



# COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0345

October 30, 2023

Mert Atas

CLAIMANT

v.

Joseph Wagner

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 **November 29, 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 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.

### Misrepresentation – Clarity

This proceeding raises a claim of misrepresentation in connection with a takedown notice or counter-notice under 17 U.S.C. § 512(f). That kind of misrepresentation has a very specific meaning under copyright law, which involves false statements made to an online service provider (OSP) related to a copyright-protected work posted online.

Your claim must make enough factual allegations to support each “element” of the claim. The elements of a section 512(f) misrepresentation claim are:

1. The respondent sent an OSP either
  - a. a takedown notice claiming online content or activity was infringing, or
  - b. a counter-notice denying infringement and claiming the online content was removed or disabled due to a mistake or a misidentification,
2. The respondent made a misrepresentation (a false or incorrect statement of fact) in the takedown notice or counter-notice,
3. The respondent knew the misrepresentation was false or incorrect,
4. The misrepresentation was important to the OSP’s decision to take down or repost the content,
5. The OSP relied on the misrepresentation, and
6. You were harmed as a result.

17 U.S.C. § 512(f). The claim must include the words in the notice or counter-notice that you allege were a misrepresentation and an explanation of the alleged misrepresentation. 37 C.F.R. §§ 222.2(c)(9)(vi)-(vii). It must also include the dates of the takedown notice and counter-notice, if known. *Id.* §§ 222.2(c)(9)(iii), (v)(C). Your claim does not provide enough information to show that the respondent made a false or incorrect statement of fact.

You allege that you sent a takedown notice to Valve Corporation describing infringing content, and that the respondent then sent a counter-notice claiming to believe in good faith “that Valve removed the content due to a mistake or misidentification,” but you do not provide the dates that the takedown and counter-notices were sent to Valve. You explain the misrepresentation by stating that there was “no mistake or misidentification” because the respondent’s “material was infringing on my copyright.”

This claim does not describe what the allegedly infringing material was. You provide more information in a separate proceeding, *Ataş v. Wagner*, No. 23-CCB-0346, in which you raise a copyright infringement claim against the same respondent and allege that he created a derivative work based on your work. However, as explained in the noncompliance order issued today in that proceeding, your allegedly infringed work (a modification of the video game “Crusader Kings III”) also appears to be a derivative work, and it is not clear from your allegations that your work is copyrightable.

A counter-notice only violates section 512(f) if the respondent misrepresents that the allegedly infringing “material or activity was removed or disabled by mistake or misidentification.” 17 U.S.C. § 512(f). If your modification is not copyrightable, it cannot be infringed—and in that case, the respondent’s counter-notice stating that the takedown was due to a mistake or misidentification would not be a misrepresentation.

If you submit an amended claim in this proceeding, you must provide additional facts to explain what work the respondent infringed and how it was infringed. In addition, you must provide the dates of the takedown notice and counter-notice, and show that the counter-notice included a false or incorrect statement of fact “that material or activity was removed by mistake or misidentification,” and your allegations must show or explain why the statement was false or incorrect. You must indicate which words in the counter-notice were false or incorrect, and how they were false or incorrect.

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](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. 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