



COPYRIGHT CLAIMS BOARD

Docket number: 24-CCB-0288

November 27, 2024

Frank C Rocca, II

CLAIMANT

v.

Olimpiu Toader

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 27, 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. 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.

Work Infringed — Clarity

Your copyright infringement claim must provide enough information for the respondent to identify the work that you claim has been infringed. As noted in the Board’s October 10, 2024 Order to Amend Noncompliant Claim, it is unclear if the work that you claim was infringed is a novel titled “I’m Jack & I Want More” or one of the two “Dawn Of The Time-Travellers” novels listed in your pending application (SR 1-14311434721).

In the “Work infringed” section of the amended claim, you state that the work “I’m Jack & I Want More” is pending registration by the Copyright Office. You have also included a supplemental document that shows what appears to be a screenshot of the listing for “I’m Jack & I Want More.” However, a Board search of Copyright Office records shows that the pending registration you listed is titled “Dawn Of The Time-Travellers: Book One and 1 Other Unpublished Works,” which is a group registration of two works titled “Dawn Of The Time-Travellers: Book One” and “Night Of The Time-Travellers: Book Two.” The allegations in your claim indicate that

you may be alleging that the respondent is infringing one of your novels; however, it is unclear if the allegedly infringed work (“I’m Jack & I Want More”) is covered by your pending registration, if that is an alternative title for your work, or if the wrong registration number was listed.

In your second amended claim, you should confirm that the correct registration information is provided, and you must include clarifying information about which of your works was infringed and how much of your novel(s) were used.

Copyright Infringement Claim—Elements

You have brought a copyright infringement claim before the Board. Your claim must make enough factual allegations to support each “element” of the claim. Information about the elements required to assert a claim of copyright infringement is available in the [Starting an Infringement Claim](#) chapter of the CCB Handbook. 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 amended claim still does not provide enough facts about how the respondent had access to your works and how the respondent’s work is similar to your work. Please provide more details and background regarding this element in your second amended claim.

Access

Your amended claim does not provide facts about how the respondent had access to your work. “Access” means a reasonable opportunity to view or hear your work before the alleged infringement took place. In your claim, you reiterate that “amazon.com allowed the aforementioned company to pirate and sell my novel on their site.” However, your amended claim does not detail where your work is publicly available or how the respondent accessed it.

To address this issue, you must file an amended claim with allegations that make access a reasonable possibility, not just hypothetically or theoretically possible. Acceptable allegations of access may include how your work (a) was sent directly to the respondent or a close associate of the respondent; (b) was widely disseminated or was available to the respondent; or (c) is so strikingly similar to the respondent’s work that the respondent could not have created it independently. Alternatively, you can upload copies of your work and the allegedly infringing work if they demonstrate that the works are so strikingly similar that they could not have been created independently. If you include copies of the works at issue as supplemental documents, they must be clearly labeled and identified so they can be properly compared to each other.

Substantial Similarity

Your amended claim also does not include enough facts that explain the similarities between your work and the respondent's allegedly infringing work. As noted in the Board's October 10, 2024 Order to Amend Noncompliant Claim, if it is not readily apparent from supplemental documents that are submitted with the claim, you must provide some specific allegations about how your work and the allegedly infringing work are similar.

In your amended claim, you state that your work is a novel and appear to allege that your whole work was infringed; however as noted above, it is unclear if you are alleging identical infringement of the whole work ("I'm Jack & I want More") or another work. It is also unclear how much of the work you are alleging was infringed was copied by respondent. You do not provide enough information describing or showing your work. No allegations in the "Describe the infringement" field of the claim describe your work or the allegedly infringing work, or state or show how they are identical or substantially similar. In addition, you have not provided a copy of your work or the allegedly infringed work as supplemental documents.

As a result, the claim does not provide enough information to enable the respondent to understand the claim and respond to it. If you submit another amended claim, it must include more factual allegations that support the element of substantial similarity. Please provide more details and background regarding this element in your amended claim, including a clear, detailed statement regarding which portions of your work were taken by the respondent in the allegedly infringing work, or documents that are sufficient to show the similarities. If you include copies of the works at issue as supplemental documents, they must be clearly labeled and identified so they can be properly compared to each other. More information about the elements required to assert a claim of copyright infringement is available in the [Starting an Infringement Claim](#) chapter of the CCB Handbook.

Online Service Provider — Proper Respondent

In the "Respondent" section, your claim lists only "Olimpiu Toader" as a respondent, but several allegations mistakenly refer to "KDP amazon.com" as a respondent too. In the section concerning online service providers (OSPs), you answer "Yes" to the questions, "Are any of the respondents online service providers?" and "Did you send the online service provider a 'takedown notice' as required by Section 512 of the Copyright Act?". You also list "KDP amazon.com" in the "Respondent name or organization" field. In the "Description of harm suffered and relief sought" section, you state, "They left my name as author on my book, yet all profits from sales are going to another party." It is unclear if you are referring solely to Toader or both Toader and KDP amazon.com. Your allegations noted above are inconsistent and must be corrected in an amended claim.

Special rules apply to infringement claims brought against OSPs, which provide online services to store (and make available), refer to, provide access to, or link to material that is available online. OSPs include content-sharing websites and internet search engines, among other services. You have not stated allegations that indicate that the named respondent is an OSP. Your allegations also do not indicate that Amazon would be a proper respondent. "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 allegedly infringing material when the copyright

owner sends them a proper takedown notice; and if they restore that material ten to fourteen business days after the uploader sends them a proper counter-notice seeking reinstatement—unless the copyright owner files an infringement claim, in court or before the Board, and notifies the OSP of the claim before the OSP reinstates that material. 17 U.S.C. §§ 512(g)(2) & 1507(d).

To bring an infringement claim against an OSP that is otherwise eligible for the safe harbor, you must state facts that indicate it did not follow these procedures. *Id.* § 1506(f)(1)(C). If Amazon promptly removed the allegedly infringing material when they received your takedown notices, and reinstated it before you brought this claim based on counter-notices from the uploader, they would not be a proper respondent. If you file an amended claim, use the term “respondent” only to refer to people and entities listed in the “Respondent” section. If no named respondent is an OSP, your answer to the question “Are any of the respondents online service providers?” must be “No.”

Final Amendment

Your amended claim resolved none, of the compliance issues raised in the October 10, 2024, 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.

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