



COPYRIGHT CLAIMS BOARD

Docket number: 22-CCB-0053

United States Copyright Claims Board

Scott Decker

CLAIMANT

v.

Kelly Souders, Carolyn G. Bernstein, and Brian Peterson

RESPONDENTS

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 17, 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 issue 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 – Element of 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, and
4. The respondent’s work is identical or substantially similar to your work.

Your claim does not provide facts about how the respondents had “access” to your work. “Access” means a reasonable opportunity to view or hear your work. Please provide more details and background regarding this element in your amended claim.

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

Copyright Infringement Claim – Element of Substantial Similarity

Your claim also does not include enough facts that explain the similarities between your work and the respondents’ 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 the copyrightable elements in your work and elements of the allegedly infringing work are similar.

The “Describe the infringement” field of your claim states generally: “The scrip writers used many scenes drawn from my book, *Recounting the Anthrax Attacks*. They used the timing and interpretation of scenes as interpreted by me.” If you submit an amended claim, include more specific allegations that support the element of substantial similarity, for example, by identifying particular scenes and details in the respondents’ work that are similar to copyrightable expression in your work, and describing how they are similar. Your description should help the respondents and the Board understand the similarities you see between the respondents’ allegedly infringing work and the protectable aspects of your work.

A valid copyright only extends to copyrightable subject matter, and copyright law only protects the components of a work that are original to the author. Information about copyrightable authorship is available in Sections 302 and 308 of [Chapter 300](#) of the *Compendium of U.S. Copyright Office Practices, Third Edition*. Facts are not copyrightable, although a work of authorship that contains factual information may contain a sufficient amount of original authorship to be protected by copyright. Information about the issue of copyrightability of facts is available in Section 313.3(C) in [Chapter 300](#) of the *Compendium*. Likewise, stock characters, settings, and events that are common to a particular subject matter (“*scènes à faire*”) are not protected by copyright because they are commonplace, not “original.” Information about the issue of *scènes à faire* is available in Section 313.4(I) in [Chapter 300](#) of the *Compendium*.

Your description should include specific allegations about what copyrightable subject matter in your work the respondents copied. More information about what to include in the “Describe the infringement” field is available at pages 14-15 of 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.

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 16, 2022