



COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0338

December 1, 2023

Todd M Schultz

CLAIMANT

v.

Michael C Thompson

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 2, 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.

Copyright Infringement — 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 claim does not provide enough facts about how the respondent’s work is substantially similar to your work.

Please provide more details and background regarding this element in your amended claim.

Substantial Similarity

Your claim does not include enough facts that explain the similarities between your work and the respondent's allegedly infringing work. 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.

Your claim states that your works are documentary style videos and that the respondent used "clips" of your works in the allegedly infringing works. However, you do not provide enough information describing what specific clips were taken from your videos and how they were used within the allegedly infringing work. You have uploaded, as supplemental documentation, a video (labelled "[a todd michael schultz production \(3\).mp4](#)") and screen shots showing thumbnails; however, your claim does not specifically detail which clips of your works were used or the length of the clips that you alleged the respondent used and how. As a result, the claim does not provide enough information to enable the respondent to understand the claim and respond to it. When you submit an 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 works were taken by the respondent in the allegedly infringing work(s) and the extent to which the allegedly infringing work(s) are similar to the works that you allege have been infringed. Alternatively, you may upload documents or videos 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.

Copyright Infringement – Online Service Provider

In your responses to questions on the claim form, you allege that the respondent is an online service provider ("OSP") and that you sent the respondent a takedown notice to take down third-party material. OSPs include content-sharing websites and internet search engines, among other services. However, the allegations in your claim suggest that the respondent did not act as an OSP in relation to infringing material posted by a third party. As further detailed below, if you file an amended claim, you can address this issue by answering "No" to the claim form question, "Are any of the respondents online service providers?"

Under the CASE Act, when a copyright infringement claim is raised against an OSP for storing, or referring or linking to, infringing material, the Board must find the claim noncompliant unless the claimant affirms that:

1. the claimant sent a takedown notice to the OSP as required by section 512 of the Copyright Act, and
2. the OSP failed to remove or disable access to the material expeditiously when it received the takedown notice.

17 U.S.C. § 1506(f)(1)(C)(i); 37 C.F.R. § 222.2(c)(7)(iii)(G). In this context, an OSP is a provider of online

services to store (and make available), refer to, provide access to, or link to material that is available online. Please visit the [section 512 page](#) and the discussion at pages 18-19 of the chapter on [Starting an Infringement Claim](#) in the CCB Handbook for additional information about what section 512 of the Copyright Act requires for an infringement claim against an OSP.

In your responses to questions on the claim form, you allege that the respondent is an OSP; that you are bringing the claim against the respondent because they stored, referred, or linked to infringing material posted by others; and that you sent the respondent a takedown notice. However, you responded “No” to the question, “Did the online service provider fail to expeditiously remove or disable access to the material after you sent a takedown notice?” If the respondent truly were an OSP, they would have had to have failed to expeditiously remove or disable access to the material after you sent a takedown notice in order to be liable for infringement. However, other factual allegations in your claim suggest that the respondent did not act as an OSP in relation to infringing material posted by a third party. You allege that you “reported these copyright infringements to YouTube multiple times in 2021 using the “Report Channel” feature - per the guidelines of YouTube’s harassment policies.” These allegations and documents indicate that the respondent personally posted the allegedly infringing material, while YouTube is the OSP that stored the material. If this is accurate, then you can make your claim compliant by answering “No” to the question of whether the respondent is an OSP and leaving the remaining information in place. Your

To correct your noncompliant responses to the OSP questions in the claim form, you must provide different responses in an amended claim. If the respondent is not an OSP, as discussed above, then you must answer “No” to the question “Are any of the respondents online service providers?” Alternatively, if the respondent is an OSP, and you seek to hold them directly liable for his own actions and not for failing to take down material posted by a third party, then you must answer “No” to the question “Are you bringing a claim against the online service provider due to their storage of or referral or linking to infringing material posted by others?”

Finally, in the “Description of harm suffered and relief sought” section, you state that you would like YouTube “be deemed in violation of Copyright Law,” and you describe certain actions by YouTube. YouTube typically operates as an online service provider, but you have not named YouTube as a respondent. Keep in mind that you can only add YouTube as a respondent if you sent them a takedown notice and they failed to expeditiously remove or disable access to the allegedly infringing material.

Final Amendment

Your amended claim resolved some, but not all, of the compliance issues raised in the October 25, 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