



# COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0243

August 28, 2023

Raymond Hughes

CLAIMANT

v.

WGBH Educational Foundation

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 **September 27, 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. 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 related to the respondent’s access to your work and substantial similarity, as described below. Please provide more details and background regarding these elements in your amended claim.

## Access

Your claim does not provide facts about how the respondent had access to your work. “Access” means a reasonable opportunity to view or hear your work before the alleged infringement took place.

In the “Works infringed” section of the claim, you identify the allegedly infringed work as a literary work titled “Evolution and the Origin of Life,” and you describe the work as “[s]cience literature” and as “[a] theory of evolution.” In the “Describe the infringement” section, you further describe it as “a 2,000 word theory of Nature's process of evolution.” Copyright Office records indicate that the work was unpublished as of March 23, 2020, when you submitted the application to register the copyright.

You allege that the respondent WGBH Educational Foundation (“WGBH”) infringed your work in two episodes of the PBS television program *Nova* titled “Nature’s Fear Factor.” In the “Describe the infringement” section, you state that you submitted the article to the magazine *Nature* for publication, and you assert that “[t]here are many direct quotes in WGBH’s NOVA episodes from my theory.” You further allege:

My first reaction upon watching the first episode was how did they get ahold of my article? Then I remembered the NATURE Magazine article that i submitted and how WGBH must have received the article from NATURE magazine.

Your claim does not explain or state facts that indicate how WGBH had any access to the allegedly infringed work. Submitting a copy of the unpublished article to *Nature* would not, by itself, give WGBH access, and your allegation that “WGBH must have received the article” from *Nature* is speculative. You have not described any relationship between WGBH and *Nature* that would make it plausible that WGBH obtained the work from *Nature*.

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, before the alleged infringement, your work (a) was sent directly to WGBH, or to a close associate of WGBH; (b) was widely disseminated or was available to the public; or (c) is so strikingly similar to the *Nova* episodes that WGBH could not have created them independently. As discussed below, you have not identified similarities between your article and the *Nova* episodes that are so striking that WGBH could not have created the episodes independently.

## Substantial Similarity

Your claim does not include enough facts that explain the similarities between your article and the allegedly infringing *Nova* episodes. The allegedly infringing works must be substantially similar to copyright-protected elements in the allegedly infringed work. If it is not readily apparent from supplemental documents that are submitted with the claim, you must provide more specific allegations about how the allegedly infringing works are similar to expressive material in your work that copyright protects.

A valid copyright only extends to copyrightable subject matter, and copyright law only protects the components of a work that are original to the author. Information about copyrightable authorship is available in Sections 302, 308, and 313 of [Chapter 300](#) of the *Compendium of U.S. Copyright Office Practices, Third Edition*. Copyright law does not protect facts, ideas, processes, or theories. It only protects original elements of expression. “Due to this distinction, every idea, theory, and fact in a copyrighted work becomes instantly available for public exploitation at

the moment of publication.” *Eldred v. Ashcroft*, 537 U.S. 186, 219 (2003) (citing *Feist Publications, Inc. v. Rural Telephone Service Co., Inc.*, 499 U.S. 340, 349-50 (1991)). See also *Harper & Row, Publishers v. Nation Enterprises*, 471 U.S. 539, 546 (1985) (“no author may copyright facts or ideas”) (citing 17 U.S.C. § 102(b)); Compendium Section 313.3(A).

You allege that the “process of evolution” discussed in your article “has no precedent . . . because my process of evolution has never been discovered until I discovered it.” In addition, you describe your work as a “2,000 word theory.” However, processes, discoveries, and theories are not protected by copyright. “In no case does copyright protection for an original work of authorship extend to any idea, procedure, *process*, system, method of operation, concept, principle, or *discovery*, regardless of the form in which it is described, explained, illustrated, or embodied in such work.” 17 U.S.C. § 102(b) (emphases added). “In copyright law a ‘discovery’ refers primarily to the disclosure of a hitherto unknown fact, principle, or theory.” *Rubin v. Boston Magazine Co.*, 645 F.2d 80, 83 (1st Cir. 1981). Discovering and disclosing a new theory of evolution in an article would not give the author a right to prevent others from exploring and applying that theory. Instead, what copyright may protect is the particular way that the article expresses the theory or, in other words, the actual way in which the article is written.

You allege that certain aspects of the *Nova* episodes are similar to elements of your article, but you have not identified substantial similarities between the episodes and protectable aspects of your work. You allege that both episodes depict scientists performing experiments “in correlation with my theory,” and that the second episode includes “a new team . . . researching and testing my theory of fear and evolution.” As discussed above, copyright does not protect the theory, just its expression.

You allege, “I employed some rhetoric in my written theory,” and such written expression may be protected. However, you have not identified substantial expressive elements of your article that appeared in *Nova*. You assert that “many direct quotes” from your theory appear in the episodes, but the few quotes listed in your claim are not substantial enough to support an infringement claim. You allege that the infringing episodes are titled “Nature’s Fear Factor,” and that “FEAR is the core idea of my evolutionary process.” You also allege:

At the end of episode one a scientist looked directly into the camera, as if he was speaking to an audience of biologists, quoting my article said ‘it’s simple’. Also he said ‘Coexistence’. These words are rhetorical and part of my theory.

Thus, you appear to allege that the *Nova* episodes quoted only three specific elements of the article: “fear,” “it’s simple,” and “coexistence.” However, Copyright Office records do not support your allegation that “it’s simple” is a quote from the article. It does not appear in the copy of the article deposited with your application for copyright registration. Your copyright does not protect that phrase because your copyrighted work does not include it. Your copyright also does not protect the mere words “fear” or “coexistence” because individual words are “not subject to copyright.” 37 C.F.R. § 202.1(a); *CMM Cable Rep, Inc. v. Ocean Coast Properties, Inc.*, 97 F.3d 1504, 1519 (1st Cir. 1996) (“‘fragmentary words’ . . . do not exhibit the minimal level of creativity necessary to warrant copyright protection”) (quoting 1 Melville B. Nimmer & David Nimmer, *Nimmer on Copyright* § 2.01[B], at 2-13-18 (1995)).

Your allegations do not provide enough information to enable the respondent to understand the claim and respond to it because you have not identified any copyright-protected expression from your article that is used in

the allegedly infringing *Nova* episodes.

If you submit an amended claim, include more specific allegations that support the element of substantial similarity, for example, by identifying particular expressions and details in the respondent's works that are similar to copyrightable expression in your work, and describing how they are similar. Include a clear, detailed statement regarding which portions of your work were taken by the respondent in the allegedly infringing works, or documents that are sufficient to show the similarities. Your description should help the respondent and the Board understand the similarities you see between the allegedly infringing episodes and protectable aspects of your work.

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