



# COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0282  
September 20, 2023

Michelle Shocked

CLAIMANT

v.

YouTube and David Pakman

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 **October 20, 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.

### Legal or Beneficial Ownership (Musical Composition)

You allege copyright infringement of a musical composition titled “Other People.” It is not apparent from the claim that you are a legal or beneficial owner of “Other People,” which is a requirement for an infringement claim. As explained in the June 28, 2023 [Order to Amend Noncompliant Claim](#) in *Michelle Shocked v. Carol H. Chen and YouTube (Google LLC)*, Case No. 23-CCB-0248:

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 “Other People.” You allege that Campfire Girl Publishing (“Campfire”) “owns and controls exclusive rights to” the composition. While the

copyright registration certificate for the work lists you as the author, it names Campfire as the copyright claimant (owner) based on a written transfer agreement. Your allegation that you own Campfire does not mean that you own any of Campfire's exclusive rights.

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 composition. You can do this either by adding facts to the "Describe the infringement" section explaining how you owned exclusive rights in the work at the time of the infringement, or by submitting supplemental documents. For example, if Campfire is not a separate entity but is simply a "dba" (a name under which you do business in your personal capacity), or if you are a beneficial owner of the copyright because you are an author of the work with the right to receive royalties from Campfire, then your amended claim may state such facts. Alternatively, if Campfire is the copyright owner and is a separate legal entity, then you may file an amended claim that names Campfire as the claimant that asserts infringement of that work, as you did in Case No. 23-CCB-0248.

### **Authorized Work (Sound Recording)**

You also allege infringement of a sound recording titled "Michelle Shocked 'Truth Vs. Reality: Bootleg This' Encore at Yoshi's San Francisco March 17, 2013." You name yourself as the author of the sound recording, which you describe as a live recording of your performance at Yoshi's Jazz Club. In the "Describe the infringement" section of your claim, you state: "On March 17, 2013, Carol Chen, a YouTube engineer, recorded an audio-only bootleg of my live concert at Yoshi's San Francisco and, acting on her own initiative, uploaded the encore of my concert to her YouTube channel @carolcheny on March 18, 2013." You describe Ms. Chen's recording as a "copyright-infringing bootleg." Your allegations that Ms. Chen recorded the work without your authorization indicate that you cannot raise a claim of copyright infringement for that work.

Copyright protects "original works of authorship fixed in any tangible medium of expression . . . from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device," including sound recordings. 17 U.S.C. § 102(a). "A work is 'fixed' in a tangible medium of expression when its embodiment in a copy or phonorecord, *by or under the authority of the author*, is sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration." 17 U.S.C. § 101 (emphasis added). Therefore, to qualify for copyright protection, a sound recording must be recorded by the author or with authorization from the author.

Bootlegs do not qualify. "A 'bootleg' phonorecord is one which contains an unauthorized copy of a commercially unreleased performance." *Dowling v. United States*, 473 U.S. 207, 211 n. 2 (1985). "Since bootleg recordings are by definition unauthorized by the author/musicians, such recordings cannot be 'fixed' under § 101, and therefore cannot be given copyright protection." *Flo & Eddie, Inc. v. Bill Graham Archives, LLC*, No. 09-CV-2842, 2009 U.S. Dist. LEXIS 148204, at \*13 (C.D. Cal. Aug. 25, 2009). "Recordings not made 'by or under the authority of the author,' even if embodied in a disk, tape, or other medium, are not 'fixed' for purposes of the copyright infringement statute, and not subject to a claim for copyright infringement." *Kihn v. Bill Graham Archives*,

*LLC*, 445 F. Supp. 3d 234, 256 (N.D. Cal. 2020) (*citing Flo & Eddie*, 2009 U.S. Dist. LEXIS 148204, at \*13), *reversed on other grounds*, No. 20-17397, 2022 U.S. App. LEXIS 9 (9th Cir. Jan. 3, 2022).

Because you allege that the sound recording registered by the Copyright Office was recorded by Ms. Chen without your authorization, and was copied from the bootleg recording that Ms. Chen uploaded to YouTube, it cannot be the basis of a copyright infringement claim. An unauthorized fixation, transmission, or distribution of a live musical performance is not an act of copyright infringement. Such acts may violate 17 U.S.C. § 1101, the “anti-bootlegging” provision of the Copyright Act. However, the Board is only authorized to resolve certain types of copyright disputes. 17 U.S.C. § 1504(c)(1)-(3). The Board is not authorized to hear claims alleging violations of Section 1101. 17 U.S.C. § 1504(d)(1). An amended claim that asserts infringement of the sound recording cannot move forward unless it shows that, despite your current allegations, you authorized Ms. Chen to record it.

Alternatively, you may file an amended claim that omits the sound recording from the list of allegedly infringed works in the “Works infringed” section. If you file an amended claim for infringement of only “Other People,” and if Campfire is the only legal or beneficial owner of that work, then you should name Campfire as the only claimant.

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](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