



# COPYRIGHT CLAIMS BOARD

Docket number: 24-CCB-0192  
August 5, 2024

Kristina I McGowan

CLAIMANT

v.

Cloudflare

RESPONDENT

## 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 **September 4, 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.

### Copyright Infringement — Online Service Provider

In response to questions on the claim form, you indicate that the respondent (Respondent or Cloudflare) is an online service provider (“OSP”); that your claim against the OSP is based on “their storage of or referral or linking to infringing material posted by others;” and that Respondent failed to expeditiously remove or disable access to the material after you sent a takedown notice.

Special rules apply to infringement claims brought against an OSP that provides online services to store (and make available), refer to, provide access to, or link to material that is available online. OSPs include content-sharing websites and internet search engines, among other services. “Safe harbors” in section 512 of the Digital Millennium Copyright Act shield certain OSPs from paying damages for copyright infringement claims if, among other things, they 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, OSPs must follow procedures specified in section 512 when they receive takedown notices alleging infringement, and counter-notices seeking the reposting of the allegedly infringing material. An infringement claim against an OSP that is eligible for a section 512 safe harbor must state facts that indicate that the OSP did not follow those procedures.

Your claim asserts that the “entity (hosted by Cloudflare) has stolen my copyright protected work and is selling it on their site, effectively destroying my business.” However, your claim does not state enough facts in support of a claim for copyright infringement against Cloudflare. Specifically, in addition to alleging that the OSP engaged in acts constituting infringement, you must include additional information about the takedown notice you sent to Cloudflare and their failure to expeditiously remove or disable access to the material after you sent the takedown notice. To correct this issue, you should include enough facts or documentation to show that you sent Cloudflare an effective takedown notice and that Cloudflare failed to appropriately respond to that notice.

Additionally, you list “Cloudflare and PinDIY” as the respondent names or organizations that failed to remove the material but only Cloudflare is listed as a respondent in the claim. Therefore, it is unclear which entity failed to remove or disable access to the material. In your amended claim, you should only list as respondent the OSP that received a takedown notice and failed to expeditiously remove or disable access to the material.. To bring a claim against a party, that party must be a U.S. resident.

Please visit the [section 512 page](#) 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 for an infringement claim against an online service provider protected by a section 512 safe harbor.

### **Copyright Infringement—Clarity**

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 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, meaning a reasonable opportunity to view or hear your work, and
4. The respondent’s work is substantially similar to the original elements of expression in your work.

Your claim does not provide enough facts about how Respondent used one of your exclusive rights without your permission. Further, it is not clear whether you are accusing Cloudflare of engaging in direct infringement (for example, by directly distributing your work) or of secondary infringement (for example, by providing a link to the allegedly infringing work, to encourage or induce viewers to click the link and thereby engage in infringement).

Copyright law grants exclusive rights to copyright owners. These include the right to reproduce, distribute, and publicly display 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 they have a legitimate defense.

Your claim does not allege that Cloudflare itself reproduced, distributed, or publicly displayed your work. As

noted above, your claim alleges that Respondent is an OSP that did not “expeditiously remove or disable access to” the allegedly infringing material after you sent it a takedown notice. You specifically state that “[t]he entity (hosted by Cloudflare) has stolen my copyright protected work.” However, your claim does not present enough facts to state clearly how (1) Respondent allegedly facilitated acts of direct infringement by others and (2) PINDIY, the alleged primary infringer, violated your exclusive rights in the work.

## Secondary Infringement

A copyright infringement claim may be also 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 in your claim suggest that you may wish to bring a claim of secondary infringement to hold Cloudflare liable for activities by third parties. To support a claim of secondary infringement, you must provide additional facts about how Cloudflare was involved in the infringement committed by another person or entity.

If you contend that Cloudflare is liable as an OSP for infringement based upon infringing activity undertaken taken by another person or entity, you must include facts or attach supplemental documents showing that Cloudflare either

- (1) knew about that infringing activity and either induced, caused, or substantially contributed to or assisted that activity, or
- (2) had the right and ability to supervise or control the infringing activity and received a direct financial benefit from that activity.

In addition, if you allege that Cloudflare is a secondary infringer, you must provide details about the direct infringement of another person or entity. Your allegations do not appear to describe PINDIY’s allegedly infringing activity with any specificity, and you do not attach any supplemental documents that show the similarity of your work and the infringing work. In your amended claim, you must more fully explain how PINDIY infringed your work. Specifically, you must include information about how PINDIY used one of your exclusive rights in the work without permission, had access to your work, and how your work and PINDIY’s work are substantially similar. 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.

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 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](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. 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