



COPYRIGHT CLAIMS BOARD

Docket number: 24-CCB-0176

August 12, 2024

Hollis Nelson

CLAIMANT

v.

Ingram Content Group,
Kindle Direct Publishing of Amazon

RESPONDENTS

SECOND ORDER TO AMEND NONCOMPLIANT CLAIM

The Copyright Claims Board (Board) finds that your claim, as amended, still does not comply with the requirements of the CASE Act and related regulations. The claim cannot move forward unless it is properly amended.

If you wish to proceed with this claim, you must file a second amended claim by **September 11, 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. There is no additional filing fee for an amended claim. If you file a second amended claim and it is found compliant, you will be notified and directed to proceed with service. However, if your second amended claim also is found not to comply, the Board will dismiss the proceeding without prejudice. 17 U.S.C. § 1506(f)(1)(B); [37 C.F.R. § 224.1\(d\)](#).

To make your second 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 amended 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 while keeping in mind the need for clear statements of fact.

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. 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 clarity about the three elements further detailed below. Please provide more details and background regarding these elements in your amended claim.

Infringing Activity — Clarity

Your claim does not present enough facts to clearly state how *each* respondent used any exclusive rights you have in the allegedly infringed work without permission. 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. You have brought a claim alleging that two respondents infringed your work; however, the claim does not include a clear statement of the infringing activity of each respondent.

In your claim, you give what appears to be a lengthy chronological narrative of the publication of the work and include some allegations of unauthorized distribution. You state that “I have seen my copyrighted e-book in the Kindle Store. All of this without my permission. I saw Ingram's name posted on an on-line marketplace website publicly displaying a copyrighted image of my property/hardback book on-line using my exact words for about this book without my permission.” However, you have not included a clear statement that gives a clear overview of the allegedly infringing activities of each respondent.

To address this issue, your amended claim must include a clear statement of how each respondent infringed your work along with the chronological narrative you have provided. You should consider focusing your narrative on statements that go through the elements of copyright infringement as discussed below so that you can say what you own, how a specific respondent gained access to your work, what they did that was an actual violation of your copyright rights, and, if the works are different, how their allegedly infringing work is substantially similar to your work.. These statements do not need to be more than a few sentences as you should focus on the infringing activity and should include enough facts to explain how *each* respondent personally copied, distributed, performed, or prepared derivative works based on your work, or participated in any such infringing activity.

Access

Your claim does not provide facts about how Kindle Direct Publishing of Amazon had access to your work. “Access” means a reasonable opportunity to view or hear your work before the alleged infringement took place. Not all parties need to have had direct access to your work, to the extent that they were involved in the infringement of the work with persons who did have access, but your claim must have facts that clearly link the respondent that did have access to the work and the other respondent.

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 work (a) was sent directly to the respondent or a close associate of the respondent; (b) was widely disseminated or was available

to the respondent; or (c) is so strikingly similar to the respondent's work that the respondent could not have created it independently. You can also give specifics on how the respondents worked together to the extent you show access for one and therefore what might amount to a chain of access. Alternatively, you can upload copies of your work and the allegedly infringing work if they demonstrate that the works are so strikingly similar that they could not have been created independently—however, this must still show access as described above related to each respondent in your claim and related to the specific infringing actions that respondent took. 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 work and the respondent's allegedly infringing work. If it is not readily apparent from supplemental documents that are submitted with the claim, you must provide some specific allegations about how your work and the allegedly infringing work are similar.

Your claim states that your work is an illustrated children's book. You also state that the respondents are "publicly displaying a copyrighted image of my property/hardback book on-line using my exact words for about this book without my permission." However, in the "Describe the infringement" section of the claim you state that "I saw changed front covers of my coloring book and my color paperback on Bowker's site," which indicates that you are alleging some changes were made to your work. You have not included a clear statement that explains the extent of the alleged changes or the remaining similarities between the two works. Further, it is unclear if the supplementary documents included with the claim include your work and the changes you have alleged.

Also, as explained above, it is unclear exactly what you are claiming was infringed. For instance, if you are claiming that the respondent made unauthorized copies of your entire book, you should state that clearly. If, however, the respondent had legitimate copies of your book that it was merely selling or re-selling, that would not be a copyright infringement. If your claim is instead that they copied the cover of your book but made changes to it, you should describe both how the use was an infringing use and the similarities between your copyrightable expression (as opposed to mere ideas) and the allegedly infringing work.

In sum, 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 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 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. However, you should only upload the documents necessary as the Board and the respondent cannot be expected to go through dozens of attachments to find the relevant information. More information about the elements required to assert a claim of copyright infringement is available in the [Starting an](#)

Final Amendment

Your amended claim resolved some, but not all, of the compliance issues raised in the July 1, 2024, Order to Amend Noncompliant Claim. **This is your third and final opportunity to submit a compliant claim in this proceeding. If your claim remains noncompliant, the entire proceeding will be dismissed.** 17 U.S.C. § 1506(f)(1)(B).

To submit a second 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.