



# COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0297  
March 8, 2024

VideoHat LLC

CLAIMANT

v.

Google LLC

RESPONDENT

## SECOND ORDER TO AMEND NONCOMPLIANT CLAIM

The Copyright Claims 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 **April 8, 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.

### Allegedly Infringed Works

The “Works infringed” section of your amended claim lists three albums of sound recordings by Al Hadraa Band as the allegedly infringed works. Those sound recordings are not a proper basis for this proceeding. As stated in the January 22, 2024 [Order to Amend Noncompliant Claim](#) (January 22 Order), the copyright for a *musical composition* (also known as a musical work) is distinct from the copyright for a *sound recording* of that composition. To proceed on the facts you are alleging, the allegedly infringed works must instead be the musical compositions on the “Best of Al Hadra Band” album that were at issue in *VideoHat LLC v. YouTube LLC*, Claim No. 23-CCB-0185, and in *VideoHat LLC v. El Din Nageh Ali*, Claim No. 23-CCB-0216, for reasons explained in this section.

In your amended claim, and in a supplemental document labeled [23-CCB-0297 – Response.pdf](#) (Response), you allege that a YouTube user uploaded multiple infringing videos of sound recordings by Al Hadraa Band; you sent takedown notices to YouTube; the uploader filed counter-notices; and YouTube told you that it would reinstate the videos unless you showed that you were taking legal action against the uploader, either in court or

before the Board. On May 28, 2023, you filed an application with the Copyright Office to register twenty musical works published on the 2017 album “Best of Al Hadra Band.” You filed Claim No. 23-CCB-0185 against YouTube that same day, and you filed Claim No. 23-CCB-0216 against the alleged uploader on June 26, 2023. In both cases, your infringement claim was based on the musical works within that application, not on sound recordings. Both cases have since been dismissed without prejudice.

In this proceeding, in the last three supplemental documents filed with the amended claim, you allege that while the earlier cases were pending, “[o]n June 26th, 27th and 28th, 2023, we provided YouTube with a proof of legal action taken against the uploader which is a notice of a prior Board proceeding filed against the uploader.” You contend that Google is liable for infringement because it restored the videos despite you providing proof of that legal action—and despite YouTube stating, in general instructions, that “[t]he content at issue will not be reinstated to YouTube while legal action is pending.” For Google to be liable on that basis, you must allege infringement of the copyrighted works that were at issue in the prior Board proceedings—musical compositions on the album “Best of Al Hadra Band,” not sound recordings.

Notably, when you first filed this proceeding, the “Works infringed” section of the claim listed “Works Published on the Album Best of Al Hadra Band” as one of the allegedly infringed works, although it incorrectly identified those works as sound recordings. You omitted the work in the amended claim, and your Response document indicates that you intend to seek to “update the registration type” for that copyright to sound recordings before raising an infringement claim over those works. Seeking a different registration type is not necessary for this claim and would not support this claim. Instead, in your second amended claim, you must identify the “type of work(s)” on that album as musical compositions.

In addition, your allegations appear to relate to multiple works. The claim must include the title of each allegedly infringed work. 37 C.F.R. § 222.2(c)(7)(ii)(A). If you intend to pursue a claim that Google should be held liable for infringement of more than one work, the “Works infringed” section of your second amended claim should include separate entries listing each allegedly infringed composition.

You are alleging that Google became liable for infringement when it restored the works after notice of your legal action that was based on infringement of *musical compositions*, so only those works can be the basis of this claim, not any sound recordings of those compositions. As the January 22 Order stated: “Sending Google a notice of a prior Board proceeding, which involved only ‘Works Published on the Album Best of Al Hadra Band,’ would not affect any safe harbor Google would have for a claim of infringing any [sound recordings] on the other three albums at issue in this proceeding.”

If you file a second amended claim, you could address these issues by taking the following steps:

- In the “Works infringed” section:
  - Remove the three entries for sound recordings.

- Add an entry for the musical compositions on the “Best of Al Hadra Band” album, or add multiple entries, one for each title of an allegedly infringed composition that appears on that album.
- For that entry (or for each entry), select “Musical compositions” as the “Type of work.”
- For that entry (or for each entry), answer “Yes” to the question, “Has the work been registered by the Copyright Office?” and list the effective date of registration as July 27, 2023.
- In the “Where the alleged infringing acts occurred” section, change the allegedly infringed works listed to include only the musical compositions on the album “Best of Al Hadra Band.”
- Include a supplemental document, similar to the last three supplemental documents filed with the amended claim, that states facts that clearly relate to the alleged infringement of the musical compositions on the “Best of Al Hadraa Band,” rather than the sound recordings.

### **Access and Substantial Similarity**

As discussed in the January 22 Order, your claim must include facts indicating that it is reasonably likely that (1) the uploader had “access” to the allegedly infringed works (that is, a reasonable opportunity to view or hear the works before the allegedly infringing uploads took place), and that (2) what was uploaded was either identical or “substantially similar” to the allegedly infringed works.

Your amended claim provided such facts, about the allegedly infringed sound recordings. Each of the last three supplemental documents filed with the amended claim includes a list of sound recordings on an Al Hadraa Band album, after which you state: “The infringing videos are identical to the works listed above and included in the supplemental documentation.” Those allegations make it plausible that the videos uploaded to YouTube include material that is (1) so strikingly similar to the sound recordings that the uploader could not have created the works independently (and therefore, that the uploader likely had access before the alleged infringement took place), and (2) identical to the allegedly infringed sound recordings.

Your second amended claim could address this issue by including similar facts about the musical compositions on the “Best of Al Hadra Band” album—indicating, if true, that the uploaded videos contain material that is: (1) so strikingly similar to the allegedly infringed compositions that they could not have been created independently, and (2) identical or substantially similar to those compositions. If you can truthfully state such facts in your second amended claim, then to make your allegations clear, include them in the “Describe the infringement” section of the claim form itself, not just in supplemental documents.

### **Final Amendment**

Your amended claim resolves some, but not all, of the issues raised in the January 22, 2024 Order. If you file a second amended claim, it must state enough facts in support of the claim alleged. **This is your third and final opportunity to submit a compliant claim in this proceeding. If you raise any claims that your allegations**

**do not support, the entire proceeding will be dismissed.** 17 U.S.C. § 1506(f)(1)(B). In the alternative, you can delete any unsupported claim allegations in your second amended claim.

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](mailto: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