



# COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0149  
June 8, 2023

Michelle Shocked

CLAIMANT

v.

MacMillan Publishers, Farrar, Straus and  
Giroux dba FSG

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 **July 10, 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 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.

### Respondent Information

Your claim states that the allegedly infringing work was published by “FSG Originals, a MacMillan imprint” And lists Farrar, Straus & Giroux, dba FSG Originals as one of the respondents. That does not appear to be a separate entity and corporate records indicate that Farrar, Straus & Giroux, Inc. was an New York corporation but its status has been inactive since 1998 when became a division of of MacMillan. Therefore, it appears that correct respondent is Macmillan Publishers. Please amend the “Respondent Information” field and ensure that only the correct respondent is named.

### Legal or Beneficial Ownership

To bring a copyright infringement claim before the Board, the claimant must be “the 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.

Your claim provides conflicting facts about your status as a legal or beneficial owner of the allegedly infringed work. A Board search of Copyright Office records shows that you are not listed as an author of the copyright registrations for the work “Five AM in Amsterdam” (“PA0000374062”) identified in your claim. Copyright Office records identify PolyGram Records, Inc. as the copyright claimant.

A claimant asserting an infringement claim who is not a named copyright owner in the registration of the allegedly infringed work must support the claimant’s appropriate ownership of the copyright. If it is not readily apparent from supplemental materials submitted with the claim, you must provide some specific allegations about how the claimant owns, or has an exclusive license to use, the exclusive rights at issue.

When amending your claim, you must provide some specific allegations about how you own the copyright in the registered work or that you own the exclusive rights at issue or are a beneficial owner under the law. You can do this either by adding facts to the “Describe the infringement” section explaining your ownership in exclusive rights in the work at the time of the infringement or by submitting supplemental documents. For example, you may describe your relationship with PolyGram Records, Inc. and detail how you obtained legal or beneficial ownership of the copyright. More information about legal and beneficial ownership is available at page 4 of the [Starting an Infringement Claim](#) chapter of the CCB Handbook.

### **Copyright Infringement Claim – Clarity**

Your copyright infringement claim must provide enough information for the respondent to understand what its allegedly infringing acts were. Your claim includes multiple allegations of infringement by third-party foreign publishers. In addition, in the “Describe the infringement” section of the claim you have included substantive communications concerning a potential license with a French publisher. It is acceptable to give background details to make your claim clearer. However, in this claim, the details make your infringement claim against the respondent less clear as your claim does not include enough facts about how the respondent, a United States based publisher, directly infringed your work. Please provide details and background regarding the infringing activities of the respondent.

Your claim is similarly unclear in its discussion of “greymarket traffickers” and “Fraudulent First Sale” activities. To the extent that these allegations do not directly relate to a claim of infringement by respondent, they should be removed. A copyright infringement claim may be also raised against a “secondary infringer” who does not engage in infringing acts directly, but controls and profits from or facilitates acts of direct infringement by others. To the extent that you intend to support a claim of secondary infringement, however, you have not done so in this claim, and you would have to provide additional facts about how the respondent acted with relation to these third-party activities. Secondary infringement claims must be based on either “vicarious liability” or “contributory liability.” Your claim does not include enough facts to support either of these grounds for secondary infringement. Finally, the Board notes that, under the first sale doctrine, any owner of a lawfully made copy of a work may sell or otherwise dispose of that copy. 17 U.S.C. § 109. Therefore, to the extent your claim is that you do not wish others to re-sell lawfully made copies of your work, that is not a valid claim under copyright law.

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