



COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0339

October 17, 2023

Andrew Blevins and Matthew Blevins

CLAIMANTS

v.

Andrew Mercado

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 16, 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.

Copyright Infringement – Elements

You have brought a claim for copyright infringement of two motion picture or audiovisual works, titled “Blevins For Council – ‘Say No To Joe’” (the “Council” video) and “UKRAINE VICTORY AT BAKHMUT! Current Ukraine War Footage And News With The Enforcer (Day 570)” (the “Ukraine” video).

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 allegations do not provide clear facts related to the respondent’s access to the “Council” video, as discussed below. Please provide more details and background regarding this element in your amended claim.

Access

Your claim does not provide enough facts about how the respondents had access to the “Council” video. “Access” means a reasonable opportunity to view or copy your work before the alleged infringement took place. Your claim does not include enough allegations about where or how the “Council” video was available before the alleged infringement so that the respondent had an opportunity to see or copy it.

You allege generally that “Respondent obtained copies of our works via the internet for the purpose of uploading to YouTube to present to his audience.” However, your allegations do not indicate where on the internet the “Council” video was available to the respondent. A [supplemental document](#) filed with the claim that includes the takedown notice you sent YouTube for the “Council” video describes it as an “Internet video” and states that its source was “outside YouTube.” (By contrast, it is apparent where the “Ukraine” video was available because you describe it as a “Youtube Livestream” and another [supplemental document](#) includes the takedown notice you sent to YouTube for that work, which indicates that the “source video” was on YouTube.) Stating that the “Council” video is available somewhere on the internet other than YouTube is not enough to show that it was so widely distributed that the respondent’s access to it is reasonably likely. See *Cooley v. Target Corp.*, Civ. No. 20-2152, 2022 U.S. Dist. LEXIS 175623, *10 (D. Minn. Sept. 28, 2022); *Design Basics, LLC v. Lexington Homes, Inc.*, 858 F.3d 1093, 1108 (7th Cir. 2017).

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 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 public or respondent; 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 “Council” video and the allegedly infringing work if they demonstrate that the works are so strikingly similar that they could not have been created independently. Your claim included copies of your works, but not the allegedly infringing works. If you include copies of the works at issue as supplemental documents in your amended claim, they must be clearly labeled and identified so they can be properly compared to each other.

Relief Requested

Your claim seeks a remedy for infringement that the Board cannot grant. The “Description of harm suffered and relief sought” section of your claim indicates that you are seeking “a ruling by the board affirming our copyright in order to prevent our works from being reinstated on Respondent’s YouTube channel.” The Board is not authorized to issue a declaration of ownership of a copyright, separate from a determination of whether your copyrights have been infringed. 17 U.S.C. § 1504(d)(1). Ownership is a threshold question for the Board to resolve in an infringement claim, because the claimant must establish “ownership of a valid copyright” and unauthorized “copying of original elements of the work.” *Infogroup, Inc. v. Database LLC*, 956 F.3d 1063, 1066 (8th Cir. 2020). However, “[a] determination of ownership of a copyrighted work for purposes of resolving a matter before the

Copyright Claims Board may not be relied upon, and shall not have any preclusive effect, in any other action or proceeding before any court or tribunal, including the Copyright Claims Board.” 17 U.S.C. § 1504(a)(2).

To address this issue, if you file an amended claim, you will need to remove the request for a formal declaration of ownership from the “Description of harm suffered and relief sought” section.

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