



COPYRIGHT CLAIMS BOARD

Docket number: 24-CCB-0023

January 24, 2024

Victor R. Wallner

CLAIMANT

v.

Meta Platforms, Inc.

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 23, 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.

Copyright Infringement – Elements

Your claim must make enough factual allegations to support each “element” of the claim. 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. 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 substantially similar to the original elements of expression in your work.

Your claim does not provide clear facts to support the elements of the claim related to the respondent’s access to your work and substantial similarity, as described below. If you file an amended claim, it must include enough details about the elements for the Board and the respondent to understand the facts of the alleged infringement. In addition, your claim must provide more information related to your takedown notice and the respondent’s actions in response to that notice.

Access

You allege that Facebook users have posted copies of your work on Facebook. However, your claim does not provide facts that indicate how the Facebook users had access to your work. “Access” means a reasonable opportunity to see or copy your work before the alleged infringement took place. Your claim does not state allegations about where or how your work was available to the Facebook users before the alleged infringement so that they had an opportunity to see it and post it on Facebook.

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 work that appeared on the respondents’ website that they could not have created it independently.

Alternatively, you can upload a copy of your work and the allegedly infringing works posted on Facebook, if they demonstrate that the works are so strikingly similar that they could not have been created independently. You included an image file with your claim, labeled [Shallowshark Image-690.jpg](#), which appears to be your work, but you have not provided a copy of any allegedly infringing work that appeared on Facebook. 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 the allegedly infringing work. If it is not readily apparent from supplemental documents that are submitted with the claim, you must provide more specific allegations about how your work and the allegedly infringing work are similar.

In the “Works infringed” section of the claim, you describe your work as “A bridge in Yuma Az with lightning striking behind it,” titled “Shallowshark Image-690,” and a supplemental document filed with the claim appears to be your work. However, the claim does not clearly describe the allegedly infringing work that was posted on Facebook or include it as a supplemental document. As a result, the claim does not provide enough information to enable the Board to understand the similarity of the works.

If you submit an amended claim, it must include more factual allegations that support the element of substantial similarity. Please provide more details and background regarding this element in your amended claim, including a clear, detailed statement regarding which portions of your work were used by the Facebook users in the allegedly infringing Facebook posts, or documents that are sufficient to show the similarities. If you include copies of the works at issue as supplemental documents, then as discussed above, they must be clearly labeled and identified so they can be properly compared to each other.

Online Service Provider

Your infringement claim asserts that the respondent Meta Platforms, Inc. (Meta) is an “online service provider” (OSP); that you are bringing the claim against Meta “due to their storage of or referral or linking to infringing material posted by others”; and that it failed to expeditiously remove or disable access to infringing material after you sent a takedown notice to Meta as required by section 512 of the Copyright Act. Your claim does not provide enough information to support those allegations or to show that Meta 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, and counter-notices seeking the re-posting of the allegedly infringing material. 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.

Your infringement claim does not provide enough information about the respondent’s activities to overcome the safe harbor provisions. Specifically, you do not provide information supporting your allegations that you sent a takedown notice to Meta, and that it failed to expeditiously remove or disable access to infringing material upon receiving notice of infringement. Without more specifics, those bare allegations do not provide sufficient details for Meta to understand what its allegedly infringing acts were.

If you submit an amended claim, you must include more details about the takedown notice to support your claim, such as when and how it was submitted to Meta, what you stated in the takedown notice, whether Meta responded to your takedown notice, and if so, when, and what Meta said in response. Alternatively, when you submit the amended claim, you may include copies of your takedown notice to Meta and other communications with Meta about this claim as supplemental documents, if they are sufficient to show that your takedown notice complied with section 512 and that Meta did not take action in a timely manner. If you include copies of such correspondence as supplemental documents, they must be clearly labeled and identified.

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