



# COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0148

August 16, 2023

Michelle Shocked and Campfire Girl Publishing

CLAIMANTS

v.

Carol H. Chen and YouTube (Google LLC)

RESPONDENTS

## 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. While you have resolved the compliance issues raised in the noncompliance order issued on June 28, 2023, additional issues explained below also must be resolved for the claim to go forward.

If you wish to proceed with this claim, you must file a second amended claim by **September 15, 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.

### Statute of Limitations

Your copyright infringement claim cannot proceed based on allegations that show that you knew about all of the alleged infringing activities more than three years ago. Your amended claim is based on allegations of infringement that you discovered more than ten years ago. Because you do not allege any infringing act that occurred or was discovered in the last three years, the claim is barred by the statute of limitations.

A “statute of limitations” is a time limit set by law for starting a claim. The statute of limitations period for copyright claims, both in federal court and the Board, is three years after the claim “accrues.” 17 U.S.C. §§ 507(b) & 1504(b)(1). A claim for copyright infringement accrues when the infringing act occurs, or when the claimant discovers, or reasonably should have discovered, the infringement. *Starz Entertainment LLC v. MGM Domestic TV Distrib., LLC*, 39 F.4th 1236, 1239-41 (9th Cir. 2022). A proceeding before the Board cannot be commenced more than three years after the claim accrued. 17 U.S.C. § 1504(b)(1).

You allege that:

- The infringement began on March 18, 2013, when respondent Carol Chen (“Chen”) uploaded a video to her YouTube account that contained an audio recording from the encore of your March 17, 2013 performance at Yoshi’s (the “Chen video”).
- You submitted a series of takedown notices to respondent YouTube/Google LLC (“YouTube”) seeking removal of the Chen video beginning on April 2, 2013, fifteen days after it was uploaded.
- “For four years, YouTube rejected [your] compliant DMCA takedown notices for Chen’s infringing video,” including notices you submitted on seven dates in 2013 and two dates in 2017, until the Chen video was taken down on October 27, 2017.
- On the same dates in 2013 and 2017, you also submitted takedown notices to YouTube to remove a video distributed on the David Pakman Show’s YouTube account (the “Pakman video”) that included material from the Chen video. You submitted a last takedown notice on November 29, 2017, but the Pakman video remains on YouTube.

Your claim against Chen accrued no later than April 2, 2013, when you submitted the first takedown notices for the Chen video and the Pakman video, and the claim against YouTube first accrued soon after, when it did not comply. You filed your claim with the Board on April 24, 2023. You had known about the alleged infringing acts for more than three years, so they cannot be the subject of this infringement claim unless you can show in a second amended claim that your allegations are based on incidents that are not barred. A new infringing act would open a new three-year window for raising a claim, because the statute of limitations period “runs separately for each successive incident of infringement.” *Starz*, 39 F.4th at 1241. However, you have not alleged any new infringing acts that took place or were discovered in the three years before you filed your claim. If you file a second amended claim, it must include facts about some infringing use of your work that occurred during, or that you did not discover (and reasonably should not have discovered) until, the three-year period before you filed the claim on April 24, 2023. Your second amended claim should only include an alleged infringer as a respondent if you state facts about such an infringing act by that respondent.

### **Clarity (Respondent)**

The claim must separately provide the name and address of each respondent, and must include allegations describing infringing activity by each respondent. 37 C.F.R. § 222.2(c)(5), (6), & (7)(iii)(C). In the Respondents section of the amended claim, you name “YouTube (Google LLC)” as a single respondent. However, in parts of the “Describe the Infringement” section you acknowledge that they are distinct entities, quoting a description of YouTube as “Google’s subsidiary.”

If you file a second amended claim, do not conflate Google LLC and YouTube LLC. To bring a claim against both entities, list them separately in the Respondents section and provide facts describing how each of them committed infringing acts. Alternatively, to bring a claim against only Google LLC or YouTube LLC, name only the intended respondent in the Respondents section and clarify any allegations that refer to the other entity.

## Clarity (Infringing Activity)

In the “Works infringed” section, you list three allegedly infringed works: a sound recording titled “Michelle Shocked ‘Truth Vs. Reality: Bootleg This’ Encore at Yoshi’s San Francisco March 17, 2013,” which you describe as a live recording of your Yoshi’s performance, and two musical compositions, “Other People” and “Wanted Man.” Your amended claim does not assert that the Chen video, the Pakman video, or any other video on YouTube included either of the musical compositions. If you file a second amended claim, it must include facts in the “Describe the infringement” section that describe acts infringing your copyrights, specifying how each respondent engaged in the infringing activity. You should be as detailed as possible, setting forth what the respondent did in relation to each work you allege they infringed.

## Final Amendment

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 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