



COPYRIGHT CLAIMS BOARD

DOCKET NO. 22-CCB-0027

United States Copyright Claims Board

Louis D. Alfieri, S

CLAIMANT

V.

John M Hill

RESPONDENT

ORDER DISMISSING CLAIM WITHOUT PREJUDICE

PLEASE READ CAREFULLY

On [August 23, 2022](#) and [October 19, 2022](#), the Copyright Claims Board issued noncompliance orders that notified the claimant that the claim and amended claim filed in this proceeding, respectively, did not comply with the applicable statutory and regulatory requirements for filings before the Board. [37 C.F.R. § 224.1\(c\)\(2\)](#). On November 17, 2022, the claimant submitted a second amended claim, which was the final opportunity to submit a compliant claim. [17 U.S.C. § 1506\(f\)\(1\)\(B\)](#); [37 C.F.R. § 224.1\(d\)](#). Under 17 U.S.C. § 1506(f)(1)(B), if any part of a second amended claim is noncompliant, the entire claim must be dismissed without prejudice. On November 18, 2022, the claimant sent the Board an email asking to revise the second amended claim. Specifically, the claimant sought to remove the allegations that two musical works involved in the claim were infringed, leaving only claims for infringement of the sound recordings of those compositions.

A Copyright Claims Attorney who reviewed the second amended claim and the request to amend concluded that the claim is still noncompliant, and amendment would be futile, as the allegations clearly do not state a claim upon which the Board may grant relief. [37 C.F.R. § 224.1\(b\)\(3\)](#). The Copyright Claims Attorney referred the second amended claim to me to confirm that it does not comply with the applicable statutory and regulatory requirements, and that this proceeding should, therefore, be dismissed without prejudice. 17 U.S.C. § 1506(f)(1)(B). I have reviewed the second amended claim, and I concur with and confirm the finding of noncompliance.

The claim remains noncompliant with respect to the sound recordings, which were first published in 1965, because the Board does not have jurisdiction over claims related to [pre-1972 sound recordings](#). The Board may decide claims for infringements of rights provided under [section 106](#) of the copyright law. [17 U.S.C. § 1504\(c\)\(1\)](#). Pre-1972 sound recordings are granted separate statutory protection under chapter 14 of the copyright law. See [17 U.S.C. § 1401](#); [17 U.S.C. § 301\(c\)](#). Accordingly, an amendment that would leave only the sound recording claims for the Board to consider is futile.

In addition, the claimant has not alleged facts sufficient to establish the claimant's current legal or beneficial ownership of the musical compositions, which is necessary to bring a copyright infringement claim. See [17 U.S.C. § 1504\(c\)\(1\)](#). The Copyright Office issued registrations for the two allegedly infringed musical compositions in 1965, listing the respondent and others as the co-authors and copyright claimants of each. Documents dated 1965 and recorded in the Copyright Office in 2018 appear to be copies of publishing agreements, signed by the claimant and the co-authors, assigning the composition copyrights to Alfieri Music.

Works that first secured copyright in 1965 had an initial copyright term of 28 years, followed by a renewal term. [17 U.S.C. § 304\(a\)](#). An assignment of copyright includes the renewal term interests only if specifically provided. *Edward B. Marks Music Corp. v. Borst Music Pub. Co.*, 110 F. Supp. 913, 917 (D.N.J. 1953). There is a presumption against conveyance of renewal rights, rebutted only “where the author includes language which expressly grants rights in renewals of copyright or extensions of copyright.” *Guardian Music Corp. v. James W. Guercio Enters.*, 271 Fed. Appx. 119, 120 (2d Cir. 2008) (quoting *P.C. Films Corp. v. MGM/UA Home Video Inc.*, 138 F.3d 453, 457 (2d Cir. 1998)).

The documents recorded in the Copyright Office do not reference the renewal term. Nothing in the claim, or in any records cited by the claimant, indicates that the authors conveyed the renewal term rights for the compositions to the claimant. As both noncompliance orders in this proceeding explained, any rights that the claimant may have obtained by assignment in 1965 apparently expired when the initial copyright term ended in 1993. The factual allegations in the second amended claim do not identify any allegedly infringing acts before 2005. The claimant cannot maintain a claim for infringement of the compositions during their renewal term because the claimant has not shown that they own the copyrights.

Accordingly, the Board dismisses the claim without prejudice, denies the request to revise the second amended claim, and closes this case.

December 20, 2022

Copyright Claims Officer