



COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0261
September 12, 2023

Terry Harris Photography

CLAIMANT

v.

New Rockstars

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 12, 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 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. 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

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, and
4. The respondent’s work is substantially similar to the original elements of expression in your work.

Your claim does not provide clear facts to support the elements of the claim related to the respondent’s access to your work and substantial similarity, as described below. If you file an amended claim, it must include enough details about the elements for the Board and the respondent to clearly understand the facts of the alleged infringement.

Access

Your claim does not provide facts that indicate how the respondent had access to your work. “Access” means a reasonable opportunity to view your work before the alleged infringement took place.

To address this issue, you must file an amended claim with allegations that make access a reasonable possibility, not just hypothetically or theoretically possible. Acceptable allegations of access may include that, before the alleged infringement, your work (a) was sent directly to the respondent, or to a close associate of the respondent; (b) was widely disseminated or was available to the public; or (c) is so strikingly similar to the respondent’s work that the respondent could not have created it independently.

Alternatively, you can upload copies of your work and the allegedly infringing work if those images demonstrate that the works are so strikingly similar that they could not have been created independently. 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.

Substantial Similarity

Your claim also does not include facts that explain the similarities between your work and the allegedly infringing work. If it is not readily apparent from supplemental materials submitted with the claim, you must provide specific allegations about how your work and the allegedly infringing work are substantially similar.

You describe the allegedly infringed work as a pictorial, graphic, or sculptural work titled “Deadpool 3 Filming UK.” You further state that “[t]he Stills and Video of the deadpool 3 filming was exclusive and therefore valuable.” You allege that the infringing acts occurred on YouTube. In the “Describe the infringement” section of the claim, you state that “[t]he youtuber has created a video, uploaded and monetised it without obtaining a licence,” and that “no attribution was made meaning their defence of ‘fair use’ is invalid.”

However, you do not provide information clearly describing or showing your work, or stating how it is substantially similar or identical to the respondent’s allegedly infringing use of the work. In addition, you have not provided a copy of your work or the allegedly infringing work as supplemental documents. As a result, the claim does not provide enough information to enable the respondent to understand the claim and respond to it.

If you submit an amended claim, include more factual allegations that support the element of substantial similarity, including a clear, detailed statement regarding which portions of your work were taken by the respondent in the allegedly infringing video, or documents that are sufficient to show the similarities. As explained above, 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.

In addition, your claim refers to a “youtuber” without identifying who that is, and seems to suggest that the respondent has asserted a defense of fair use but does not indicate where or how that issue was raised. Include more details and background about your allegations so that the Board and the respondent can understand how you believe that your work was infringed, who allegedly infringed your work and, if the alleged infringer asserted a defense to your claim of infringement, how that defense was communicated to you.

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 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