



COPYRIGHT CLAIMS BOARD

Docket number: 24-CCB-0365

December 5, 2024

Ajah K. Royale

CLAIMANT

v.

Zion D. Smith

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 **January 6, 2025**. 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.

Copyright Infringement – Clarity

It is not clear that your allegations state a claim for copyright infringement. You describe your work, a sound recording titled “Plot Twist,” as “my Performance and my Lyrics.” You allege that the respondent Zion D. Smith (“Smith”) infringed your copyright by including a verse from your work in a music video on YouTube. However, as further explained below, certain allegations in your claim suggest that you may have contributed your verse for use in a recording created as a “joint work” with Smith, or that you may have entered into an “implied license” for Smith to use the work. If Smith’s recording is jointly owned, then you cannot proceed with an infringement claim against a co-owner, and if there was an implied license to use your recording you could only proceed if Smith exceeded the scope of that license, or if Smith failed to fulfill a “condition precedent,” as further described below.

To address these issues, you must file an amended claim that states more facts about your business arrangement with Smith, describing facts that indicate that Smith’s work was not jointly owned and that he did not have, or exceeded, an implied license to use your work.

I. Joint Ownership

You allege: “After our business relationship broke down due to Zion Smith’s failure to honor the terms of our agreement—specifically withholding agreed-upon compensation, including revenue from her YouTube platform—I withdrew my participation and removed my verse from the song.” A [document](#) filed with the claim appears to be an email you sent withdrawing your consent for the use of your work: “I am withdrawing my participation from the ‘Plot Twist’ project. As a result, I am removing my verse from the song. . . . You are hereby instructed to cease and desist from using, distributing, or incorporating my verse in any form.” Other documents filed with the claim include what appear to be a handwritten [statement](#) by Smith, asserting, “[a]n old friend (Ajah Royale) and I created a song over a year ago[.] She posted the song to the distribution app giving us both 50% royalties,” and Smith’s [counter-notice](#) to YouTube, which stated, “We’ve discussed the issue and both have equal rights on the song! One of the creators decided to be greedy and want 100% royalties when it’s a 50/50 split! . . . I’m a creator of the song also! It’s two artists on the song . . . and we both share rights on the song!”

You have not provided enough information about the nature and terms of your agreement with Smith and how it relates to the use of your work. If you agreed to create the work together, then he would own or co-own the copyright, and you cannot raise an infringement claim against him, even if you later stated you were withdrawing your participation. Once parties are considered joint owners in a work, both parties have the right to use that work indefinitely and neither can stop the other from use of the work. Information about joint ownership of a copyright is available at pages 9-10 of the [Responding to an Infringement Claim](#) chapter of the CCB Handbook. An owner or co-owner of a copyright in a work cannot be liable for infringement of that copyright. Joint owners generally must share any income they receive from their use and licensing of the work with the other owners, but a claim about failing to make such payments is called an “accounting” claim, which is not a claim that the Board can hear. A claim for nonpayment might be viable in state court, and a claim seeking a declaration of copyright co-ownership rights and an accounting of profits might be viable in federal court, but not before the Board.

II. Implied License

Alternatively, your allegations appear to describe a breach of contract dispute, not a dispute over copyright infringement. The facts stated in the claim suggest that your work may have been created or delivered to Smith for use in the video uploaded to YouTube and other social media sites. There may have been an “implied license” to use your work, especially if you provided your work to Smith with the understanding, at that time, that he could use the work in the way that he did.

An implied license is created when “(1) a person (the licensee) requests the creation of a work, (2) the creator (the licensor) makes the particular work and delivers it to the licensee who requested it, and (3) the licensor intends that the licensee-requestor copy and distribute his work.” *Lulirama Ltd., Inc. v. Axxess Broadcast Services, Inc.*, 128 F.3d 872, 879 (5th Cir. 1997) (quoting *I.A.E., Inc. v. Shaver*, 74 F.3d 768, 776 (7th Cir. 1996)). An implied license can also be created in other circumstances depending on “the totality of the parties’ conduct.” *Baisden v. I’m Ready Productions*, 693 F.3d 491, 501 (5th Cir. 2012). “Consent for an implied license may take the form of permission or lack of

objection.” *Id.* at 500. To clarify whether your actions created an implied license, your amended claim must state facts that indicate whether or not:

- Smith requested the creation of your “Plot Twist” sound recording—specifically, the verse that you allege was infringed;
- you created the “Plot Twist” sound recording and delivered it to Smith;
- you intended that Smith would copy and distribute it as he did; and
- you gave Smith permission to use your “Plot Twist” verse, or did not initially object to its use.

If the facts alleged indicate that Smith had an implied license to use your work, the Board may only hear the infringement claim if it also states facts indicating that he failed to satisfy a “*condition precedent*” of the implied license, or that his use of the work went beyond the *scope* of the uses permitted under the license, both of which are explained below.

A. Condition Precedent to an Implied License

Your claim can cure these grounds for noncompliance if you state facts in an amended claim that indicate that a “condition precedent” had to occur before the implied license could take effect, and that it did not occur. A “condition precedent” is an act or event that must occur to trigger certain contract obligations. For example, if an author agrees that a licensee may publish her book “if, and only as long as” the licensee makes monthly payments to the author, then the payments may be a “condition precedent” to the licensee’s right to publish. Or, if a photographer allows a website to use his photograph “if” the website credits the photographer by name, that credit could be a condition precedent. If a copyright license depends on the licensee **first** satisfying a condition precedent, and the licensee does not satisfy it when using the work under copyright, then the license is not effective and the licensor may raise a copyright infringement claim.

You have not alleged that, in any communications with Smith before he used the work, you set a condition for him to satisfy first. If such communications existed, your amended claim should provide the terms you imposed, including any specific conditional wording. In order to show that any term of use was a “condition precedent” to an implied license, your amended claim must include enough details about the term stated to show that it had to be satisfied before the implied license would take effect. Typically, lack of payment is breach of a contract term unless it is clear that use is not allowed “if and only if” payment is first made.

B. Scope of an Implied License

Your claim could also proceed if you present facts in an amended claim that indicate that, even if an implied license existed, Smith exceeded its scope by using your work in a way that the license would not allow. You have not indicated that, if you at first agreed to “participate” in Smith’s use of “Plot Twist,” that you communicated any restrictions or limits on his ability to use the work. To support a contention that his use of your “Plot Twist” exceeded the scope of an implied license, you must provide more details in an amended claim to indicate how the use went beyond the scope of the implied license formed when you created and delivered the allegedly infringed work.

Misrepresentation – Damages

You are also raising a claim of misrepresentation, in which you request “statutory damages.” Statutory damages are only available for claims of infringement. 17 U.S.C. § 1504(e)(1)(A), (C). If you submit an amended claim, you should remove references to statutory damages as a request for relief on the misrepresentation claim.

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 supplementary 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.