



COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0334
October 16, 2023

Scott Aaronson

CLAIMANT

v.

Fine Art America, Pixels.com

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 15, 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.

Infringed Works

To bring an infringement claim, you must provide for each work at issue in the claim the title, author, registration, and work of authorship category. 37 C.F.R. § 222.2(c)(7). In your claim form, you list a work title “THE ECLECTIC PHOTOGRAPHIC WORKS OF SCOTT JASON AARONSON” and registration number VAAu001499422. A review of Copyright Office records shows that this registration corresponds to a group registration of 228 unpublished photographs. It appears from your claim that you are alleging that the respondent infringed multiple images within the group registration. Please clarify which works are subject to your claim by listing each one separately. If you are alleging more than one has been infringed you should provide the title, author, registration number (which presumably will be the same number for each photograph), and work of authorship category for each photograph that is involved in the claim. For the title, you may want to use the title list that you provided with your group registration application.

Respondent Clarity

The Board can only hear claims asserted against multiple respondents if all claims in the proceeding “arise out of the same allegedly infringing activity or continuous course of infringing activities[.]” 17 U.S.C. § 1504(c)(6). Your

claim does not state how the activities of each respondent infringed the works. Specifically, the amended claim must (1) make clear what *each* respondent did and (2) provide information about the relationship between Fine Art America and Pixels.com. Your amended claim also must include facts in the “Describe the infringement” section that detail what infringing activities each respondent engaged in. You should be as detailed as possible, setting forth what each respondent did in relation to the works you allege was infringed. Lastly, the amended claim must also include facts that indicate that all respondents jointly engaged in the same allegedly infringing activities and state how they acted together in the same course of conduct. If not all of the respondents did act together, you should remove from the claim those who did not act with the others.

Online Service Provider – Clarity

Your infringement claim asserts that the respondents are “online service providers” (OSP); that you are bringing the claim against the respondents “due to their storage of or referral or linking to infringing material posted by others”; and that they failed to expeditiously remove or disable access to infringing material after you sent a takedown notices to the respondents as required by section 512 of the Copyright Act.

“Safe harbors” in section 512 shield certain online service providers from paying damages for copyright infringement claims if, among other things, the online service providers take steps to quickly remove or disable access to infringing material when a copyright owner notifies them about the infringement through a proper takedown notice. To avoid liability, online service providers must follow procedures specified in section 512 when they receive takedown notices alleging infringement, and counter-notices seeking the re-posting of the allegedly infringing material. In an infringement claim against an online service provider that is eligible for a section 512 safe harbor, the claimant must state facts that indicate that the respondent did not follow those procedures.

In your claim you answered “yes” to “Are you bringing a claim against the online service provider due to their storage of or referral or linking to infringing material posted by others?” However, it is unclear from the information included in your claim what activities the respondents engaged in. Online service providers include content-sharing websites and internet search engines, among other services. Although it appears that the respondents may be OSPs, you have not detailed the specific activities that would hold them liable under section 512. In your amended claim you must include additional facts that explain how the OSPs named as respondents in your claim engaged in the storage of or referral or linking to infringing material posted by other persons. Alternatively, if you are asserting that the respondents are not OSPs, then you should answer “no” to “Are any of the respondents online service providers?”

Further, you have included a “[Copyright Cease and Desist](#)” letter to Duck Duck Go in their capacity as a search engine; however, it is unclear how Duck Duck Go relates to your claim. You have also included additional supplementary documents that name other search engines (Ecosia and SwissCow) and is similarly unclear how these search engines relate to your claim. In your amended claim, you should explain what relationship, if any, Duck Duck Go, Ecosia, and Swisscow have to the respondents.

Your infringement claim cannot proceed unless you file an amended claim that states allegations either (1) that

the respondents are liable as online service providers, despite the Section 512 safe harbor, or (2) that the respondents directly infringed by copying, distribution, adapting, or publicly displaying your work without your permission. Please visit the section 512 page and the discussion at pages 18-19 of the chapter on [Starting an Infringement Claim](#) in the CCB Handbook for additional information about what is required for an infringement claim against an online service provider protected by a section 512 safe harbor.

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.

Copyright Claims Attorney