



COPYRIGHT CLAIMS BOARD

Docket number: 24-CCB-0099

April 2, 2024

Ernest C. Curci

CLAIMANT

v.

Google LLC d/b/a YouTube

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 **May 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.

Copyright Registrations

You have raised a copyright infringement claim, alleging infringement of works titled “Mackey Moose & Millie Moose & Cody Coqui” and “Where the Coqui sings tonight.” The claim must include the copyright registration numbers and effective dates of registration, if the works are registered. 37 C.F.R. § 222.2(c)(7)(ii)(C). You listed the effective dates of registration in the “Works infringed” section of the claim, but instead of the registration numbers issued by the Copyright Office, you provided the service request numbers for the applications for registration of both works. When you file an amended claim, you must include the registration numbers VAu001245204 for “Mackey Moose & Millie Moose & Cody Coqui,” and PAu004092384 for “Where the Coqui sings tonight.”

In the “Works infringed” section, you state that “Where the Coqui sings tonight” is a sound recording and you describe the work as a “[s]ong composition and recording.” However, Copyright Office records show that the PAu004092384 registration was issued for a musical work, not for a sound recording. Information about those two different kinds of copyright works is available in [Circular 56A: Copyright Registration of Musical Compositions and Sound Recordings](#) and in [What Musicians Should Know about Copyright](#). In your amended claim, you may refer to “Where the Coqui sings tonight” as a musical composition or a musical work, but

not as a sound recording, unless you have separately obtained or applied to register the copyright for the sound recording.

Copyright Infringement – Elements

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, and
4. The respondent’s work is substantially similar to the original elements of expression in your work.

You allege that the respondent Google LLC d/b/a YouTube (“YouTube”) is allowing a third party to use your works online. Your claim does not provide clear facts to support the elements of the claim related to how that third party had access to your work and substantial similarity, as described below. If you file an amended claim, it must include enough details about the elements for the Board and the respondent to understand the facts of the alleged infringement. In addition, your amended claim must provide more information related to your takedown notice and the respondent’s actions in response to that notice.

Access

You allege that a YouTube user posted copies of your works online without your permission, and that YouTube did not promptly comply with your takedown notice. However, your claim does not provide facts that indicate how the YouTube user had access to your works in the first place. “Access” means a reasonable opportunity to see, hear, or copy your works before the alleged infringement took place.

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 YouTube user or a close associate of the YouTube user; (b) were widely disseminated or were available to the YouTube user; or (c) are so strikingly similar to the works that appeared on YouTube that the YouTube user could not have created them independently.

Alternatively, you can upload copies of your works and the allegedly infringing works as they appeared on YouTube, if they demonstrate that the works are so strikingly similar that they could not have been created independently. You included an image file with your claim labeled [Mackey Moose.jpg](#), which shows one of your allegedly infringed works, but you have not provided copies of your other work, or of any allegedly infringing work that appeared on YouTube. 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 claim also does not include enough facts that explain the similarities between your works and the 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 similar.

You allege that YouTube has allowed a third-party user to “use my product without consent,” but you do not describe or show how your works have been used. In the “Works infringed” section of the claim, you describe “Mackey Moose & Millie Moose & Cody Coqui” as depicting three characters “as cartoons on the beach,” and you provide a copy of that image as a supplemental document. You do not provide details describing “Where the Coqui sings tonight,” or provide a copy of that work. Your claim also does not clearly describe any allegedly infringing work or include it as a supplemental document. As a result, the claim does not provide enough information to enable the Board to understand the similarity of the works.

If you submit an 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 were used by the YouTube user 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.

Online Service Provider

Your infringement claim asserts that the respondent YouTube is an “online service provider” (OSP); that you are bringing the claim against YouTube “due to their storage of or referral or linking to infringing material posted by others”; and that it failed to expeditiously remove or disable access to infringing material after you sent a takedown notice to YouTube as required by section 512 of the Copyright Act. Your claim does not provide enough information to support those allegations or to show that YouTube committed any infringing act.

“Safe harbors” in section 512 shield certain OSPs from paying damages for copyright infringement claims if, among other things, the OSPs 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 re-posting of the allegedly infringing material. In an infringement claim against an OSP that is eligible for a section 512 safe harbor, the claimant must state facts that indicate that the respondent did not follow those procedures.

Your infringement claim does not provide enough information about YouTube’s activities to overcome the safe harbor provisions. Specifically, you do not provide information supporting your allegations that you sent a takedown notice to YouTube, and that it failed to expeditiously remove or disable access to infringing material upon receiving notice of infringement. Without more specifics, those bare allegations do not provide sufficient details for YouTube to understand what its allegedly infringing acts were.

If you submit an amended claim, you must include more details about the takedown notice to support your claim, such as when and how it was submitted to YouTube, what you stated in the takedown notice, whether YouTube responded to your takedown notice, and if so, when, and what YouTube said in response. Alternatively, when you submit the amended claim, you may include copies of your takedown notice to YouTube and other communications with YouTube about this claim as supplemental documents, if they are sufficient to show that your takedown notice complied with section 512 and that YouTube did not take action in a timely manner. If you include copies of such correspondence as supplemental documents, they must be clearly labeled and identified.

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.