



COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0399

January 3, 2024

Michelle Shocked and Campfire
Girl Publishing LLC

CLAIMANTS

v.

LANDR Audio, SESAC, The Harry
Fox Agency, and YouTube

RESPONDENTS

ORDER TO AMEND NONCOMPLIANT CLAIM

The Copyright Claims Board (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 **February 2, 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. 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.

Legal or Beneficial Ownership

Your claim presents unclear information about each claimant's status as a legal or beneficial owner of the allegedly infringed work, a musical composition titled "Blackberry Blossom." The claim does not specify how either claimant is a legal or beneficial owner of the work.

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 has 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. A claimant who is not an author or named copyright owner of the allegedly infringed work must provide some specific details or supplemental documents explaining how the claimant owns, or has an exclusive license to use, the exclusive rights at issue.

The claim identifies Claimant Michelle Shocked (Shocked) as the author of the work. The copyright registration identified in the claim, Registration No. PA0000575550, was issued to Polygram Music Publishing, Ltd. (Polygram) as the copyright claimant. The Certificate of Registration also named Shocked as the sole author, but it does not identify Shocked as an owner of the copyright. In another proceeding before the Board, *Michelle Shocked v. Gavin McInnes*, No. 22-CCB-0263, Shocked submitted supplemental documents that appeared to indicate that Polygram or its successor had reassigned to Shocked “all right, title and interest” in multiple compositions, including “Blackberry Blossom.” Submitting such documents in an amended claim in this proceeding would clarify Shocked’s rights.

Registration No. PA0000575550 does not mention claimant Campfire Girl Publishing LLC (Campfire). A supplemental document filed with the claim describes Campfire as the publishing company that administers the work, not a rights holder. The claim does not present facts that indicate that Campfire has the right to bring a claim of infringement for the work as either a legal or beneficial owner. To correct this issue, if you name Campfire as a claimant in an amended claim, you must include specific allegations about how it owns, or has an exclusive license to use, the exclusive rights at issue. You can do this either by adding facts to the “Describe the infringement” section explaining Campfire’s ownership of exclusive rights in the work at the time of the infringement, or by submitting supplemental documents on the Documentation page of the claim form that demonstrate Campfire’s ownership. Alternatively, you may file an amended claim that omits Campfire as a claimant.

Infringing Activity

Your claim does not clearly state how the respondents used any exclusive rights you have in the allegedly infringed work without authorization. Copyright law grants exclusive rights to copyright owners. These include the right to reproduce, distribute, and publicly perform the work, and to make a “derivative work,” which is a work based on the original work. Someone who does one of those activities without the copyright owner’s permission may be infringing the copyright, unless the use is otherwise authorized. More information about exclusive rights is available on page 3 of the [Starting an Infringement Claim](#) chapter of the CCB Handbook.

One form of authorization for certain uses of musical works is a “compulsory license” under 17 U.S.C. § 115. Once a nondramatic musical work has been publicly distributed in the United States under the copyright owner’s authority, a person or entity that complies with the requirements of Section 115 of the Copyright Act may make and distribute digital phonorecord deliveries (DPDs) of that work. A DPD is an individual digital transmission of a sound recording, for example, by downloads or streaming. A DPD can be the basis of an infringement claim unless the sound recording copyright owner authorized it and (1) it is also “authorized by the musical work copyright owner, or by a record company pursuant to an individual download license,” or (2) the entity making the DPD obtained a compulsory license by complying with Section 115. 17 U.S.C. § 115(b)(2)(C)(i)(II).

Here, a [supplemental document](#) filed with the claim appears to be a copy of a “Notice of Intention to Obtain a Compulsory License for Making and Distributing Phonorecords” (NOI) issued by respondent LANDR Audio (Landr) for DPDs of a recording of “Blackberry Blossom” by the artist As the Crow Flies. In the “Describe the

infringement” section of the claim, you assert that Landr’s NOI was “non-compliant.” However, your allegations and the supplemental documents filed with the claim do not clearly indicate or show how Landr failed to comply with the statutory requirements.

