



COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0395

December 1, 2023

Terrell Lipscomb

CLAIMANT

v.

David Ellison, Dana Goldberg, and Amazon Prime

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 **January 2, 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.

Registration Number

You have raised a claim of copyright infringement before the Board. The claim must include the registration number of the allegedly infringed work, if it has been registered. 37 C.F.R. § 222.2(c)(7)(ii)(C).

In the “Works infringed” section of your claim, you list a literary work titled “The War Hero,” which you describe as a “feature screenplay script.” You provide 1-10140403711 as its registration number. However, that is the Service Request number the Copyright Office assigned to the application for registration. The registration number is PAu004070326. If you file an amended claim, please provide the correct registration number for the work in the “Works infringed” section.

Infringing Activity

Your claim lists Amazon Prime and two individuals as respondents. You have not presented enough facts to clearly state how each of the respondents used your exclusive rights in the allegedly infringed work without permission.

Copyright law grants exclusive rights to copyright owners. These include the right to reproduce, distribute, and publicly display the work, and to make a “derivative work,” which is a work based on the original work. Someone

who does one of those activities without the copyright owner's permission may be infringing the copyright, unless they have a legitimate defense. More information about exclusive rights is available on page 3 of the [Starting an Infringement Claim](#) chapter of the CCB Handbook.

Your allegations are not specific or clear enough to describe how any of the respondents copied, distributed, or made other use of the work that would constitute copyright infringement. Your claim does not state any allegations about either of the individual respondents. You allege that “it was probable that someone close to Amazon studios read” your script, but you do not clearly state how the respondent Amazon Prime engaged in any specific infringing acts. You state generally that “they stole my release.” You indicate that a “movie came out” after “[t]hey had multiple writers working on the script throughout the years,” but you do not clearly describe the movie or assert that it was based on your script and how. You state that you are “seeking a writing credit on the movie Without Remorse.” “Without Remorse” may be the title of the allegedly infringing work, but your claim does not clearly allege it.

Those allegations do not clearly describe how the respondents reproduced, distributed, or made derivative works based on your work without authorization. Your claim does not state facts that clearly describe each respondent's role in any allegedly infringing acts.

If you file an amended claim, it must include allegations that state or show how the respondents engaged in a clearly described infringing use of your work. You must identify particular infringing acts by each respondent. For example, if a respondent copied your screenplay, you must provide details about how and what it copied. Include enough facts explaining what activities each respondent engaged in that allegedly infringed the work, so that each of the respondents can understand the nature of the claim against them.

Access

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

Your claim does not provide enough information about where your work was available to the respondents, or how it was provided to the respondents, before any alleged infringement. While you indicate that the allegedly infringing movie was in development for years, you do not identify when it was produced or released. In the “Describe the infringement” section of the claim, you allege: “My script was getting read by agents and screenwriting competitions before it came out so it was probable that someone close to Amazon studios read it and I can get a testimony from the agent I was working with that she sent out my script.” You do not indicate that your agent sent your script to any of the respondents, or how entering the script in screenwriting competitions would have given the respondents access before they created the allegedly infringing work. Your claim does not state when your script was sent to agents or entered in competitions. A separate document you filed indicates that it was submitted to two competitions in 2021, but that is not a fact included as part of the 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 respondent or a close associate of the respondent; (b) was widely disseminated or was available to the public or respondent; or (c) is so strikingly similar to the respondent's work that they could not have been created independently.

Alternatively, you can upload copies of your work and the allegedly infringing work as supplemental documents if those copies show that the works are so strikingly similar that they could not have been created independently. You have uploaded a copy of "The War Hero," but not the allegedly infringing script or movie. 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 enough facts that explain the similarities between your work and any allegedly infringing work. The allegedly infringing work must be substantially similar to copyright-protected elements in the allegedly infringed work. If it is not readily apparent from supplemental documents that are submitted with the claim, you must provide more specific allegations about how the allegedly infringing work is similar to expressive material in your work that copyright protects.

