of a valid takedown notice. Please review the chapter on [Starting an Infringement Claim](#) in the CCB Handbook and the [section 512 page](#) for more information about what is required for an infringement claim against an online service provider.

Copyright Infringement Claim – Access

You have brought a copyright infringement claim before the Board. Your claim must make enough factual allegations to support each “element” of the claim. The elements of a copyright infringement claim are:

1. You own a valid copyright in the work, or have been given an exclusive license to the copyright rights at issue in the work,
2. The respondent used one of your exclusive rights in the work without permission,
3. The respondent had access to your work, meaning a reasonable opportunity to view or hear your work, and
4. The respondent’s work is substantially similar to the original elements of expression in your work.

Your claim does not provide facts about how the alleged infringing third party had “access” to your work. “Access” means a reasonable opportunity to view or hear your work. Your claim describes your work as “confidential material,” specifically, a video interview registered as an unpublished work. Supplemental documents filed with your claim indicate that you notified the respondent that a third party, Exclave Media, had used part of your work in a podcast. However, your claim does not indicate how the third party gained access to your work.

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 third party or a close associate of the third party; (b) was widely disseminated or was available to the public or the third party; or (c) is so strikingly similar to the third party’s work that the third party could not have created it independently.

Copyright Infringement Claim – Substantial Similarity

Your claim also does not include enough facts that explain the similarities between your work and the allegedly infringing work. If it is not readily apparent from supplemental materials that are submitted with the claim, you must provide some specific allegations about how your work and the allegedly infringing work are similar.

Your claim states that your work is a video interview, and describes the infringing activity as “the use the audio of my interview and these individual mixed with other material.” Supplemental documents filed with your claim indicate that you notified the respondent that a third party was “using part of the audio of an interview for my PhD” in a podcast made available via the respondent’s Apple Podcasts. However,

your claim does not state enough facts describing how the material that the third party made available to the respondent was substantially similar to your work. Your claim does not clearly identify the allegedly infringing work, how much of your work it used, or what “other material” it was “mixed with.” No allegations in the “Describe the infringement” field of the claim describe your work or the allegedly infringing work, or state or show how they are identical or substantially similar, and you have not provided copies of your work or the allegedly infringing 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 an amended claim, it must include allegations that support the element of substantial similarity. Please provide more details and background regarding this element in your amended claim, including a clear, detailed statement regarding which portions of your work were taken by the third party in the allegedly infringing work, or documents that are sufficient to show the similarities.

More information about the elements required to assert a claim of copyright infringement is available in the [Starting an Infringement 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.

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). A misrepresentation claim may be made only against a respondent that made a misrepresentation in a takedown notice or a counter-notice. Your claim is not compliant because it refers only to a takedown notice that you submitted and states that no counter-notice was sent. It does not identify any misrepresentation made *by the respondent*, nor does it identify any takedown notice or counter-notice sent by the respondent.

If you believe that the respondent was responsible for making misrepresentations in a takedown notice or a counter-notice, you may file an amended claim that includes factual allegations that explain what kind of notice the respondent sent and in what way the respondent made a misrepresentation. If you believe that a different person, residing within the United States, made a misrepresentation in a takedown notice or a counter-notice, 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 an individual or entity residing outside the United States before the Board. 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.

Designated Service Agent

The respondent has designated a service agent, listed in the [CCB Designated Service Agent Directory](#), to accept service of CCB claims. If you file an amended claim, you will need to put [the name and address listed for the service agent](#) in the directory into the claim form for the respondent’s address. If the CCB finds your amended claim compliant and authorizes service, you will need to have the claim served on the service agent, using the service method specified in the directory.

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. Make the necessary edits. If your claim included supplementary documents, you must re-upload any documents you wish to include in the amended claim on the “**Documentation**” page. Please include only documents that are directly related to your claim.
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. You may also refer to the [Compliance Review](#) chapter of the Copyright Claims Board Handbook for more assistance.

Copyright Claims Attorney

September 19, 2022