



COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0399

February 6, 2024

Michelle Shocked

CLAIMANT

v.

LANDR Audio, The Harry
Fox Agency, and YouTube

RESPONDENTS

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 **March 7, 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. 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 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.

Infringing Activity

Your amended claim does not clearly state how one of the respondents, The Harry Fox Agency (Harry Fox), used any of your exclusive rights in the allegedly infringed work without authorization.

A [supplemental document](#) filed with your amended claim appears to be a copy of a “Notice of Intention to Obtain a Compulsory License for Making and Distributing Phonorecords” (NOI) issued by respondent LANDR Audio (Landr) for a recording of your composition “Blackberry Blossom” by the artist As the Crow Flies, pursuant to Section 115 of the Copyright Act. In certain circumstances, Section 115 authorizes a person or entity that complies with its requirements to make and distribute digital phonorecord deliveries (DPDs) of a musical work, which is commonly described as obtaining a “compulsory license.” In the “Describe the infringement” section of your amended claim, you assert that Landr’s NOI was “non-compliant.”

As the January 3, 2024 Order to Amend Noncompliant Claim (January 3 Order) stated:

A document uploaded with the claim, labeled as “Blackberry Blossom LANDR YouTube.docx,” appears to include the contents of several emails related to the claim, which indicate that respondent The Harry Fox Agency (Harry Fox) notified you of the NOI on November 21, 2023, and that Landr delivered DPDs of As the Crow Flies’ recording of “Blackberry Blossom” to online outlets, including respondent YouTube, on November 24, 2023.

...

It appears from the “Blackberry Blossom LANDR YouTube.docx” document that Harry Fox provided you notice of Landr’s NOI on November 21, 2023. The NOI states that Harry Fox is not Landr’s agent for service “or for any other matters.” **Simply forwarding the NOI was not an unauthorized use of the work or an act authorizing any use in violation of the copyright owner’s exclusive rights.**

(Emphasis added.)

Like your original claim, your amended claim does not include allegations that would make Harry Fox liable. You now allege that “Respondent Harry Fox, on behalf of Respondent LANDR, was obligated to issue a timely NOI for both words and music, not for words only.” Without more, you have not stated facts that implicate Harry Fox in Landr’s alleged “failure to comply.” It appears that Landr issued the NOI, and that Harry Fox simply forwarded the electronic notice of its terms. Finding fault with Harry Fox for giving you notice of Landr’s alleged infringement would blame the messenger for the message. You also now allege, “I have identified SESAC as owners of Harry Fox, which has been named as respondent in the claim.” However, you have not identified acts of infringement by either SESAC or Harry Fox, and the amended claim removes SESAC as a respondent. The added allegations still do not present a basis to find that Harry Fox committed an infringing act, such as reproducing, distributing, or publicly performing the work.

If you submit a second amended claim, and maintain Harry Fox as a respondent, you must more fully explain how Harry Fox infringed your work or participated in the infringement alleged against the other respondents. To address this issue, you must state facts in the “Describe the infringement” section that support the claim, specifying how Harry Fox engaged in the infringing activity. Do not include as a respondent any entity that did not engage in infringing activity in your second amended claim.

Final Amendment

Your amended claim resolved some, but not all, of the compliance issues raised in the January 3, 2024 Order. **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 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