



COPYRIGHT CLAIMS BOARD

Docket number: 24-CCB-0369
December 13, 2024

Tamar Israel

CLAIMANT

v.

eBay

RESPONDENT

ORDER TO AMEND NONCOMPLIANT CLAIM

The Copyright Claims Board (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 **January 13, 2025**. 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 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.

First Sale

The owner of a lawfully made copy of a work may sell or otherwise dispose of that copy. 17 U.S.C. § 109. This is sometimes called the “first sale” doctrine in copyright law.

In your copyright infringement claim, you allege that an “independent freelance worker from Fiverr that I hired to help me with my copyright . . . is re-selling my book” on eBay, and screenshots filed with the claim seem to show an allegedly infringing eBay listing. Your allegation that you hired the freelancer for work related to your copyright suggests that at some point you may have given authorized copies of your book to the freelancer, such as advance copies, review copies, or genuine merchandise. If the freelancer owns lawfully made copies of your work, then under the first sale doctrine, it is not a violation of copyright law to resell them, and their sale is not a basis for a copyright infringement claim. However, if the copies of the book listed for sale by the freelancer on eBay were not made or obtained lawfully, then you must state in amended claim that they are not lawfully made or obtained copies.

Online Service Provider

Your infringement claim is not against the freelancer but against eBay, which you identify as an “online service provider” (OSP). In this context, an OSP is a provider of online services to store (and make available), refer to,

provide access to, or link to material available online that was created by someone other than the OSP. OSPs include content-sharing websites and internet search engines, among other services.

“Safe harbor” provisions in section 512 shield certain OSPs from paying damages for copyright infringement claims if they 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. Safe harbor provisions in section 512 also shield the OSPs if they restore the allegedly infringing material 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.

An infringement claim against an OSP that is eligible for a section 512 safe harbor must present facts that indicate that the claimant sent a takedown notice to the OSP as required by section 512, and that the OSP failed to remove or disable access to the material expeditiously when it received the takedown notice. Your claim includes such allegations in response to questions on the claim form, and you allege, “I have contacted eBay several times and they are allowing the seller to continue this activity.” However, other information in the claim leaves it unclear if eBay has failed to expeditiously comply with a takedown notice it received. Your only allegations about a specific interaction with eBay indicate that it complied with a takedown notice you sent in 2023 (“I contacted eBay already back in 12/2023 and they sent me this: Your reference ID: 2-171263156633. Here are the listings you reported that have been removed: Item: 256321816134”). You indicate that the freelancer has created a new eBay listing for the book, and a [screenshot](#) filed with the claim appears to show a message you sent to the freelancer asking him to remove your book from his eBay store. However, it is not apparent that you sent a message to eBay about the new listing.

You can only bring an infringement claim against an OSP if it failed to take down third-party material in response to a proper takedown notice, or restored that material without a proper counter-notice. To address this issue in an amended claim, include more details about your communications with eBay. For example, you may provide the dates of any takedown notices you sent to eBay, and of any counter-notices sent by the freelancer, and state if and when eBay complied with those notices and counter-notices. Alternatively, if screenshots of those communications would show that eBay did not take the steps required for a “safe harbor” under section 512, you may upload those screenshots as part of your amended claim. If you do include screenshots in your amended claim, they must be clearly labeled to indicate what they are.

Please visit the [section 512](#) page and the discussion at pages 18-19 of the [Starting an Infringement Claim](#) chapter of the CCB Handbook for information about what section 512 of the Copyright Act requires for an infringement claim against an OSP.

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. 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.

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