



COPYRIGHT CLAIMS BOARD

Docket number: 22-CCB-0030

March 10, 2023

World Media Alliance Label inc

CLAIMANT

v.

Apple Inc.

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 **April 10, 2023**. 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 – Elements

You have brought a copyright infringement claim before the Board. Your claim must make enough factual allegations to support each “element” of the claim. 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.

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. Your claim does not present enough facts to support any of the elements of a copyright infringement claim, as discussed further below.

Copyright Infringement – Infringing Activity

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 they have a legitimate defense. More information about exclusive rights is available on page 3 of the [Starting an Infringement Claim](#) chapter of the CCB Handbook. As detailed further below, your claim does not provide enough information to support allegations of infringement against the respondent Apple Inc (Apple).

Your claim asserts that Apple is an “online service provider” (OSP); that you are bringing the claim against Apple “due to their storage of or referral 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 Apple as required by section 512 of the Copyright Act. Your claim does not provide enough information to support those allegations or to show that Apple committed any infringing act.

“Safe harbors” in section 512 shield certain OSPs from being responsible for damages, if any, resulting from copyright infringement claims provided, 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 Apple's activities to overcome the section 512 safe harbors. Specifically, you do not provide information supporting your allegations that you sent a takedown notice to Apple, 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 the respondent to understand what its allegedly infringing acts were.

Alternatively, to the extent that you want to allege that Apple directly infringed your copyright, your claim does not describe any infringing activity by Apple. While you allege that the work was infringed by an “illegal publication” on iTunes, your claim does not present facts that clearly state how Apple, rather than a third-party user, engaged in that infringing activity. You do not describe how Apple used the work in a way that would violate any of your exclusive rights.

If you file an amended infringement claim, it must include more information about how Apple engaged in infringing activity. If your claim is based upon its alleged activity as an OSP—storing, making available, referring to, providing access to, or linking to material posted by other persons that is available online—you will have to state facts in support of that allegation that would make Apple liable as an OSP, despite the section 512 safe harbor provisions, because of a failure to expeditiously remove or disable access to the infringing material after you sent a takedown notice, as well as details related to the underlying alleged infringement. 17 U.S.C. § 1506(f)(1)(C). Please visit the [section 512 page](#) at copyright.gov 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 to bring an infringement claim against an OSP under section 512.

If, on the other hand, your amended claim is not based on Apple acting as an OSP, you must state facts that identify how Apple engaged in infringing activity (such as copying, distributing, or performing your work) on its own, rather than on the basis of infringing material posted on its website by other iTunes users.

Copyright Infringement – Access

Your claim does not provide facts about how the person or entity that uploaded the allegedly infringing work to Apple had access to your work. “Access” means a reasonable opportunity to view or hear your work before the alleged infringement took place. You describe the allegedly infringed work as a music track but you do not include any allegations that specify how the song appeared on iTunes, or identify any place where it was available before the alleged infringing use.

To address this issue, you must file an amended claim with allegations that make access a reasonable possibility, not just hypothetically or theoretically possible. If you are alleging that Apple itself engaged in direct infringing activity, acceptable allegations of access may include that your work (a) was sent directly to the respondent or a close associate of the respondent; (b) was widely disseminated or was available to the public or respondent; or (c) is so strikingly similar to the respondent’s work that the respondent could not have created it independently. If you are alleging that Apple is liable for failing to expeditiously take down infringing material subject to a valid takedown notice, you must make similar access allegations related to the person or entity that uploaded the allegedly infringing work.

Copyright Infringement – Substantial Similarity

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

You allege that the music track was illegally published on iTunes, and you provide a link to the page on iTunes where the alleged infringing acts occurred; however, the song is not available through that link. You do not provide any information describing or showing your work. No allegations in the “Describe the infringement” field of the claim describe your work or the allegedly infringing work, or state or show how they are identical or substantially similar. In addition, you have not provided a copy of your work or the allegedly infringed work as supplemental documents. As a result, the claim does not provide enough information to enable the respondent to understand the claim and respond to it.

If you submit an amended claim, it must include 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 work were taken by the respondent in the allegedly infringing work, or documents that are sufficient to show the similarities. 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 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.

Copyright Claims Attorney