



# COPYRIGHT CLAIMS BOARD

Docket number: 22-CCB-0271

March 27, 2023

Michelle Shocked

CLAIMANT

v.

Eric Strauss

RESPONDENT

## SECOND ORDER TO AMEND NONCOMPLIANT CLAIM

The Copyright Claims Board finds that your claim, as amended, still does not comply with the requirements of the CASE Act and related regulations. The claim cannot move forward unless it is properly amended.

If you wish to proceed with this claim, you must file a second amended claim by **April 26, 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. There is no additional filing fee for an amended claim. If you file a second amended claim and it is found compliant, you will be notified and directed to proceed with service. However, if your second amended claim also is found not to comply, the Board will dismiss the proceeding without prejudice. 17 U.S.C.

§ 1506(f)(1)(B); [37 C.F.R. § 224.1\(d\)](#).

To make your second 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 amended 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 – Infringing Activity

Your allegations still do not clearly state how the respondent Eric Strauss (Strauss) violated your exclusive rights in the allegedly infringed work. As discussed further below, it is not clear whether you are accusing Strauss of engaging in direct infringement, secondary infringement, or both.

The allegedly infringed work is a sound recording titled “Short Sharp Shocked,” which you describe as “an album with words and music, performed by Michelle Shocked.” You allege that Strauss posted a video on YouTube titled “Found It! ‘Short Sharp Shocked’ Full Album Whereabouts,” which was accompanied by the following descriptive text:

#MichelleShocked #ShortSharpShocked #ElusiveMusic Boy is this a difficult album to listen to online. It looks like Michelle Shocked is really trying to sell 1000 CDs at \$250 a pop, so it's very difficult to find this album's audio anywhere online. But I found it. Where? Here: [https://archive.org/details/cd\\_short-sharp-shocked\\_michelle-shocked\\_0/disc1/01.+Michelle+Shocked+-+When+I+Grow+Up.flac](https://archive.org/details/cd_short-sharp-shocked_michelle-shocked_0/disc1/01.+Michelle+Shocked+-+When+I+Grow+Up.flac)

You refer to that archive.org URL as a “copyright infringing URL,” and you allege that it was linked to an audio file of the album on the Internet Archive’s website, where an unidentified Internet Archive member had uploaded a copy. An [image](#) file submitted with your amended claim appears to show a screenshot of that “Found It!” video. It indicates that the video was 21 seconds long and was posted on YouTube on January 29, 2021. The video image appears to show the Internet Archive page at the “infringing URL” where you allege the audio file of the album was available. You allege that on February 9, 2021, you submitted a DMCA takedown notice to YouTube regarding the “Found It!” video, as well as a notice of infringement to Internet Archive.

However, it is not clear whether you are accusing Strauss of engaging in *direct* infringement (for example, by distributing and publicly performing a substantial portion of the album on YouTube, or by posting the audio file on archive.org) or of *secondary* infringement (for example, by providing a link in the video’s descriptive text to the archive.org audio file, to encourage or induce viewers to click the link and thereby engage in infringement). As further described below, if you file a second amended claim, it must include clearer allegations that support a claim based on direct infringement, secondary infringement, or both.

## **I. Direct Infringement**

Copyright law grants exclusive rights to copyright owners. These include the right to reproduce, distribute, and publicly perform the work, and to make a “derivative work,” which is a work based on the original work. More information about exclusive rights is available on page 3 of the [Starting an Infringement Claim](#) chapter of the CCB Handbook. To support a claim of direct copyright infringement, your second amended claim must include facts that indicate that Strauss personally violated one or more of those exclusive rights.

You allege that infringing acts occurred in two online locations: the YouTube page where Strauss posted his video, and the Internet Archive audio file. However, your allegations do not state enough facts to support a direct infringement claim against Strauss based on either the video or the audio file. You have not described the YouTube video’s content, or alleged that it directly reproduced, distributed, or publicly performed any audio from “Short Sharp Shocked.” You also have not alleged that it was Strauss who uploaded the audio file on archive.org, and your amended claim states that you “cannot provide probative evidence” about who did. If you want to assert a claim of direct infringement, then your second amended claim must include more facts that support that claim. For example, if you contend that Strauss’s video included some or all of the “Short Sharp Shocked” album, then your second amended claim must clearly state that part of the album was played in the video, and indicate which part. Alternatively, if your contention is that Strauss personally uploaded an audio file containing the work to archive.org, then your second amended claim must explicitly allege that he did, and describe the basis for that allegation.

## **II. Secondary Infringement**

A copyright infringement claim may be also raised against a “secondary infringer” who does not engage in any infringing acts directly, but profits from or facilitates acts of direct infringement by others. Some facts in your amended claim suggest that you may wish to bring a claim of secondary infringement to hold the respondent liable

for activities by third parties. To support a claim of secondary infringement, you must 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 amended claim does not include enough facts to support either of these grounds for secondary infringement.

- A **vicarious liability claim** must state facts that indicate that the respondent had the right and the ability to supervise or control a third party’s infringing activity, and received a direct financial benefit from the infringement.
- A **contributory liability claim** must state facts that indicate that the respondent knows about a third party’s infringing activity and induces, causes, or substantially contributes to that infringing conduct.

A secondary infringement claim, whether based on vicarious or contributory liability, must allege some underlying direct infringement by a *third party*. If you intend to assert a claim of secondary infringement, then your second amended claim must include more facts that support that claim.

If you want the Board to find Strauss *vicariously* liable for third-party uses of the audio file on archive.org, your second amended claim must include allegations that he was able to control or supervise the use of that audio file, and that he profited directly from its use. While you allege that Strauss offered directions to the audio file, you have not alleged facts indicating that he could control or supervise, or received a direct financial benefit from, any infringing use.

Alternatively, if you want the Board to find Strauss *contributorily* liable for third-party uses of the audio file on archive.org, your second amended claim must include allegations that he knew, or had reason to know, that uses of the audio file would be infringing, and that he facilitated that infringing conduct by inducing, causing, or materially contributing to its use. Your current allegations about Strauss’s descriptive text on YouTube indicate that he knew that the album was “difficult to find ... online,” and that he publicized the “copyright infringing URL” link to the archive.org audio file. However, you have not alleged that he knew, or reasonably should have known, that using the audio file would be infringing, and you have not alleged that he in fact induced, caused, or materially contributed to anyone actually using the link to engage in direct infringement by, for example, copying, distributing, or publicly performing your work.

## Final Amendment

Your amended claim resolved some, but not all, of the compliance issues raised in the February 6, 2023 Order to Amend Noncompliant Claim. This order further explains the compliance issue in your amended claim that still must be resolved. **This is your third and final opportunity to submit a compliant claim in this proceeding. If your claim remains noncompliant, the entire proceeding will be dismissed.** 17 U.S.C. § 1506(f)(1)(B).

To submit a second 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 supplementary 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