



# COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0297  
January 22, 2024

VideoHat LLC

CLAIMANT

v.

Google LLC

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 **February 21, 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. 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.

### Legal or Beneficial Owner

Your claim provides unclear information about your status as a legal or beneficial owner of the allegedly infringed works. To bring a copyright infringement claim before the Board, the claimant must be a “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. More information about legal and beneficial ownership is available at page 4 of the [Starting an Infringement Claim](#) chapter of the CCB Handbook.

It is not apparent that you are a legal or beneficial owner of the copyrights at issue. In the “Describe the infringement” section of the claim form, you state that “[t]he uploader is violating our client’s copyright by distributing their content without a license,” which seems to indicate that the copyrights belong to your clients

rather than you. Supplemental documents filed with the claim indicate that you are authorized to collect the royalties for certain works, act as their licensing agent, and “manage” the copyrights, but they do not appear to transfer any copyrights or grant you an assignment or an exclusive license for the works. These materials leave it unclear whether you own the copyrights or have an exclusive license to use the exclusive rights at issue.

To correct this issue, if you file an amended claim, it must include specific allegations about how you own, or have an exclusive license to use, the exclusive rights at issue. You can do this either by adding facts to the “Describe the infringement” section explaining how you were the owner of exclusive rights in the work at the time of the infringement or by submitting supplemental documents. For example, you may state facts that clarify your relationship with the songwriters and musicians who appear to be the authors and copyright owners, or state how you obtained legal or beneficial ownership of the copyrights from them.

### Copyright Registration

The Board can only hear a copyright infringement claim if, before the claim was filed, (1) the Copyright Office issued a registration certificate for the copyrighted work or (2) the legal or beneficial owner of the copyright applied to register the copyright by delivering a completed application, deposit, and fee to the Copyright Office, and the Copyright Office has not refused the application. 17 U.S.C. § 1505(a). The claim must include the registration number and effective date of registration or, if the work has not yet been registered, the service request number for a pending application to register the copyright. 37 C.F.R. §§ 221.1(b) & 222.2(c)(7)(ii)(C)-(D).

Your claim correctly listed the service request numbers for four applications for registration of the allegedly infringed works. Those registrations have since issued. If you submit an amended claim, state in the “Works infringed” section that the works have been registered, and include the registration numbers and effective dates of registration listed below.

Title of Work	Registration No.	Effective Date of Registration
Works Published on the Album Lataef Al Hadra	SR0000977559	July 27, 2023
Works Published on the Album Anwaro Annabi	SR0000977564	July 27, 2023
Works Published on the Album Best of Al Hadra Band	PA0002446635	May 28, 2023
Works Published on the Album Madeehul Mustafa Taha	SR0000977551	July 27, 2023

In addition, although you identify the allegedly infringed works as sound recordings, the works covered by the copyright registration for the “Works Published on the Album Best of Al Hadra Band” are not sound recordings but a group of musical works.

When a song is recorded, two works may be created that are protected by copyright: a musical composition (also known as a musical work) and a sound recording. “A copyright in a musical composition is distinct from a copyright in a particular recording thereof.” *TufAmerica, Inc. v. WB Music Corp.*, 67 F. Supp. 3d 590, 591 n.1

(S.D.N.Y. 2014). A musical composition is the underlying composition along with any accompanying lyrics. Musical compositions are usually created by a songwriter or composer. A sound recording is a series of musical, spoken, or other sounds fixed in a recording medium, such as a CD or digital file. Sound recordings are usually created by the performer and the producer of the recording. For example, Aretha Franklin’s recording of “Respect” includes two works protected by copyright: the musical composition of “Respect” written by Otis Redding and the recording of that musical composition performed by Aretha Franklin.

If you allege infringement of “Works Published on the Album Best of Al Hadra Band” in an amended claim, correct the “Works infringed” section to identify the type of work on that album as musical works, not as sound recordings.

### **Access**

You allege that an “uploader is violating our client’s copyright by distributing their content without a license, while the respondent is reinstating these videos and refusing to comply.” You name the respondent as both “Google LLC” and “YouTube LLC” (herein, Google), which you identify as an “online service provider” (OSP). You list dozens of YouTube URLs where the alleged infringing acts occurred. However, your claim does not provide facts about where or how the uploader had access to the allegedly infringed works before uploading them. “Access” means a reasonable opportunity to view or hear the work before the alleged infringement took place.

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 the works (a) were sent directly to the uploader or a close associate of the uploader; (b) were widely disseminated or were available to the public or the uploader; or (c) are so strikingly similar to the uploaded works that the uploader could not have created them independently.

### **Substantial Similarity**

Your claim also does not include enough facts that explain the similarities between the allegedly infringed works and the allegedly infringing videos uploaded to YouTube. If it is not readily apparent from supplemental documents that are submitted with the claim, you must provide some specific allegations about how the copyrighted works and the allegedly infringing works are identical or substantially similar.

