



COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0337

November 17, 2023

Jonathan D Smith-el

CLAIMANT

v.

KOMU8 TV, et al.

RESPONDENT

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 **December 18, 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. 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.

Copyright Registration

The Board can only hear a copyright infringement claim if, before the claim was filed, (1) the Copyright Office issued a registration certificate for the copyrighted work or (2) the legal or beneficial owner of the copyright applied to register the copyright by delivering a completed application, deposit, and fee to the Copyright Office, and the Copyright Office has not refused the application. 17 U.S.C. § 1505(a). The Board can only determine that a work has been infringed after the Copyright Office registers the work. 17 U.S.C. § 1505(b)(1)(A).

Five of the six allegedly infringed works have been registered. You state that the copyright has not been registered for the other allegedly infringed work, titled “Welcome to the free city state of Jonathan D Smith-el,” and you provide Service Request No. 1-11101043300 for an application for registration of the work. However, Copyright Office records indicate that the application has been closed. After several rounds of correspondence, you did not respond to a Copyright Office examiner’s email dated August 30, 2022. That email noted that if you

did not respond to the message within 45 days, your case would be closed without processing your registration or notifying you further. The Office did not receive a reply by the specified deadline and the application was closed as a “No reply” on October 20, 2022.

If you file an amended claim, you must either (1) provide a copyright registration number that was issued for “Welcome to the free city state of Jonathan D Smith-el” before you filed this claim on October 9, 2023, (2) provide the Service Request number for an application to register the work that was filed before that date, and that is still pending, or (3) remove that work from the “Work(s) infringed” section. If the work was neither registered nor subject to a complete pending application on October 9, 2023, this claim cannot be successfully amended to maintain a claim of infringement for that work.

Respondent Clarity

The Board can only hear claims asserted against multiple respondents if all claims in the proceeding “arise out of the same allegedly infringing activity or continuous course of infringing activities[.]” 17 U.S.C. § 1504(c)(6). Your amended claim does not state how the activities of each respondent infringed your work. Specifically, you have brought a claim against approximately eighteen respondents, varying between individuals, corporations, and a television station. In your amended claim you state that you never gave any of your stuff to some of the respondents and a number of third parties.

This general allegation is vague and insufficient. An amended claim must make clear what role each respondent played in infringing your work and provide information about the relationship between them. Include these facts in the “Describe the infringement” section that specify in detail what infringing activities each respondent engaged in. Remove details that do not relate to activities that infringed your copyright protected works.

Lastly, the amended claim must also detail the relationship between each respondent and include facts that indicate that all respondents jointly engaged in the same allegedly infringing activities, and state how they acted together in the same course of conduct. Any respondent that didn’t act together with the others should be removed from the claim.

If you amend your claim to include allegations that the respondents acted together in a continuous course of infringement, you must list each of them separately in the claim form. Each respondent needs to have their own separate mailing address. 37 C.F.R. § 222.2(c)(6). Currently four respondent entries list both an entity and one or more individuals. You will need to clarify whether you are asserting the claim against the individuals, the entities, or both. If both, they need to be listed separately.

Infringing Activity – Clarity

Your copyright infringement claim does not present enough facts to clearly state how the respondents used any exclusive rights you have in the allegedly infringed works without permission.

Copyright law grants exclusive rights to copyright owners. These include the right to reproduce, distribute, and

publicly display 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.

While you assert that you have not given anyone permission to use your works, and that use without your permission would be copyright infringement, your allegations do not clearly describe unauthorized use of your works by any named respondent. For example, your new allegations in the “Describe the infringement” section state that some of the respondents possessed “community,” which may refer to one of your listed works. This allegation, however, does not state or show how the respondents reproduced, distributed, adapted, displayed, or performed your works. Similarly, the new allegation that “they been committing corporate crimes with it opening up businesses, etc.” is vague as the claim doesn’t identify who they are, what it is, or what infringing activity encompasses “corporate crimes.”

If you file an amended claim, it must include allegations that state or show how each named respondent engaged in a clearly described infringing use of one or more of your allegedly infringed works. You must identify particular infringing acts by each respondent using the specified works.

In addition, your amended claim continues to combine your allegations about your copyrighted works with many unrelated and inflammatory assertions about the respondents and other people, with the result that the elements of your infringement claim are not stated clearly enough for the Board and the respondents to understand. If you file an amended claim, it must clearly set forth allegations that support the infringement claim without mixing those allegations up with unrelated allegations.

Final Amendment

Your amended claim resolved some, but not all, of the compliance issues raised in the October 17, 2023, 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.

Copyright Claims Attorney