



COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0148

June 28, 2023

Michelle Shocked

CLAIMANT

v.

Carol H. Chen and YouTube (Google LLC)

RESPONDENTS

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 **July 28, 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.

Proper Respondent

Your claim lists two respondents, Carol H. Chen (“Chen”) and YouTube/Google LLC (“Google”). Your allegations do not show or describe how Google infringed any of your copyrights. You allege that “Chen, while employed by Google, uploaded a bootleg recording of my performance of my encore at Yoshi’s in San Francisco on March 17, 2013, to her YouTube account,” and that “Chen uploaded this bootleg content to further promote the virality of the It Gets Better Project, which itself was a native advertising campaign on behalf of Google Chrome’s new browser launch.” However, you do not appear to allege that Chen uploaded the recording as part of her employment, or that Google was aware of the upload.

If you submit an amended claim, your description of Chen’s allegedly infringing activities should clarify what activities she engaged in personally and whether she was acting on behalf of Google when she engaged in those activities. If you allege that Chen was not acting on behalf of Google, yet you continue to maintain a claim against Google in your amended claim, you must include allegations that would support a claim for direct infringement, or for secondary infringement based on vicarious or contributory liability. Information about these

different bases for an infringement claim was provided in the March 27, 2023 [Second Order to Amend Noncompliant Claim](#) in *Michelle Shocked v. Eric Strauss*, Case No. 22-CCB-0271.

Legal or Beneficial Ownership (Musical Compositions)

The “Works infringed” section of your claim lists four allegedly infringed works, which include two musical compositions, “Other People” and “Wanted Man,” apparently performed during a 2013 encore at Yoshi’s Jazz Club in San Francisco. It is not apparent from the claim that you are a legal or beneficial owner of those two works.

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. 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. More information about legal and beneficial ownership is available at page 4 of the [Starting an Infringement Claim](#) chapter of the CCB Handbook.

The claim does not indicate that you are a proper claimant to allege infringement of the two compositions. While the copyright registration certificates for both works list you as the author, they name Campfire Girl Publishing as the copyright claimant (owner) based on a written transfer agreement.

To correct this issue, your amended claim must include specific allegations about how you own, or have an exclusive license to use, the exclusive rights for the compositions. You can do this either by adding facts to the “Describe the infringement” section explaining how you owned exclusive rights in the works at the time of the infringement, or by submitting supplemental documents. For example, you may describe your relationship with Campfire Girl, or state how you obtained legal or beneficial ownership of the copyrights. Alternatively, if Campfire Girl is the owner, you may add it as a claimant in an amended claim.

Access (Literary Work)

Your claim does not provide facts about how the respondents had access to the allegedly infringed literary work, which you describe as a transcript of the Yoshi’s performance. “Access” means a reasonable opportunity to view the work before the alleged infringement took place.

The literary work is titled “Bootleg This: Truth Vs. Reality.” You describe it as a “transcript of [a] live performance on March 17, 2013 at Yoshi’s Jazz Club in San Francisco CA.” The copyright registration states that the work was created in 2014 and lists you and Perrin Blackman as co-authors and co-owners. The registration identifies the work as unpublished. Your co-author affirmed, in correspondence with the Copyright Office in March 2015, that the work “ha[d] not been published yet.”

You have not described any activity that would have infringed that copyright. The only infringing act alleged in the “Describe the infringement” section of the claim is Chen’s video upload. In the “Infringement dates” section you allege that the infringement occurred or commenced on April 2, 2013. Your allegations in the “Description of harm suffered and relief sought” section indicate that Chen uploaded the video then, or around that date in 2013:

Following the upload of the bootleg recording on Chen’s YouTube channel I was ‘cancelled’, and all tour dates that were booked prior to this were cancelled, and I have been unable to book concert tours since 2013, despite booking and performing on 80+ tour dates in each of the preceding five years.

A 2013 upload of the encore recording could not infringe a transcript created in 2014 and, as of 2015, still unpublished. A work cannot be infringed before it is created, because the alleged infringer does not have access to the work before any infringing act alleged. See *Basile v. Twentieth Century Fox Film Corp.*, CV 14-4263, 2014 U.S. Dist. LEXIS 189325, *22 (C.D. Cal. Aug. 19, 2014); *Oravec v. Sunny Isles Luxury Ventures L.C.*, 469 F. Supp. 2d 1148, 1160-61 (S.D. Fla. 2006). Based on your allegations, access before the alleged infringement was not possible.

Clarity (Sound Recording)

The allegedly infringed sound recording is titled “Michelle Shocked ‘Truth Vs. Reality: Bootleg This’ Encore at Yoshi’s San Francisco March 17, 2013.” In the “Works infringed” section, you describe it as a “live recording of a performance by Michelle Shocked at Yoshi’s Jazz Club in San Francisco March 13, 2013.” The relationship between your registered sound recording and the allegedly infringing “bootleg recording” is not clearly stated.

Your “Bootleg This: Truth Vs. Reality” literary work, which discusses the 2013 performance and its aftermath, states: “The 23-minute bootleg audio was also later published on YouTube. This version provides some context within the encore section of the show, but was later cut and pasted into shorter, less comprehensible clips.” The sound recording deposited with the Copyright Office during the registration process is just over 23 minutes long.

If you file an amended claim that asserts infringement of the sound recording, you must include allegations that explain the relationship between that registered recording and the allegedly infringing upload. In particular, please state facts that explain whether the registered sound recording was recorded by you or with your authorization, and whether it was copied from the bootleg recording that Chen allegedly uploaded to YouTube. Please also include facts in the “Describe the infringement” section that explain whether the video that Chen allegedly uploaded to YouTube included only an audio recording, or also video or photographs, from the 2013 performance.

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