You have not provided enough information clearly describing the allegedly infringed sound recordings or musical compositions or how they are similar to the content of the allegedly infringing videos. You allege that certain works on four Al Hadra Band albums were used without permission, but you do not specify which works from each album were used. Other than a general statement that the videos distribute some “content” under copyright, no allegations in the “Describe the infringement” section of the claim describe the copyrighted works or the allegedly infringing works, or state or show how they are identical or substantially similar. In addition, you have not provided copies of the works as supplemental documents. While the “Where the alleged infringing acts

occurred” section lists dozens of allegedly infringing YouTube URLs, the Board will not take into account material that is solely referred to in a hyperlink or URL and not uploaded as supplemental documentation. 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, include more specific allegations that support the element of substantial similarity. For example, if you allege that infringing YouTube videos contain material that is *identical* to the allegedly infringed works, identify those videos and the works to which they are identical. Or, if you allege that the infringing videos contain material that is *substantially similar* to expressive material in the allegedly infringed works, identify particular details in the allegedly infringing works that are similar to copyrightable expression in the original works, and describe how they are similar. Your description should help the respondent and the Board understand the similarities you see between the allegedly infringing works and the protectable aspects of the allegedly infringed works.

### **Online Service Provider**

In your claim, you assert that Google is an OSP; that you are bringing the infringement claim against Google “due to their storage of or referral or linking to infringing material posted by others”; and that Google failed to expeditiously remove or disable access to infringing material after you sent a takedown notice to Google as required by section 512 of the Copyright Act. Your claim does not provide enough information to support those allegations or to show that Google committed any infringing act.

“Safe harbors” in section 512 shield certain OSPs from paying damages for copyright infringement claims if, 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, counter-notices seeking the re-posting of the allegedly infringing material, and notices of legal action after a counter-notice. 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.

A Section 512 safe harbor protects Google’s act of reinstating the videos unless, before the reinstatement, you filed an infringement lawsuit or Board claim against the uploader and gave Google notice of that legal action. 17 U.S.C. §§ 512(g)(2)(C) & 1507(d). Your allegations leave it unclear if that safe harbor applies. In the “Description of harm suffered and relief sought” section, you state:

YouTube sided with the uploader and refused to cooperate when provided with the required documents to demonstrate that we were taking legal action against the uploader.

YouTube LLC requested us to submit an eCCB claim, and in return, they would comply and remove the content. Despite submitting the required document, YouTube LLC refused to comply and reinstated the content.

This is the third Board proceeding in which you claim that videos uploaded on YouTube, at the same URLs, infringe “Works Published on the Album Best of Al Hadra Band.” You initiated the first proceeding (*VideoHat LLC v. YouTube LLC*, No. 23-CCB-0185) directly against YouTube LLC on May 28, 2023, and the second proceeding (*VideoHat LLC v. Nour El Din Nageh Ali*, No. 23-CCB-0216) against the alleged uploader on June 26, 2023. You amended the latter claim on July 26, 2023, to name YouTube LLC as the respondent instead. Both proceedings were dismissed without prejudice, as you had not completed your application for copyright registration before filing those claims as required by 17 U.S.C. § 1505(a).

Your infringement claim does not provide enough information about your notice of legal action to show that the safe harbor provisions do not apply to this proceeding. You have not provided the dates when you sent the notice to Google and when Google reinstated the videos, and it is not clear if the legal action your notice concerned was one of the prior Board proceedings or some copyright infringement lawsuit filed in federal court. The notice would only affect the safe harbor if it concerned an action against the alleged uploader, rather than against Google itself. *See* 17 U.S.C. § 1507(d) (requiring notice of “an action seeking an order to restrain [the OSP’s] *subscriber* from engaging in infringing activity”) (emphasis added). Therefore, to affect the safe harbor, a notice of a prior Board proceeding must have been sent to Google about Claim 23-CCB-0216, during the month that the alleged uploader was the named respondent in that proceeding.

It also is not clear which allegedly infringed works were at issue in the notice of legal action. Sending Google a notice of a prior Board proceeding, which involved only “Works Published on the Album Best of Al Hadra Band,” would not affect any safe harbor Google would have for a claim of infringing any works on the other three albums at issue in this proceeding. If you only sent notice of such a proceeding, you would need to remove the other three albums from an amended claim, or add allegations showing that Google directly engaged in copyright infringement. Without more specifics, your claim does not clearly indicate that Google may be held liable for any or all of the infringing acts alleged in this proceeding.

If you file an amended claim, it must include more information about how Google engaged in infringing activity. If your claim is based upon its 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, because it failed to comply with a notice of legal action against the uploader for infringing the works at issue in this proceeding. Provide the date of each takedown notice, counter-notice, notice of legal action, and reinstatement at issue; list the allegedly infringed works identified in each takedown notice; identify the lawsuit or Board proceeding that your notice of legal action concerned; and identify which works you alleged were infringed in that lawsuit or proceeding. In the alternative, you may upload any documents you want the Board to consider as supplemental materials as part of the claim, such as any takedown notices, counter-notices, notices of legal action, or other

correspondence with Google related to the alleged infringement. If you include supplemental documents, they must be clearly labeled and identified so the Board and the respondent can understand how they relate to the claim.

Please visit the [section 512 page](#) and the discussion at pages 19-21 of the chapter on [Starting an Infringement Claim](#) in the CCB Handbook for additional information about what is required for an infringement claim against an OSP protected by a section 512 safe harbor.

If, on the other hand, your amended claim is not based on Google acting as an OSP, you must state facts that identify how Google engaged in infringing activity (such as copying, distributing, or performing your work) on its own, rather than on the basis of infringing material posted on YouTube by its users.

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