



COPYRIGHT CLAIMS BOARD

Docket number: 24-CCB-0099
May 7, 2024

Ernest C. Curci

CLAIMANT

v.

Google LLC d/b/a YouTube

RESPONDENT

SECOND ORDER TO AMEND NONCOMPLIANT CLAIM

The Copyright Claims Board (“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 **June 6, 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.

Permissible Claim – Noninfringement v. Infringement

The Board is only authorized to resolve certain types of copyright disputes. 17 U.S.C. § 1504(c)(1)-(3). You checked the box on the claim form to state that your claim is for copyright infringement. Your amended claim has not provided enough facts to support an infringement claim, as discussed in this order below, and it appears that you may intend to bring a claim for a declaration of noninfringement, which is also a type of claim that the Board can address. *Id.* § 1504(c)(2).

A claim for a declaration of noninfringement asks the Board to find that your actions do not amount to an infringement of a *copyright owner’s* copyrighted work. If someone has accused you of infringing their copyright, a noninfringement claim requests an official declaration that you did not infringe, and the copyright owner becomes the respondent. The claim must identify the party that accused you of infringement and must describe your allegedly infringing activity, the reasons why you believe no infringement occurred, and the reasons why you believe

there is an actual controversy about the respondent's copyrights. 37 C.F.R. §§ 222.2(c)(8)(i) & (iii)-(v).

A supplemental document filed with the claim labeled [Youtube copyright denied.pdf](#) seems to show that a third party, Audiam (Publishing) ("Audiam"), issued a takedown notice to YouTube, claiming that your video infringed its copyrighted content, and maintained its position when you disputed the claim. It appears that Audiam "decided that their copyright claim is still valid," and that this resulted in YouTube removing your video from its platform and continuing to do so. Accordingly, this supplemental document seems to show that the facts at issue in your claim involve a dispute between you and Audiam over its claim that your video infringed its copyright in "[t]he melody found in La Canzone Del Capitano."

If you raise a noninfringement claim in your second amended claim, it must specifically describe an actual dispute between you and a respondent over whether your activities infringed their copyright. A noninfringement claim cannot proceed unless, your second amended claim states facts that indicate that a named respondent claims an ownership interest in the copyright or controls the copyright for a work you are allegedly infringing, and that you reasonably anticipate that the named respondent may sue you for infringement. More information about noninfringement claims is available in the [Starting a Noninfringement Claim](#) chapter of the CCB Handbook.

If you wish to maintain your copyright infringement claim, you will need to resolve the issues discussed in further detail below.

Allegedly Infringed Work

You allege infringement of works titled "Mackey Moose & Millie Moose & Cody Coqui" and "Where the Coqui sings tonight." Additional information about each work is needed to support the infringement claim.

In the "Works infringed" section of the amended claim, you identify "Where the Coqui sings tonight" as a musical work, such as a musical composition. However, in the "Describe the work" field, you describe the work as a "[s]ong composition and recording." Copyright Office records show that your registration for that work covers the composition, but not a sound recording. In your second amended claim, you may describe the work as a song composition, but do **not** refer to it as a "recording," unless you have separately obtained or applied to register the copyright for a sound recording of "Where the Coqui sings tonight."

You identify "Mackey Moose & Millie Moose & Cody Coqui" as a pictorial, graphic, or sculptural work that depicts three characters "as cartoons on the beach." An image file included with the amended claim labeled Mackey Moose.JPG shows a copy of the work registered by the Copyright Office. However, you have not alleged any infringing use of that artwork. If you file a second amended claim, you must describe or show how the respondent used that artwork without permission; or you must omit it from the claim by removing it from the "Works infringed" section.

Secondary Infringement

A copyright infringement claim may be raised against a "secondary infringer" who does not engage in any infringing acts directly, but profits from or facilitates acts of direct infringement by others. Some facts alleged in

your amended claim suggest that you wish to bring a claim of secondary infringement to hold the respondent Google LLC dba YouTube (“Google”) liable for activities by third parties. To support a claim of secondary infringement, your second amended claim must include additional facts about how third parties directly engaged in infringing activities, and about how Google acted in relation to these third-party activities.

A secondary infringement claim must allege some underlying direct infringement by a third party, such as reproducing, distributing, adapting, publicly performing, or publicly displaying the allegedly infringed work. Currently, you do not state facts that describe any of these types of activities. If you intend to assert a claim of secondary infringement, then your second amended claim must include facts that support the underlying direct infringement. In the “Describe the infringement” section, you state that Google blocked you from uploading an animated music video of “Where the Coqui sings tonight” onto YouTube, and that Google

decided to infringe on my copyright and allow illegal use by a third party. They are denying me my copyright and have given privilege to another unknown to me party to use my product without consent and they are benefiting with revenue and audience denying me my right to present and defend my works and Intellectual Property and denying me Due Process under the Law.

