



# COPYRIGHT CLAIMS BOARD

Docket number: 22-CCB-0019

## United States Copyright Claims Board

Cory D. Palmer

CLAIMANT

v.

Columbia Records

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 **September 30, 2022**. If you do not, the Board must dismiss this proceeding without prejudice, although you may file again in the future before the Board or in federal court. There is no extra filing fee for a second 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, and a Copyright Claims Officer confirms that it is not compliant, 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 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 a second amended claim.

#### Copyright Infringement Claim – Access

As amended, your claim still does not include enough facts about how the respondent Columbia Records had access to your work. “Access” means a reasonable opportunity to view or hear your work. As the July 15, 2022 [Order to Amend Noncompliant Claim](#) instructed,

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 your work was sent directly to the respondent or a close associate of the respondent; the ways that it was widely disseminated or made available to the public or respondent; or that it is so strikingly similar to the respondent’s work that the respondent could not have created it independently.

Your amended claim identifies the two allegedly infringed works, “Take it Easy” and “No Room for Mistakes,” as unpublished voice memos recorded on your iPhone. You allege that Apple had access to your voice memos, but Apple is not the respondent; you do not explain how respondent Columbia Records had access to your works. In the “Describe the infringement” section, you assert, “Apple itself is giving Record Companies access to my iPhone voice recordings I created on my iPhone[.]” That conclusory statement appears to be speculative and made generally about all record companies. It is not supported by any specific facts in the amended claim that plausibly identify anyone at Apple with access to your voice recordings, or how anyone at the respondent record company who had a role in the allegedly infringing work got access to your work, or any relationship between the two companies. Your assertion that Apple “still have access to ALL of the song memo ideas I recorded stored away in their cloud or some storage device elsewhere,” would not provide a plausible basis to understand when or how *the respondent* (or “Adele and her team,” who you appear to allege created the allegedly infringing work “Easy on Me”) may have gained access. The bare assertions that Apple has access to your unpublished recordings, and the broad accusation that it gave record companies generally that access, are not enough to allow the Board to draw a reasonable inference that the respondent is liable for the alleged infringement.

Your amended claim also does not state any facts that would support the conclusion that your works are so strikingly similar to the respondent’s that the respondent could not have created it independently. Your amended claim does not identify any similarities between any of your works and any allegedly infringing works that are so striking that the Board could infer that the respondent had access to your works. You do not identify any content in the lyrics or music video of “Easy on Me” that is strikingly similar to any aspect of the two allegedly infringed voice recordings that you discuss in the amended claim. Any similarities that you identify between any of your other works and “Easy on Me,” or any other songs recorded on the Adele album “30,” are also not striking enough to support your assertion that the respondent had access to the two allegedly infringed works. On the whole, your amended claim does not include allegations that make access appear reasonably plausible.

Again, to address this issue, you must file a second amended claim with allegations that make access a reasonable possibility, not just hypothetically or theoretically possible. Without more specific facts in your claim describing how Apple obtained your unreleased voice recordings and provided them to this respondent, the amended claim is implausible and cannot proceed.

#### Copyright Infringement Claim – Substantial Similarity

The new allegations in the amended claim give rise to an additional basis to find that it does not comply. A claim must make enough factual allegations to support each “element” of the claim. 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 identical or substantially similar to your work.

Your amended claim does not assert that the respondent's work is identical to any of your works, and it does not include facts that identify or explain *substantial* similarities between either of your allegedly infringing works and the respondent's allegedly infringing work "Easy on Me." The allegations of similarity in the amended claim appear to relate only to the lyrics of your voice memo recordings. None of the similarities that you identify in the amended claim appear to relate to similarities in copyrightable expression. The "Easy on Me" excerpts quoted in the amended claim do not appear to have any similarity to any copyright-protected expression that you quote or discuss from your two allegedly infringing works. You also appear to present allegations regarding allegedly infringing works which are not part of your claim, and which the Board therefore cannot consider a basis to find substantial similarity with the works within the claim.

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 and 308 of [Chapter 300](#) of the *Compendium of U.S. Copyright Office Practices, Third Edition*. Ideas, stock characters, settings, and events that are common to a particular subject matter or medium are not protected by copyright. See *Compendium* Sections 313.3(A) and 313.4(I).

Your amended claim describes the lyrics of your work "Take it Easy" as "discussing a break up from a relationship and moving on from a loved one." Those commonplace subjects of song lyrics (as opposed to the specific expression of those subjects) are not protected by copyright. Your allegations also indicate that respondent's work did not copy or use any of your specific expression of these subjects, as you suggest that those subjects are not addressed at all in the allegedly infringing work: "My lyrics clearly identifying moving on from a place I was living at and separating myself from a relationship, while hers makes no mention of having any intention of moving out of her own home and leaving everything behind her." You also describe "Easy on Me" as "having no references to her leaving her home or moving away," unlike "Take it Easy."

Your amended claim characterizes your work "No Room for Mistakes" as "describing not having enough room to allow for myself to change by making mistakes and having no room for error, and getting in my own way regarding how I am living my life." Those commonplace themes of song lyrics also are not protected by copyright. You assert that the second verse of the respondent's work ("There ain't no room for things to change/When we are both so deeply stuck in our ways/You can't deny how hard I've tried/I changed who I was to put you both first/But now I give up") "plagiarizes" these lyrics: "No pain, no gain, stay in your own lane/no room for mistakes/stay in my own way." Those passages, as quoted in the amended claim, do not appear to have any protectable expression in common.

You have not identified any other original elements of expression in your allegedly infringing works as substantially similar to any aspect of the allegedly infringing work. If there are such areas of substantial similarity, you must provide specific allegations that detail the similarity. If you submit a second amended claim, your description should include more specific allegations, identifying which particular elements in the respondent's work copied from which specific copyrightable subject matter in your works. More information about what to include in the "Describe the infringement" section is available at pages 14-15 of the [Starting an Infringement Claim](#) chapter of the CCB Handbook.

You do not need to provide a legal argument in your second amended 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.

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 your claim included supplementary documents, you must re-upload any documents you wish to include in the amended claim on the "**Documentation**" page. Please include only documents that are directly related to your claim.
4. Once you have completed your edits, continue to click through the claim flow 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. You may also refer to the [Compliance Review](#) chapter of the CCB Handbook for more assistance.

Copyright Claims Attorney

August 31, 2022