



COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0140
July 7, 2023

Gregory P Harm, MA

CLAIMANT

v.

Zapolsky A David

RESPONDENT

SECOND ORDER TO AMEND NONCOMPLIANT CLAIM

The Copyright Claims 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 **August 7, 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.

Respondent Information

Your amended claim has updated respondent information with “Zapolsky A David” now listed as the respondent. David A. Zapolsky is general counsel for Amazon; the allegations in your claim, however, relate only to the actions of Amazon as a business and not to Zapolsky. Accordingly, if you amend your claim, you should list Amazon as the respondent and not David A. Zapolsky. Furthermore, you have not filled out any respondent address information in your claim. If you file an amended claim against Amazon, you should enter Amazon’s address in the respondent address field.

In addition, Amazon has an entry on the Board’s Designated Service Agent Directory (DSAD), which means that Amazon has designated a specific entity to receive service of process after a claim is found compliant. You should provide this information in the claim by answering “yes” to the question of whether there is a DSAD entry, and provide the following:

Corporation Service Company
Corporation Service Company
251 Little Falls Dr.
Wilmington, DE 19808

Copyright Infringement Claim – Online Service Provider

In response to questions on the claim form, you indicate that the respondent is an online service provider (“OSP”) and that your claim against the OSP is based on “their storage of or referral or linking to infringing material posted by others,” but that the respondent did not “fail to expeditiously remove or disable access to the material after you sent a takedown notice.” Your claim cannot go forward with those responses, because you can only bring an infringement claim against an OSP if it *did* fail to timely remove the work in response to a takedown notice.

Special rules apply to infringement claims brought against OSPs, which provide 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. Section 512 of the Copyright Act provides what are known as “safe harbors,” which shield certain OSPs from paying damages for copyright infringement claim if, among other things, they take steps to quickly remove or disable access to infringing material when a copyright owner notifies them about infringement through a proper takedown notice. An infringement claim against an OSP eligible for a section 512 safe harbor cannot be compliant unless you affirm that the OSP “failed to remove or disable access to the material expeditiously upon provision of such notice.” 17 U.S.C. § 1506(f)(1)(C)(i), [37 C.F.R. § 222.2\(c\)\(7\)\(iii\)\(G\)](#).

It is not clear from your claim whether you intend to allege that Amazon failed to timely remove material posted by others or whether Amazon engaged in activity that directly infringes one of your exclusive rights of copyright. If you intend to allege that Amazon’s allegedly infringing actions were done in its capacity as an OSP, and these actions fall outside of the safe harbor, you will need to answer “Yes” to the final OSP question to affirm that Amazon failed to expeditiously remove the allegedly infringing material. You will also need to provide additional information about the valid take-down notice that you sent to Amazon and the actions that Amazon took or should have but did not take in response. The allegations against Amazon must demonstrate a failure by Amazon to expeditiously remove the works produced by the third-party authors in response to your valid take-down notice.

If you intend, instead, to allege that Amazon engaged in activity that directly infringed in one of your exclusive rights, you will need to answer “No” to the second OSP question in the claim form—which would mean that you are not bringing the claim as a result of Amazon’s storage of, referral, or linking to infringing materials posted by *others*—and provide additional information about the direct infringing activity of Amazon. While you allege that the work was infringed by “plagiarism” resulting in six separate works created by individual “counterfeiters,” you do not state or describe Amazon’s infringing activity. You note that Amazon “marketed the book globally,” but advertising a book, in and of itself, does not constitute copyright infringement. The exclusive rights granted to

authors include the right to reproduce, distribute, publicly display or publicly perform the work, and to make a “derivative work” based on the original work. If you amend your claim, you will need to provide allegations about activity that falls under at least one of these categories.

For background information to address these issues, please visit the U.S. Copyright Office’s [section 512](#) page and the [Starting an Infringement Claim](#) chapter in the CCB Handbook for additional information about what is required to bring an infringement claim.

Final Amendment

Your amended claim did not resolve all of the compliance issues raised in the May 16, 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