You do not present facts that indicate how Google “allow[ed] illegal use by a third party.” As discussed above, the [Youtube copyright denied.pdf](#) document seems to show that Audiam issued a takedown notice to YouTube, claiming that your video infringed its copyrighted content, and maintained its position when you disputed the claim. That document supports your assertion that Google kept your video off YouTube. However, taking or keeping a work offline after a takedown notice is not an act of direct infringement, and you have not shown that Google permitted any third party “to use my product without consent.” You have not identified any direct infringer, or clearly alleged any acts of direct infringement, of either of your works. If you file a second amended claim seeking to hold Google liable as a secondary infringer, then you must include more specific allegations describing direct infringement by a third party.

In addition, a secondary infringement claim must be based on either “vicarious liability” or “contributory liability.” Your claim does not include enough facts to support either of these grounds for secondary infringement.

- A **vicarious liability claim** must state facts that indicate that the respondent had the right and the ability to supervise or control a third party’s infringing activity and received a direct financial benefit from the infringement.
- A **contributory liability claim** must state facts that indicate that the respondent knows about a third party’s infringing activity and induces, causes, or substantially contributes to that infringing conduct.

If you intend to assert a claim of secondary infringement against Google, then your second amended claim must include more facts that support either vicarious or contributory liability. If you want the Board to find Google *vicariously liable* for a third party’s use of your works, your second amended claim must include allegations that it was able to control or supervise that use, and that it profited directly from that use. Alternatively, if you want the Board to find Google *contributorily liable* for a third party’s use of your works, your second amended claim must include allegations that Google knew, or had reason to know, that uses of your works would be infringing, and that it facilitated that infringing conduct by inducing, causing, or materially contributing to that use.

More information about vicarious and contributory liability is available at page 21 of the [Starting an Infringement Claim](#) chapter of the CCB Handbook.

Access

Your amended claim does not provide facts about how a direct infringer had access to either of your works. “Access” means a reasonable opportunity to see, hear, or copy the work before the alleged infringement took place.

You allege that in 2021, you recorded “Where the Coqui sings tonight,” and contracted with an animator who created and delivered a video using your music and characters. You also allege that you “released the movie Privately on Vimeo in January 2023,” and then tried to upload it to YouTube in February 2024. You have not clearly stated or shown how or when an alleged direct infringer had access to the video. You also have not alleged any facts that indicate how the “Mackey Moose & Millie Moose & Cody Coqui” artwork was infringed, or how it was available to a direct infringer before any alleged infringement.

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 how your works (a) were sent directly to the direct infringer or a close associate of the direct infringer; (b) were widely disseminated or were available to the direct infringer; or (c) are so strikingly similar to allegedly infringing works, such as works that appeared on YouTube, that the direct infringer could not have created them independently. In addition, you must allege how the direct infringer gave Google access to the works, such as by uploading them to YouTube.

Alternatively, you can upload copies of your works and the allegedly infringing works if they demonstrate that the works are so strikingly similar that they could not have been created independently. You included copies of your allegedly infringed works with the amended claim, but you have not provided copies of any allegedly infringing work that appeared on YouTube or anywhere else. 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.

Substantial Similarity

Your amended claim also does not include enough facts that explain the similarities between your works and any allegedly infringing work. If it is not readily apparent from supplemental documents that are submitted with the claim, you must provide more specific allegations about how your works and the allegedly infringing work are substantially similar.

You allege that Google has allowed someone to “use my product without consent,” but you do not describe or show how your works have been used. While you provide copies of your works as supplemental documents, you do not include or clearly describe any allegedly infringing work. As a result, the amended claim does not provide enough information to enable the Board to understand the similarity of the works.

If you submit a second amended claim, it must include more factual allegations that support the element of substantial similarity. Please provide more details and background regarding this element in your amended claim, including a clear, detailed statement regarding which portions of your works Google (and, if different, the direct

infringer) used without authorization, or documents that are sufficient to show the similarities. If you include copies of the works at issue as supplemental documents, then as discussed above, they must be clearly labeled and identified so they can be properly compared to each other.

Final Amendment

Your amended claim resolves some, but not all, of the issues raised in the April 2, 2024 Order to Amend Noncompliant Claim. **This is your third and final opportunity to submit a compliant claim. If your claim remains noncompliant, the entire proceeding will be dismissed.** 17 U.S.C. § 1506(f)(1)(B).

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.