



COPYRIGHT CLAIMS BOARD

Docket number: 22-CCB-0262
April 7, 2023

software dynamic
CLAIMANT

v.

Google LLC
RESPONDENT

SECOND ORDER TO AMEND NONCOMPLIANT CLAIM

The Copyright Claims Board finds that your claim 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 **May 8, 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 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 amended claim before you file a second amended 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.

Claimant Information

Your claim contains conflicting information about where software dynamic is located. One address lists “Boulder, CA” while the other lists “Boulder, CO.” Please review the “Claimant Information” field and ensure that the correct address is listed for both fields.

Copyright Infringement – Infringing Activity

You are bringing a claim against an online service provider (OSP). OSPs include content-sharing websites and internet search engines, among other services. As detailed further below, your claim does not provide enough information to support allegations of infringement against the OSP respondent Google, LLC (Google).

In your responses to questions on the claim form, you assert that Google is an OSP; that you are bringing the claim against Google “due to their storage of or referral to infringing material posted by others”; and that it “failed to expeditiously remove or disable access to the material after you sent a takedown notice” as required by section 512 of the Copyright Act. In your claim you support those assertions with the statement that “Google LLC crawled this site and assisted in the infringement.” However, this assertion and the rest of your claim does not

provide enough information to support those allegations or to show that Google committed any infringing act. It appears likely that your claim is based solely upon Google's activities as a search engine, referring users of the search engine who enter certain search queries to the website where infringing copies of your Panda Helper software may be found. However, the allegations in your claim are not sufficiently clear to determine whether that is the basis for your claim.

"Safe harbors" in section 512 shield certain OSPs from being responsible for damages, if any, resulting from copyright infringement claims provided, among other things, the OSPs take steps to quickly remove or disable access to infringing material when a copyright owner notifies them about the infringement through a proper takedown notice. To avoid liability, OSPs 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. In an infringement claim against an OSP that is eligible for a section 512 safe harbor, the claimant must state facts that indicate that the respondent did not follow those procedures. Section 512 also provides a safe harbor for OSPs that restore infringing material following receipt of a "counter notification" from the person who had originally posted the material.

Your infringement claim does not provide enough information about Google's activities to overcome the section 512 safe harbor provisions. In your claim you state "We notified Google LLC, who took down the site but reinstated it later." The allegation that Google "took down the site" appears to be inconsistent with your affirmative response to the question, "Did the online service provider fail to expeditiously remove or disable access to the material after you sent a takedown notice?" The statement that Google "reinstated it later" suggests that Google may have done so in response to a counter notification from the persons responsible for panda-helper.org. This indicates that a counternotice that is not provided or detailed in the claim was filed. However, you do not provide information supporting your allegations that Google failed to expeditiously remove or disable access to infringing material upon receiving notice of infringement. Without more specifics about the reinstatement of the work, those bare allegations do not provide sufficient details for the respondent to understand what its allegedly infringing acts were.

If you file an amended infringement claim, it must include more information about how Google engaged in infringing activity. If Google did not cease referring users of its search engine to the allegedly infringing site following its receipt of your takedown notice, it may be liable for contributory copyright infringement. However, you need to provide further information clarifying whether your claim against Google is based upon its conduct as a search engine (as described above). Because such a claim would be based upon Google's alleged activity as an OSP—storing, making available, referring to, providing access to, or linking to material posted by other persons that is available online—you will have to state facts in support of that allegation that would make Google liable as an OSP, despite the section 512 safe harbor provisions, due to a failure to expeditiously remove or disable access to the infringing material after you sent a takedown notice. You will also need to provide more information regarding Google's reinstatement of the allegedly infringing material, including whether Google provided any justification for

reinstating the material, such as the receipt of a counter notification rejecting your assertion that the material was infringing. Finally, you will also have to provide more information about the underlying infringement by the operators of panda-helper.org, including how they had access to your work and in what ways it is substantially similar to your work.. . 17 U.S.C. § 1506(f)(1)(C). Please visit the [section 512 page](#) at copyright.gov 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 to bring an infringement claim against an OSP under section 512.

Final Amendment

Your amended claim did not resolve the issues raised in the December 16, 2022 Order to Amend. If you file a second amended claim, it must state enough facts in support of the claim alleged. This is your third and final opportunity to submit a compliant claim in this proceeding. If you raise any claims that your allegations do not support, the entire proceeding will be dismissed. 17 U.S.C. § 1506(f)(1)(B). In the alternative, you can delete any unsupported claim allegations in your second amended claim.

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 supplementary 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 Attorney