



COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0346

October 30, 2023

Mert Atas

CLAIMANT

v.

Joseph Wagner

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 **November 29, 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.

Exclusive Rights

Your copyright infringement claim does not present enough facts to clearly state how the respondent used any exclusive rights you have 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 an original work. Someone who does one of those activities without the copyright owner’s permission may be infringing the owner’s 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 indicate that your work is a derivative work based on a video game titled “Crusader Kings III.” In the “Works infringed” section of the claim, you identify your work as software titled “Advanced Cheat Menu,” which you describe as an “additional modification to [a] game called Crusader Kings III,” including “code for scripts and graphical user interface.” Typically, a video game modification is a derivative work. See *Midway Manufacturing Co. v. Artic International, Inc.*, 547 F. Supp. 999, 1013-14 (N.D. Ill. 1982) (“the copyrighted work at issue

in this case is the audiovisual display that appears on the video game’s screen. . . . [Defendant’s] modifications of plaintiff’s copyrighted display fit well within the definition of derivative works.”).

The owner of the “Crusader Kings III” copyright has the exclusive rights “to prepare derivative works based upon the copyrighted work” and to authorize others to do the same. 17 U.S.C. § 106(2). Modifications, such as video game “cheat menus,” may infringe those rights. See *Micro Star v. Formgen Inc.*, 154 F.3d 1107, 1112 (9th Cir. 1998), *Take-Two Interactive Software, Inc. v. Zipperer*, No. 18 Civ. 2608, 2018 U.S. Dist. LEXIS 151169 (S.D.N.Y. Aug. 16, 2018). You do not allege that you own the copyright for “Crusader Kings III,” or that its copyright owner licensed or authorized your work directly or indirectly.

It is not clear from your allegations if “Advanced Cheat Menu” is an original, copyrightable work, or if it is instead an infringement of the “Crusader Kings III” owner’s rights to make and authorize derivative works. Copyright protects only “original works of authorship.” 17 U.S.C. § 102(a). To be original, the work must be “independently created by the author (as opposed to copied from other works)[.]” *Feist Publications, Inc. v. Rural Telephone Service Co.*, 499 U.S. 340, 345 (1991). If your work is not an original work of authorship or an authorized derivative work, it is not protected by copyright and cannot support an infringement claim.

If you file an amended claim, it must present facts that clarify what right you have to make a modification based on “Crusader Kings III,” for example, a license, permission, or other authorization from the copyright owner of that work, such as a signed agreement or provisions of the copyright owner’s Terms of Use or End User License Agreement. Your amended claim also must identify substantial elements of “Advanced Cheat Menu” that are your original works of authorship or authorized derivative works.

If you submit such materials as supplemental documents, they must be clearly labeled so that the respondent and the Board can understand what the materials are. Your claim included several documents that appear to be text files containing programming code. However, it is not wholly clear which of those files contain elements of your work rather than the respondent’s work, or which of those elements, if any, originated in your work rather than in “Crusader Kings III.”

Substantial Similarity

Your allegations do not provide enough clarity about the similarities between your work and the allegedly infringing work. You allege that the respondent created a derivative work based on your work without permission. However, your claim does not clearly identify elements of the respondent’s allegedly infringing work that are substantially similar to original, expressive elements of “Advanced Cheat Menu.”

If it is not readily apparent from supplemental materials that are submitted with the claim, you must provide specific allegations about how the allegedly infringing work is similar to original, expressive material in your work. If you file an amended claim, include clarifying information to help the respondents and the Board understand the similarities you see between the allegedly infringing work and your work. Include a clear statement regarding which original portions of your work were taken by the respondent in the allegedly infringing work, or documents that are

sufficient to show the similarities. As stated above, 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.

You should note that in software copyright infringement lawsuits, courts often rely on expert witness testimony to decide if the allegedly infringed work contains enough independently created material to be an original work of authorship, or if it is substantially similar to the allegedly infringing work. However, the use of expert witnesses in proceedings before the Board is highly disfavored and requests to submit expert testimony are rarely granted. 37 C.F.R. § 225.4(b). If expert testimony would be necessary for the Board's to determine independent creation or substantial similarity, the claim may be dismissed as unsuitable. More information is available in the [Unsuitability](#) chapter of the CCB Handbook.

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.