



# COPYRIGHT CLAIMS BOARD

Docket number: 24-CCB-0333  
December 16, 2024

Victor McClain

CLAIMANT

v.

Dwayne D. Brown

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 **January 15, 2025**. 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 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.

### Allegedly Infringed Work

You have raised a copyright infringement claim. In the “Works infringed” section of the claim, you list the copyright registration number issued by the Copyright Office for the allegedly infringed work, which you identify as a sound recording. However, the [Certificate of Registration](#) filed with the claim indicates that the registration was issued for a musical work, specifically its “words and music,” not for a sound recording. Information about those two different kinds of copyright works is available in [Circular 56A: Copyright Registration of Musical Compositions and Sound Recordings](#) and in [What Musicians Should Know about Copyright](#).

In your amended claim, you may refer to “Sensual” as a musical composition or a musical work, but not as a sound recording, unless you have separately obtained or applied to register the copyright for the sound recording.

### 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 amended claim does not provide clear facts to support the elements of the claim related to the respondent's use without permission, access to your work, and substantial similarity, as described below. If you file a second amended claim, it must include enough details about the elements for the Board and the respondent to understand the facts of the alleged infringement.

### **Infringing Activity – Clarity**

Your amended claim does not present facts that clearly state how the respondent lacked permission to use your exclusive rights in the allegedly infringed work.

Copyright law grants exclusive rights to copyright owners. These include the right to reproduce, distribute, and publicly perform the work, and to make a “derivative work,” which is a work based on the original work. Someone who does one of those activities without the copyright owner's permission may be infringing the copyright, unless they have a legitimate defense. More information about exclusive rights is available on page 3 of the [Starting an Infringement Claim](#) chapter of the CCB Handbook.

In the “Describe the infringement” section of your amended claim, you allege that the respondent used your song in a monetized video. In the “Description of harm suffered and relief sought” section, you allege that the use was “without my permission” and “[l]icensed not by me.” Those allegations are unclear as to whether the respondent had permission or a license from a third party to use your work. In addition, a [supplemental document](#) filed with the amended claim indicates that the respondent sent a counter-notice to YouTube, asserting that the material used is under a license agreement that allows for its use on YouTube.

If the respondent had, or continues to have, any license that covers his use of your work, your second amended claim must include more information and detail about whether the respondent had permission from a third party to distribute or publicly perform your work at the time of the alleged infringing acts.

### **Access**

You allege that the respondent user posted your work online in a monetized video without your permission. However, your amended claim does not provide facts that indicate how the respondent had access to your work in the first place. “Access” means a reasonable opportunity to see, hear, or copy your work before the alleged infringement took place.

To address this issue, you must file a second amended claim with allegations that make access a reasonable possibility, not just hypothetically or theoretically possible. Acceptable allegations of access may include how your

work (a) was sent directly to the respondent or a close associate of the respondent; (b) was widely disseminated or was available to the respondent; or (c) is so strikingly similar to the work that appeared on YouTube that the respondent could not have created it independently.

Alternatively, you can upload copies of your work and the allegedly infringing work as it appeared on YouTube, if they 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 materials, they must be clearly labeled and identified so they can be properly compared to each other.

### **Substantial Similarity**

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

Your amended claim does not provide enough information describing or showing your work or the allegedly infringing work. In the “Describe the infringement” section, you state only, “Song used for monetized video.” Those allegations are not detailed enough to state or show how the works are identical or substantially similar. In addition, you have not provided copies of the works as supplemental materials. As a result, the amended claim does not provide enough information to enable the Board to understand the similarity of the works.

If you submit a second amended claim, it must include more factual allegations that support the element of substantial similarity. Please provide more details and background regarding this element in your second amended claim, including a clear, detailed statement regarding which portions of your work were used by the respondent without authorization, or documents that are sufficient to show the similarities. If you include copies of the works at issue as supplemental materials, then as discussed above, they must be clearly labeled and identified so they can be properly compared to each other.

### **Online Service Provider**

Your infringement claim also includes allegations identifying the respondent as an “online service provider” (OSP) that do not appear to be correct.

Under the CASE Act, when a claimant raises a copyright infringement claim against an OSP for storing, or referring or linking to, infringing material, the Board must find the claim noncompliant unless the claimant affirms that the claimant sent a takedown notice to the OSP as required by section 512 of the Copyright Act, and that the OSP failed to remove or disable access to the material expeditiously when it received the takedown notice. 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 and that was created by someone other than the OSP. 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 amended 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 information in your amended claim, however, suggests that the respondent did not act as an OSP in relation to infringing material posted by a third party. It appears that you sent YouTube a takedown notice and the respondent sent a counter-notice. That appears to 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 second amended claim compliant by answering “No” to the question of whether the respondent is an OSP.

To correct your noncompliant responses to the OSP questions in the claim form, you must provide different responses in a second 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.

## **Final Amendment**

Your amended claim does not resolve the compliance issues raised in the November 15, 2024 Order to Amend Noncompliant Claim. Those issues, also discussed in this order, must be resolved for the claim to move forward.

**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](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 Board