



COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0334
December 14, 2023

Scott Aaronson

CLAIMANT

v.

Fine Art America, Pixels.com

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 **January 16, 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.

Respondent Clarity

The Board can only hear claims asserted against multiple respondents if all claims in the proceeding “arise out of the same allegedly infringing activity or continuous course of infringing activities[.]” 17 U.S.C. § 1504(c)(6). In a [supplemental document](#) included your amended claim filed on October 17, 2023, you stated that “FAA and Pixels are the same company. They are jointly and severally liable. FAA owns Pixels and FAA acts in concert with Pixels, and Pixels acts in concert with FAA...as the owner of Pixels.com, [and] FineArtAmerica.com, and many other online art sites <https://fineartamerica.com/imagelicensingbusiness.html>.” If this or a similar statement was included with the amended claim, this requirement would be satisfied. In your amended claim you should be as detailed as possible explaining the relationship between each respondent and setting forth what each respondent did in relation to the works you allege was infringed.

Online Service Provider

In your claim, you have asserted that the respondents are online service providers. You stated that “FAA and Pixels is an ONLINE SERVICE PROVIDER” and you have also answered affirmatively to the Board’s OSP questions including that “you are bringing a claim against the online service provider due to their storage of or referral or linking to infringing material posted by others.”

It appears, however, that you may be bringing a claim against the respondents due to their continued storage, referral, or linking to content that you yourself previously provided. If this is the case, the respondents are not online service providers, and you will need to amend your claim to reflect how the respondents are directly using your work without your permission. The information provided in this amended claim indicates that you may have a prior relationship with Fine Art America (“FAA”) and Pixels.com (“Pixels”) in which you posted your work on respondents’ websites. It also appears that you are alleging the relationship ended; that your photographs were not completely removed from the FAA/Pixels servers; and that you believe that the respondents are infringing your work by continuing public display on search engines are infringing.

In your claim you included several factual statements in support of this assertion including: “my relationship with FAA was ended” and “my images should have been purged, removed, deleted, and expunged from their servers wholly, along with my account.” You also state that “[t]he reason my images are still searchable online is due to FAA and Pixels refusal to follow the law” and “FAA failed to act in good faith, and failed to comply with (3) three take down notices, sent over the past year and a half, to remove all images, from FAA and Pixel servers, and to remove them from every search engine.”

Based on the information in your amended claim, it is not clear whether your claim against the respondents is about activity that the *respondents* are directly engaging in, or about activity by third parties that the respondents, in the capacity of online service providers, are failing to address. Although it appears that you have included facts stating that the works are available on various search engines, the core of your claim appears to be based on the actions (or inactions) of FAA/Pixels, not the search engines or other users of the FAA/Pixels websites. As a result, it appears that you may not be bringing a claim against respondents in the capacity of online service providers.

If your claim against FAA/Pixels is not based on storing, making available, referring to, providing access to, or linking to material ***posted by other persons*** that is available online, you should amend your claim to state facts that more clearly identify how FAA/Pixels engaged in infringing activity on their own, rather than on the basis of infringing material posted on its website by others (and not in the capacity of an online service provider). If this is correct, you must amend the following areas of your claim:

- You should amend the claim to answer “no” to the question asking whether any of the respondents are online service providers.
- You should remove references to FAA/Pixels liability under section 512.
- You will need to state facts that support allegations of direct infringement, including how each respondent used any exclusive rights you have in the allegedly infringed works without permission.

Copyright law grants exclusive rights to copyright owners. These include the right to reproduce, distribute, and publicly display the work, and to make a “derivative work,” which is a work based on the original work. Someone who does one of those activities without the copyright owner’s permission may be directly infringing the copyright, unless they have a legitimate defense. More information about exclusive rights is available on page 3 of the [Starting an Infringement Claim](#) chapter of the CCB Handbook. You should be as detailed as possible, setting forth what each respondent did in relation to the works you allege was infringed. In a [supplemental document](#) included your amended claim filed on October 17, 2023, you included similar information about these allegations in your “What infringing activities each respondent engaged in” on page 2.

If, on the other hand, your claim against FAA/Pixels is based on it storing, making available, referring to, providing access to, or linking to material posted by other persons that is available online, you should amend your claim to state facts that identify how FAA/Pixels is engaged in the “storage of or referral or linking to infringing material posted *by others*.”

Final Amendment

Your amended claim resolved some, but not all, of the compliance issues raised in the October 16, 2023, 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.

Copyright Claims Attorney