



# COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0275

September 11, 2023

Paige Eagle

CLAIMANT

v.

Martin Ptacek

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 11, 2023**. 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 additional 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. 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 Infringement – Elements

Your claim must make enough factual allegations to support each “element” of the claim. 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. 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, and
4. The respondent’s work is substantially similar to the original elements of expression in your work.

Your claim does not provide clear facts to support the elements of the claim related to the respondent’s access to your work and substantial similarity, as described below. If you file an amended claim, it must include enough details about the elements for the Board and the respondent to clearly understand the facts of the alleged infringement.

## Access

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

You describe your work as a documentary titled “The Life Of An 11-Year-Old Gang Member - Raul R. Ramos.” You allege that the respondent created a derivative work, which is a work based on one or more preexisting works. However, your claim does not indicate anywhere that your documentary could be seen by the general public or how the respondent might have seen your work before the 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, before the alleged infringement, your work (a) was sent directly to the respondent, or to a close associate of the respondent; (b) was widely disseminated or was available to the public; or (c) is so strikingly similar to the respondent’s work that the respondent could not have created it independently.

Alternatively, you can upload copies of your work and the allegedly infringing work if those images demonstrate that the works are so strikingly similar that they could not have been created independently. 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.

## Substantial Similarity

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

In the “Describe the infringement” section of the claim, you state:

The respondent used 100% of the information and writings from “The Life Of An 11-Year-Old Gang Member - Raul R. Ramos” to create a public video that was published online. The respondent also published in his video numerous personal photographs that were taken from the documentary.

Your allegations indicate that the respondent made extensive use of your work. However, you do not provide information that clearly describes or shows how the respondent’s allegedly infringing video is substantially similar to expressive elements of your work that the copyright protects.

Copyright law only protects the components of a work that are original to the author, and a valid copyright only extends to copyrightable subject matter. Information about copyrightable authorship is available in Sections 302, 308, and 313 of [Chapter 300](#) of the *Compendium of U.S. Copyright Office Practices, Third Edition*. Copyright law does not protect facts or ideas. Therefore, your copyright does not protect factual information presented in your documentary or content that came from other sources. Your allegation that the respondent’s video used “100% of the information and writings” from your documentary does not support an infringement claim, if you mean that it used factual information presented in your work. If the respondent’s video used specific expressive, original material derived from your documentary (for example, narration or other textual materials or “writings” that directly quote from your work or present substantially similar text), that could support an infringement claim, but you have

not clearly alleged such use. You need to be very clear about how the expressive content *you created*, and not merely facts or information, was taken from your work and placed into the respondent's work.

Your allegation that the respondent used "numerous personal photographs that were taken from the documentary" also is not clear enough to support an infringement claim. Your copyright protects only material that is original to you. The Board has reviewed the copy of the documentary deposited with the Copyright Office with your application to register the copyright. The documentary describes the life of Raul Ramos and his autobiography *Ese to Master Jefe*, and includes many photographs, but no credits identify the photographer. Your claim does not allege that you photographed Mr. Ramos and does not make it apparent if he or his autobiography is the source of the "personal photographs" in your work, or if you created them independently. In addition, you have not provided a copy of your work or the allegedly infringing work as supplemental documents. Your allegations do not provide enough information to enable the respondent to understand the claim and respond to it because you have not clearly identified any copyright-protected expression *you originated* in your work that is used in the allegedly infringing video.

If you submit an amended claim, include more factual allegations that support the element of substantial similarity, including a clear, detailed statement regarding which portions of your work were taken by the respondent in the allegedly infringing video, or documents that are sufficient to show the similarities. You should identify specific narrative text, photographs, or other expressive elements of the documentary that (1) are original to you as the author or photographer, and (2) appear in the respondent's video in identical or substantially similar form. As explained above, 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.

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 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](mailto: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 Attorney