



COPYRIGHT CLAIMS BOARD

Docket number: 22-CCB-0210

United States Copyright Claims Board

Shawn Brown

CLAIMANT

v.

YouTube

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 **December 28, 2022**. 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 a second amended claim. If you amend your 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 amended claim before you file a second amended 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.

Respondent Contact Information

You have amended your claim to raise it against a different respondent, YouTube. However, your amended claim also lists the same email address for YouTube that you provided for the respondent named in your original claim. That appears to be an email address for the original respondent, not YouTube. Your claim is not required to include an email address for the respondent. [37 C.F.R. § 222.2\(c\)](#). However, if you choose to include a respondent email address in your second amended claim, please confirm that it belongs to the right respondent.

Copyright Infringement – Elements

You have brought a copyright infringement claim before the Board. 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 you 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 present enough facts to support any of the elements of a copyright infringement claim, as discussed further below.

Copyright Infringement – Ownership and Registration

To bring a copyright infringement claim before the Board, the claimant must be “the legal or beneficial owner of the exclusive right [in a copyrighted work] at the time of the infringement[.]” 17 U.S.C. § 1504(c)(1). A legal owner is an author of the work who owns the exclusive rights at issue or a person or entity that received a transfer of those rights, for example, by an assignment or an exclusive license. A beneficial owner is a legal owner who has transferred the rights at issue but retains some of the advantages of ownership, such as the right to receive royalties from the use of the work. More information about legal and beneficial ownership is available at page 4 of the [Starting an Infringement Claim](#) chapter of the CCB Handbook.

Your amended claim does not include any facts about the claimant’s status as a legal or beneficial owner of the copyrighted work. When you submitted your amended claim, you certified that the claimant Shawn Brown was the legal or beneficial owner of rights in the allegedly infringed work. However, the copyright registration records for the work list the author of the work as Bris and list the copyright claimant as Damien Football Williams.

If you file a second amended claim, you must provide specific allegations about how you own or have an exclusive license to use the rights at issue. You can do this either by adding facts to the “Describe the infringement” section explaining how you are the owner of exclusive rights in the work at the time of the infringement, or by submitting supplemental documents. For example, you may describe the relationship between Shawn Brown, Bris, and Damien Football Williams, and detail how the claimant obtained legal or beneficial ownership of the copyright.

In addition, the registration number that you provide for the allegedly infringed work, “4084217,” is not complete. If you file a second amended claim, please include the proper registration number, which is “PAu004084217,” in the “Works infringed” section of the claim form.

Copyright Infringement – Infringing Activity

In the “Describe the infringement” section of the amended claim, your description is simply, “video.” That does not describe the allegedly infringing activity with enough detail for the respondent to understand what it is accused of having done that infringes the musical work copyright at issue. If you file a second amended claim for copyright infringement against YouTube, you will need to provide more information about its activity.

The Board notes that the only amendment to your original claim is that you have changed the respondent from Florian E. Simoes to YouTube. All of the allegations in the claim are identical to those in the original claim, including your response to the question, “Are any of the respondents online service providers?” You responded “no” to that question. The Board notes that copyright infringement claims against YouTube are typically brought against it for its activities as an online service provider. In this context, an “online service provider” is a provider of online services that store (and make available), refer to, provide access to, or link to material online that is posted by other persons. Online service providers include content-sharing websites and internet search engines, among other services. “Safe harbors” in section 512 of the Copyright Act 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. An infringement claim against an online service provider must state facts that indicate that the respondent did not follow those procedures. If the respondent is operating as an online service provider, then the claim cannot be compliant unless you affirm that you sent the online service provider a section 512 notice of infringement, and that it “failed to remove or disable access to the material expeditiously upon the provision of such notice.” 17 U.S.C. § 1506(f)(1)(C)(i).

If your claim against YouTube is based upon its activities of storing, making available, referring to, providing access to, or linking to material posted by other persons that is available online, you should amend the claim to answer “yes” to the questions asking whether (1) any of the respondents are online service providers and (2) you are bringing a claim against the online service provider due to their storage of, or referral or linking to, infringing material posted by others. You will then be prompted to answer additional questions about your claim. You will have to affirm that you sent a takedown notice to YouTube and that YouTube did not act quickly to remove or disable access to the video. You will also have to state facts that support that allegation, including any other failure by YouTube to follow the safe harbor provisions for an online service provider and details related to the underlying alleged infringement. 17 U.S.C. § 1506(f)(1)(C). Please visit the [section 512 page](#) at [copyright.gov](#) 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 to bring an infringement claim against an online service provider under section 512 of the Copyright Act.

If, on the other hand, your claim against YouTube is not based on it storing, making available, referring to, providing access to, or linking to material posted by other persons that is available online, you should amend your claim to state facts that identify how YouTube engaged in infringing activity on its own, rather than on the basis of infringing material posted on its website by others (and so not in the capacity of an online service provider),

Copyright Infringement – Access

Your amended 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. 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. Acceptable allegations of access may include that your work (a) was sent directly to the respondent or a close associate of the respondent; (b) was widely disseminated or was available to the public or respondent; or (c) is so strikingly similar to the respondent’s work that the respondent could not have created it independently. If your claim is against YouTube because it did not properly take down the infringing work of a third party, such as Florian E. Simoes, you must provide detailed allegations regarding the third party’s access to your work.

Copyright Infringement – Substantial Similarity

Your amended claim also does not include any facts to explain the similarities between your work and the respondent’s allegedly infringing work (or, if your claim is against YouTube because it did not properly take down the infringing work of a third party such as Florian E. Simoes, allegations regarding how the third party’s work is substantially similar to your work). If it is not readily apparent from supplemental materials submitted with the claim, you must provide some specific allegations about how your work and the allegedly infringing work are similar. You do not provide any information describing or depicting your work. No allegations in the “Describe the infringement” field of the claim describe your work or the allegedly infringing work, or state or show how they are identical or substantially similar. In addition, you have not provided a copy of your allegedly infringed work as a supplemental document. As a result, the amended claim does not provide enough information to enable the respondent to understand the claim and respond to it.

If you submit a second amended claim, it must include allegations that support the element of substantial similarity. Please provide more details and background regarding this element, including a clear, detailed statement regarding which portions of your work were taken in the allegedly infringing work, or documents that are sufficient to show the similarities. If you include copies of the works at issue as supplemental documents, they must be clearly labeled and identified so they can be properly compared to each other.

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 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. You may also refer to the [Compliance Review](#) chapter of the CCB Handbook for more assistance.

Copyright Claims Attorney

November 28, 2022