



# COPYRIGHT CLAIMS BOARD

Docket number: 22-CCB-0239

## United States Copyright Claims Board

Zachary Winn

CLAIMANT

v.

Rocco Lucente

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 **January 18, 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. If you file an amended claim and it is found compliant, you will be notified and directed to proceed with service. There is no additional filing fee for an amended claim. 17 U.S.C. § 1506(f)(1)(B).

To make your amended claim compliant, you must resolve the issue 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. 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 Claim – Online Service Provider

Under the CASE Act, when a claimant raises a copyright infringement claim against an online service provider (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. OSPs include content-sharing websites and internet search engines, among other services. 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 he 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?” Your claim is not compliant because you state that you are bringing the claim against the respondent based on his actions as an OSP, while you do not allege that the respondent failed to act promptly in response to a takedown notice. You can only bring an infringement claim against an OSP if the OSP failed to take down third-party material in response to a proper takedown notice.

Other factual allegations in your claim, however, suggest that the respondent did not act as an OSP in relation to infringing material posted by a third party. You allege that on November 10, 2022, you shot and edited a video and uploaded it to your YouTube channel, and then discovered that the respondent “had copied the entirety of my video and reuploaded it onto his on YouTube channel.” A document filed with the claim appears to be a copy of a takedown notice you submitted to YouTube on November 10, 2022, in which you stated: “My YouTube video was reuploaded by another user.” Other documents filed with the claim appear to be copies of emails YouTube sent you later that day, when it removed the allegedly infringing video, and when it received a counter-notice from the respondent seeking to have the video restored. 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.

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?” If the respondent *is* an OSP, and you seek to hold him 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, if you maintain that the respondent is an OSP, that you sent him a takedown notice, and that he did not promptly redress the third party’s infringement, then you must answer “Yes” to all four OSP questions, including “Did the online service provider fail to expeditiously remove or disable access to the material after you sent a takedown notice?” and you must state facts supporting those allegations. Again, your current factual allegations do not portray the respondent as an OSP.

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 any 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 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](mailto: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

December 19, 2022