General information about the operation of NOIs under current law is available on the [Musical Works Modernization Act](#) page. For a record company to obtain a DPD compulsory license specifically for individual downloads, it must serve the NOI before, or no more than 30 days after, making the first DPD. 17 U.S.C. § 115(b)(2)-(3); 37 C.F.R. § 201.18(a)(2)(iii). It may serve the NOI on either the copyright owner or an agent of the copyright owner authorized to receive the NOI. 37 C.F.R. § 201.18(a)(6).

A document uploaded with the claim, labeled as “Blackberry Blossom LANDR YouTube.docx,” appears to include the contents of several emails related to the claim, which indicate that respondent The Harry Fox Agency (Harry Fox) notified you of the NOI on November 21, 2023, and that Landr delivered DPDs of As the Crow Flies’ recording of “Blackberry Blossom” to online outlets, including respondent YouTube, on November 24, 2023. These documents indicate that the timing of the NOI was proper.

The NOI also must “comply, in form, content, and manner of service, with requirements that the Register of Copyrights shall prescribe by regulation.” 17 U.S.C. § 115(b)(2)(A). Those regulations are set forth at 37 C.F.R. § 201.18(d). The form and content of the NOI filed with the claim seem to comply, and the claim does not appear to take issue with the manner of its service. If you contend in an amended claim that the NOI does not comply, you must explain in detail how it did not comply.

Your claims against all respondents are based on the allegedly misattributed use and noncompliant NOI, so the claims cannot go forward unless you can state facts that show how Landr failed to comply with Section 115. It is not sufficient to state the legal conclusion that the NOI was noncompliant without indicating what made it so.

In addition, even if you can show in an amended claim that Landr’s use was not covered by a compulsory license, you have not stated facts that provide a basis for a claim against any of the other three respondents.

- It appears from the “Blackberry Blossom LANDR YouTube.docx” document that Harry Fox provided you notice of Landr’s NOI on November 21, 2023. The NOI states that Harry Fox is not Landr’s agent for service “or for any other matters.” Simply forwarding the NOI was not an unauthorized use of the work or an act authorizing any use in violation of the copyright owner’s exclusive rights.
- No basis for a claim against SESAC is apparent from the claim. A supplemental document indicates that SESAC owns Harry Fox, but there are no allegations of infringing activity by SESAC itself.
- In the claim, you allege that YouTube received a takedown notice but did not “expeditiously remove or disable access to the material,” that is, the As the Crow Flies recording posted on YouTube. Emails in the “Blackberry Blossom LANDR YouTube.docx” document indicate that Shocked sent the takedown notice on November 29, 2023, and that YouTube replied the next day, requesting more information and stating that a third party had licensed the use. You filed this claim on December 4, 2023, five days after the takedown notice. If you file an amended claim that indicates that the use was not authorized by a compulsory license, and you keep YouTube as a respondent, you must include additional facts that indicate that YouTube had not “respond[ed] expeditiously to remove, or disable access” to the recording. *See* 17 U.S.C. §§ 512(c)(1)(C) & 1506(f)(1)(C); *see also Business Casual Holdings, LLC v. YouTube, LLC*, No. 21-cv-3610 (JGK), 2022 WL 837596, *2 & 6 (S.D.N.Y. Mar. 21, 2022) (YouTube acted

“promptly” when it took down videos three days, nine days, and twenty-three days after it received takedown notices), *aff’d*, No. 22-3007-cv, 2023 WL 6842449 (2d Cir. Oct. 17, 2023).

If you submit an amended claim, you must more fully explain how each respondent infringed your work, and why their activities were not protected by a compulsory license under Section 115. To address this issue, you must state facts in the “Describe the infringement” section that support the claim, specifying how the respondents engaged in the infringing activity, and state or show why the DPDs were not compliant. Do not include as a respondent any entity that did not engage in infringing activity in your amended claim.

In addition, if you file an amended claim, your description of the facts relating to the alleged infringement must be included in the claim form itself, not just presented in supplemental documents. 37 C.F.R. § 222.2(c)(7)(iii). In your initial claim the “Describe the infringement” section consisted of just two sentences, with many significant details provided only in supplemental documents. Stating the relevant facts in the claim form makes it easier for the Board and the respondents understand the nature of your 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 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