



COPYRIGHT CLAIMS BOARD

Docket number: 22-CCB-0262

United States Copyright Claims Board

software dynamic

CLAIMANT

v.

Google LLC

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 **February 17, 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.

Claimant Information

Your claim contains conflicting information about where software dynamic is located. One address lists “Boulder, CA” while the other lists “Boulder, CO.” Please review the “Claimant Information” field and ensure that the correct address is listed for both fields.

Works Infringed – 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. 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 include enough facts that explain how the respondent infringed the work you have identified in the claim. In your claim, you have identified the type of work infringed as “software.” A Board search of Copyright Office records confirms that a registration was issued for a “computer program” (TX0009207326) on December 30, 2022, for the service request number you provided with your claim (“1-12004469651”). However, the allegations you have included in the “Describe the infringement” and “Description of harm suffered and relief sought” sections of the claim state that the “Panda Helper logo and Panda Helper text” are the works that have allegedly been infringed.

It is unclear from the allegations included in the claim what the relationship is between the computer program and the Panda Helper logo and text and you have not included any supplementary documents that would explain the connection. If it is not readily apparent from the claim, you must provide specific allegations about how your registered *computer program* was used by the respondent.

If you have claimed infringement of a computer program in error, and are actually alleging infringement of a logo and/or text, you will need to amend your claim again to make that clear. In addition, you must have obtained copyright registrations or submitted application(s), deposit(s), and fees to register the logo and text before you filed your claim on December 11, 2022. If your work(s) was neither registered nor subject to a pending application at that time, this claim cannot be successfully amended and cannot proceed. 17 U.S.C. § 1501(a)(1). Instead, you would need to apply to register the copyright for the allegedly infringed work(s) before you could refile your claim as a new proceeding. For more information on registration, please refer to the Copyright Office [Registration Portal](#).

Proper Respondent

Your allegations are also unclear because they do not specify how Google LLC infringed your work. They appear to intertwine the actions of respondent with the actions of an unknown third party, which you have not named as a respondent. In your claim, you allege that “[r]eproducing these logos on the panda-helper.org website is a copyright infringement on its own.” However, you do not specify how Google or another party has reproduced the images. You also do not appear to specifically allege which party has infringed your copyright. If you submit an amended claim, your description of Google LLC’s allegedly infringing activities should clarify what activities the entity engaged in personally and whether they were acting on behalf of someone when they engaged in those activities. If you also assert a claim against a different respondent in your amended claim and maintain your claim against Google LLC, you should add specific allegations about how the additional respondent infringed your work but you should still clarify the actions taken by Google LLC. If you do assert a claim against a different person or entity and wish to drop your claim against Google LLC, you should clarify your allegations against the new party and delete Google LLC as a party to this proceeding.

Infringement – Online Service Provider

Your allegations also appear to suggest that your claim against Google LLC may be based on its activities as a search engine. Twice in the claim, you state, “We, therefore, hope you can swiftly take down panda-helper.org in google search and provide information about its owner panda-helper.org.” To the extent that your claim against Google LLC is based upon Google’s search results leading users to the website of a third party (panda-helper.org), Google LLC would be considered an online service provider (OSP) whose activities would be potentially eligible for a safe harbor from liability provided in Section 512 of the Copyright Act. If that is the case, you will need to clarify in your amended claim whether the respondent engaged in conduct outside the scope of the Section 512 safe harbors or directly engaged in infringing activities.

Special rules apply to infringement claims brought against OSPs for storing, referring to, or linking to infringing material posted by others. OSPs include content-sharing websites and internet search engines, among other services. In many cases, OSPs are not liable for such claims because of protections in the copyright law under section 512 of the Copyright Act.

These “safe harbors” in section 512 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. An infringement claim against an OSP that is eligible for the safe harbor must state facts that indicate the respondent did not follow these procedures. Specifically, the claim cannot be compliant unless you affirm that you sent the OSP a section 512 notice of infringement, and that it “failed to remove or disable access to the material expeditiously upon the provision of such notice.” 17 U.S.C. § 1506(f)(1)(C)(i). A search engine typically refers to and links to material found elsewhere on the internet, and such activity would fall within the safe harbor if all of its requirements are met.

Although your claim requests that Google LLC “take down panda-helper.org in google search,” you have answered “No” to the question, “Are any of the respondents online service providers?” If your claim is based upon Google LLC’s activities as an online search engine, the answer to that question should be “Yes.” If you answer “Yes” to that question, you will be asked additional questions, including “Are you bringing a claim against the online service provider due to their storage of, or referral or linking to, infringing material posted by others?” If your claim is based upon the appearance of panda-helper.org in Google search results, the answer to that question should be “Yes,” and you will then be asked, “Did you send the online service provider a ‘takedown notice’ as required by section 512 of the Copyright Act?” If your answer to that question is “No,” the Board may not hear your claim against Google until after you have sent a takedown notice to Google and other requirements of section 512 have been met. If your answer is “Yes,” you will then be asked, “Did the online service provider fail to expeditiously remove or disable access to the material after you sent a takedown notice? If your answer to that question is “Yes,” you may proceed with your claim. If the answer is “No,” you may not proceed with the claim.

If you are not alleging that Google is liable based on its activities as an OSP, your claim may proceed if and to the extent that you amend your allegations as described in the first page of this order.

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 OSP protected by a section 512 safe harbor

Impermissible Claims

The Board is only authorized to resolve certain types of copyright disputes. Three particular kinds of claims are permitted:

1. claims of copyright infringement;
2. claims seeking a declaration that activity is not infringement; and
3. claims about misrepresentations in connection with a takedown notice or counter-notice under the Digital Millennium Copyright Act (DMCA).

17 U.S.C. § 1504(c)(1)-(3). The Board cannot hear claims of trademark infringement or false advertising. 17 U.S.C. § 1504(d)(1). In your claim, you allege that the respondent’s use of the Panda Helper logo and text “infringes our company’s registered trademark. And guide users to download their files and constantly click on advertisements, causing terrible effects.” Those allegations are not about a claim that the Board is authorized to hear. If you file an amended claim, it should only state facts and allegations that are relevant to a claim under copyright law that the Board may hear.

Please review [Circular 1: Copyright Basics](#) and the [Introduction](#) chapter in the CCB Handbook for more information about copyright and the kinds of disputes that the Board can hear. You should only file an amended claim if you can state facts to support a claim under copyright law that can be heard by the Board. For more information about what is required to support a claim of infringement, noninfringement, or misrepresentation please refer to the CCB Handbook:

- [Starting an Infringement Claim](#)

- [Starting a Noninfringement Claim](#)
- [Starting a Misrepresentation Claim](#)

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

January 18, 2023