A 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, 308, and 313 of [Chapter 300](#) of the *Compendium of U.S. Copyright Office Practices, Third Edition*. Copyright law does not protect "any idea [or] concept"; it only protects original elements of expression. 17 U.S.C. § 102(b).

Your only allegations in the "Describe the infringement" section related to similarity are: "They both have identical openings and feature a black female sidekick." Those allegations do not sufficiently describe what portions of your work were used in an allegedly infringing work, or state or show how the respondents' work is identical or substantially similar to material in your work that copyright protects. The bare allegation of "identical openings" does not clearly identify particular protected expression in your work that appears in the respondent's work. And while copyright may protect distinctive aspects of a specific character, it does not protect the general idea for a character, or standard character types. See *Klinger v. Conan Doyle Estate, Ltd.*, 755 F.3d 496, 502-03 (7th Cir. 2014); *DiTocco v. Riordan*, 815 F. Supp. 2d 655, 668 (S.D.N.Y. 2011) ("stock characters, such as a sidekick . . . are not copyrightable"). In addition, it does not appear that your script identifies any character as a "black female sidekick."

Your allegations do not appear to describe the unauthorized use of any specific, protectible expressive material. Your description is also not clear enough to indicate what the allegedly infringing work is, or how it is similar to your work. In addition, while you include a copy of "The War Hero" script as a supplemental document, you do not include a copy of any allegedly infringing work. As a result, you do not provide enough information to enable the respondents and the Board to understand the nature of the claim.

If you submit an amended claim, it must include factual allegations that indicate that the respondents' work is substantially similar to protectible matter in your work. Please provide more information regarding this element in your amended claim, including a clear, detailed statement regarding which portions of your work were taken by the

respondents in the allegedly infringing work, or documents that are sufficient to show the similarities. For example, if you maintain that the works “both have identical openings,” please describe or show what the openings have in common, and if you maintain that both works “feature a black female sidekick,” please identify those characters in both works and describe the similarities you identify between them. If you include copies of the works at issue as supplemental documents, then as noted above, they must be clearly labeled and identified so they can be properly compared to each other, and your amended claim should point the Board and the respondents to the substantially similar material.

Online Service Provider

In your responses to questions in the claim form, you allege that one or more of the respondents is an online service provider (“OSP”), and that your claim against the OSP is based on its “storage of or referral or linking to infringing material posted by others,” but that you did not send the OSP a “takedown notice” as required by section 512 of the Copyright Act. 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.

An OSP is a provider of online services to store (and make available), refer to, provide access to, or link to material available online. OSPs include content-sharing websites and internet search engines, among other services. Under the CASE Act, when a copyright infringement claim is raised against an OSP for storing, or referring or linking to, infringing material, the Board must find the claim noncompliant unless the claimant affirms that:

1. the claimant sent a takedown notice to the OSP as required by section 512 of the Copyright Act, and
2. the OSP did not remove or disable access to the material expeditiously when it received the takedown notice.

17 U.S.C. § 1506(f)(1)(C)(i); 37 C.F.R. § 222.2(c)(7)(iii)(G). Your claim does not comply with the CASE Act because you identify the claim as based on at least one respondent’s actions as an OSP, and you state that you did not send the OSP a proper takedown notice. However, despite those responses to the OSP questions, nothing else in your claim indicates that any of the respondents acted as an OSP in relation to infringing material posted by a third party. Your infringement claim cannot proceed unless you file an amended claim that either (1) removes the allegation that any respondent is an OSP, (2) removes the allegation that the claim against the OSP is based on it storing, referring to, or linking to infringing material posted by others, or (3) alleges that a particular respondent is an OSP that did not comply with a takedown notice you sent, and states facts in support of those allegations that would make that respondent liable.

Please visit the [section 512 page](#) on the Copyright Office website and the discussion at pages 19-21 of the [Starting an Infringement Claim](#) chapter in the CCB Handbook for additional information about OSPs and 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.

Copyright Claims Attorney