



COPYRIGHT CLAIMS BOARD

Docket number: 22-CCB-0049

United States Copyright Claims Board

Danny A. Valentine Shabazz

CLAIMANT

v.

Robert Diggs

RESPONDENT

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 7, 2022**. 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 extra 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.

Copyright Infringement Claim – Co-owner

Your claim asserts that respondent Robert Diggs is the co-owner of the copyright in “Afro Samurai Resurrection.” That assertion is incompatible with a claim of copyright infringement against Mr. Diggs because an owner or co-owner of a copyright cannot be liable for infringement of that copyright. If the information you have given regarding the co-ownership of your alleged work is incorrect, you should correct that information on the claim form if you file an amended claim.

Copyright Infringement Claim – Clarity

Your claim does not make clear enough factual allegations about the wrongful activities that you accuse the respondent of doing. A claim can be unclear if it does not include enough detail. The allegations in the “Describe the infringement” field of your claim do not appear to describe infringing acts. Although they appear to describe aspects of a recording session for the allegedly infringed sound recording, they do not appear to discuss any wrongful activity that violates a copyright holder’s exclusive rights. The claim states that the respondent “disappear[ed] with [the work], released them, and my family died.” This allegation does not provide sufficient detail about what the respondent is alleged to have done that amounts to copyright infringement.

Your claim is also unclear because, when identifying which rights of yours were allegedly infringed, you selected options in the eCCB claim form that the rest of your claim does not support. Your claim alleges copyright infringement of a work registered as a sound recording. You selected four of the six “Wrongful Activities” listed in the dropdown menu on the claim form, including allegations that the respondent “publicly display[ed] the work” and “publicly performed the work through digital audio transmission.” The right to publicly display a copyrighted work does not apply to sound recordings. 17 U.S.C. § 106(5). The right to publicly perform a copyrighted work by means of a digital audio transmission does apply to sound recordings. 17 U.S.C. § 106(6). However, the allegations in the “Describe the infringement” field do not describe any digital audio transmission of the recording.

Think carefully about which options in the claim form actually apply to the respondent in your case. Please review the discussion at page 3 of the chapter on [Starting an Infringement Claim](#) in the CCB Handbook and confirm which of those six wrongful activities the respondent engaged in to infringe your copyright. When you file an amended claim, select only the wrongful activities that apply to this respondent, and in the “Describe the infringement” field, you will need to add detailed factual allegations about each wrongful activity that you allege. The amended claim must provide enough information for the respondent to understand what the allegedly infringing acts were.

Misrepresentation Claim – No Misrepresentation

You are bringing a claim of misrepresentation in connection with a takedown notice or counter-notice under section 512(f). Your claim must make enough factual allegations to support each “element” of the claim. The elements of a misrepresentation claim are that:

1. The respondent sent an online service provider either
 - a. a takedown notice claiming online content or activity was infringing, or
 - b. a counter-notice denying infringement and claiming the online content was removed or disabled due to a mistake or a misidentification.
2. The respondent made a misrepresentation (a false or incorrect statement of fact) in the takedown notice or counter-notice.
3. The respondent knew the misrepresentation was false or incorrect.

4. The misrepresentation was important to the online service provider's decision to take down or repost the content.
5. The online service provider relied on the misrepresentation.
6. You were harmed as a result.

17 U.S.C. § 512(f). Your claim is not compliant because it does not provide enough information about how the respondent made a misrepresentation in a takedown notice or counter-notice to an online service provider. Your claim does not identify or describe any misrepresentation in connection with an online takedown. Instead, your misrepresentation claim merely responds "Yes" to the question about *who* sent a DMCA (Section 512) takedown notice, and to the question asking the *name* of the online service provider. Your description of the content of the takedown notice ("Basic text with online instructions with a police officer attached.") does not describe a takedown notice and your description of the words that made up the misrepresentation and explanation of the misrepresentation ("RZA never paid us and he used inducement to get my energy. He also used the material with Revolt.") do not describe or explain any misrepresentation that satisfies the elements of a misrepresentation claim under Section 512(f). You also state that no counter-notice has been sent.

Your misrepresentation claim cannot proceed unless you file an amended claim that includes factual allegations that explain how the respondent made a misrepresentation in a section 512 takedown notice or counter-notice to an online service provider. More information about the elements required to assert a claim of misrepresentation is available in the [Starting a Misrepresentation Claim](#) chapter of the CCB Handbook.

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.

Issue – Supplemental Documentation

You included with your claim two images that appear to be blurry, up close pictures of a copyright registration. While not required, if you would like to include a copy of the registration certificate of the work, you should upload a clear image of the certificate.

It is not clear how the other supplemental documents added to your claim support or relate to a copyright claim. When you submit an amended claim, please include only documents that directly pertain or relate to the claim, and provide an explanation of their relevance.

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 your claim included supplementary documents, you must re-upload any documents you wish to include in the amended claim on the "**Documentation**" page. Please include only documents that are directly related to your claim.
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 or add documents 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. You may also refer to the [Compliance Review](#) chapter of the CCB Handbook for more assistance.

Copyright Claims Attorney

September 7, 2022