



# COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0335

October 13, 2023

Debbie L. Robertson

CLAIMANT

v.

Tracy Scott

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 13, 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.

### Misrepresentation – Elements

You are bringing a claim of misrepresentation in connection with a takedown notice or counter-notice under 17 U.S.C. § 512(f). That kind of misrepresentation has a very specific meaning under copyright law, which involves false statements made to an online service provider (OSP) related to a copyright-protected work posted online.

Your claim must make enough factual allegations to support each “element” of the claim. The elements of a section 512(f) misrepresentation claim are:

1. The respondent sent an OSP either
  - a. a takedown notice claiming online content or activity was infringing, or
  - b. a counter-notice denying infringement and claiming the online content was removed or disabled due to a mistake or a misidentification,
2. The respondent made a misrepresentation (a false or incorrect statement of fact) in the takedown notice or counter-notice,
3. The respondent knew the misrepresentation was false or incorrect,
4. The misrepresentation was important to the OSP’s decision to take down or repost the content,
5. The OSP relied on the misrepresentation, and
6. You were harmed as a result.

17 U.S.C. § 512(f). The claim must describe the takedown notice and provide the words that you allege were a misrepresentation, and an explanation of the alleged misrepresentation. 37 C.F.R. §§ 222.2(c)(9)(iv), (vi)-(vii).

You state that you sent a takedown notice to YouTube on September 26, 2023, and that the respondent sent a counter-notice ten days later. Your description of the content of the takedown notice is: “I created a comparison and compilation of public videos in an open murder case (released by police) in the search for the suspects, and in this case comparing the newest.” That seems to be a description the content of your allegedly infringed work, not of the takedown notice.

The claim must identify the specific words that you contend were a misrepresentation, explain why it was a misrepresentation, and provide information to indicate that it was a *knowing* misrepresentation. In the “Words that made up the misrepresentation and explanation of the misrepresentation” section of the claim, you do not quote any words of the counter-notice that were knowingly false. That section describes the counter-notice as contending “that the video I created my work from was a publicly released video by law enforcement, . . . [and] that I can’t claim copyright on my work involving that video because it didn’t ‘belong’ to me.” However, a supplemental document filed with the claim labeled [hercounter.jpg](#), which appears to be a screenshot of the respondent’s counter-notice, indicates that, rather than simply stating that you did not own the work or that she did not infringe, the respondent gave detailed reasons as to why she may have had a good-faith belief that her use of the video did not infringe your rights.

A counter-notice only violates section 512(f) if the respondent “knowingly” misrepresents that the allegedly infringing “material or activity was removed or disabled by mistake or misidentification.” 17 U.S.C. § 512(f). In this context, “[k]nowingly” has been interpreted to mean ‘that a party actually knew, should have known if it acted with reasonable care or diligence, or would have had no substantial doubt had it been acting in good faith, that it was making misrepresentations.’ *Ground Zero Museum Workshop v. Wilson*, 813 F. Supp. 2d 678, 704 (D. Md. 2011) (quoting *Online Policy Group v. Diebold, Inc.*, 337 F. Supp. 2d 1195, 1204 (N.D. Cal. 2004)).

While you allege that the respondent “deliberately plac[ed] the videos in a manner that hid the source channel information from her viewers,” your allegations do not make clear that her framing of the video indicates that she knew the counter-notice was improper. Another document filed with the claim, labeled [Gmail – Our Conversation.pdf](#), appears to show copies of emails between you and the respondent related to that allegation. In one September 30, 2023 email, you described a part of her video that displayed your video, but with “another channel on the screen for credit and . . . positioning and zooming in on it in a way that hid the video source.” You further described the use in a second email to the respondent that same day: “You had a banner with ‘credit to (some other channel) for audio’ across your screen. You pulled up my video, carefully zoomed in to not show the channel info . . . at the very end it showed my profile pic and title then you quickly closed it.” If you contend that the respondent’s use of your video, framed to hide its source, suggests that she knew the use was not authorized, you may state facts supporting that contention in the “Words that made up the misrepresentation and explanation

of the misrepresentation” section of your amended claim. You should make clear what factual assertions in her counter-notice were false and why she should have known they were false.

Without information about a specific statement in a counter-notice by the respondent that you contend was knowingly false or incorrect, your misrepresentation claim cannot proceed. If you file an amended claim, you must provide additional facts to show what the takedown notice and counter-notice said, indicating what words in the counter-notice were knowingly false or incorrect and clearly describing how and why those words were false or incorrect. It may clarify the claim if you include a more complete description of which elements of your video were created by you, rather than by a third party. It may also clarify the claim if you describe, or provide screenshots or other supplemental materials that show, which elements of your video the respondent actually used.

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.