



COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0181
June 27, 2023

Sean A. Tewodros Linzy
CLAIMANT

v.

Amblin Partners, Eric Beeney, Gregory Burke, My
Leafs, LLC, Rupert Wyatt, Storyteller Distribution
Company, LLC and Storyteller Development, LLC
RESPONDENTS

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 **July 27, 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 copyright infringement claim before the Board. Your claim must make enough factual allegations to support each “element” of the claim. 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, meaning a reasonable opportunity to view your work before the infringing activity took place, and
4. The respondent’s work is substantially similar to the original elements of expression in your work.

More 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. Your claim does not provide clear facts to support the elements related to the respondents’ access to your work and infringing activity, as described below. Please provide more details and background regarding these elements in your second amended claim.

Access

Your claim does not provide enough facts about how the respondents had access to your work. “Access” means a reasonable opportunity to view or copy your work before the alleged infringement took place. The allegedly infringed work is a literary work titled *9Eyes 9Deceiving Faces*, which you describe as a book and screenplay. Your claim does not include enough specific allegations about where or how your work was available before the alleged infringement so that the respondents had an opportunity to view it.

In the “Where the alleged infringing acts occurred” section of the claim, you allege that your book “has been available online and multiple websites since 2006.” Generally stating that a work is available somewhere online is not enough to show that it was so widely distributed that the respondents’ access to it is reasonably likely. See *Hayes v. Minaj*, No. 2:12-cv-07972, 2012 WL 12887393, at *3 (C.D. Cal. Dec. 18, 2012) (“the mere fact that [plaintiff’s] work was posted on the internet prior to the creation of defendants’ work is insufficient by itself to demonstrate wide dissemination”) (quoting *O’Keefe v. Ogilvy & Mather Worldwide Inc.*, 590 F. Supp. 2d 500, 515 (S.D.N.Y. 2008)); *Art Attacks Ink, LLC v. MGA Entertainment, Inc.*, 581 F.3d 1138, 1145 (9th Cir. 2009) (“Although we recognize the power of the internet to reach a wide and diverse audience, the evidence here is not sufficient to demonstrate wide dissemination.”). “In most cases, the evidence of widespread dissemination centers on the degree of a work’s commercial success and on its distribution through radio, television, and other relevant mediums.” *Loomis v. Cornish*, 836 F.3d 991, 997 (9th Cir. 2016).

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 a respondent or a close associate of a respondent; (b) was widely disseminated or was available to the public or respondents; or (c) is so strikingly similar to the respondents’ work that they could not have been created independently.

Infringing Activity

For each respondent you name as an alleged infringer, you must state allegations regarding that respondent’s allegedly infringing activity.

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.

Your claim does not present enough facts to clearly state how each respondent used your exclusive rights in the allegedly infringed work without permission. In the “Describe the infringement” section of the claim, you state: “The Book was used to create a Major Motion Picture.” Your claim allegations do not identify the allegedly infringing motion picture by name, but a [supplemental document](#) filed with the claim labeled “COPYRIGHT DOCUMENTS.pdf” includes several references to a motion picture titled *Captive State*, and another [document](#) filed

with the claim appears to list alleged similarities between your work and *Captive State*, under the heading “9 Deceiving Faces- Captive State Comparison.” However, your allegations do not describe actions taken *by each respondent* to use your work in a way that would infringe your exclusive rights. You do not appear to state facts that support making each respondent a respondent to your claim. Your allegation that the book “was used” to make a motion picture does not describe any role that the respondents played in the alleged infringement.

If you submit an amended claim, you must more fully explain how *each* respondent infringed your copyright. To address this issue, your amended claim must include facts in the “Describe the infringement” section that describe acts infringing your copyright in *9Eyes 9Deceiving Faces*, specifying the infringing work and the infringing acts of each respondent. If you cannot state facts to support an infringement claim against any named respondents, you must omit them in the amended claim.

Online Service Provider

In response to questions in the claim form, you indicate that one or more of the respondents is an online service provider (OSP) and that your infringement claim against the OSP is based on “their storage of or referral or linking to infringing material posted by others,” but that you did not send the OSP the “takedown notice” required by Section 512 of the Copyright Act. Your claim cannot go forward with those responses because you can only bring an infringement claim against an OSP if it failed to take down third-party material 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 claims if, among other things, the OSP takes steps to quickly remove or disable access to infringing material when a copyright owner notifies them about the infringement through a proper takedown notice. An infringement claim against an OSP that is eligible for a section 512 safe harbor must state facts that indicate that the respondent did not follow those procedures. An infringement claim against an OSP eligible for a section 512 safe harbor cannot be compliant unless you affirm that you sent the OSP a section 512 notice of infringement, and that it “failed to remove or disable access to the material expeditiously upon the provision of such notice.” 17 U.S.C. § 512(f)(1)(C)(i); 37 C.F.R. § 222.2(c)(7)(iii)(G).

Your infringement claim is not compliant because you affirm that it is based on at least one respondent’s actions as an OSP, and that you did not send the OSP a proper takedown notice. Your claim does not include any facts that support your allegations that any of the respondents is an OSP; instead, your allegations relate to the creation of an allegedly infringing motion picture. Because you have not stated facts that suggest any respondent is an OSP, you may want to reconsider whether your answer should be “yes” to the question, “Are any of the respondents online service providers?” Your infringement claim cannot proceed unless you file an amended claim that either (1) removes the allegation that any respondent is an OSP, or (2) alleges that a particular respondent is an OSP that did not comply with a takedown notice you sent, and states facts in support of those allegations that would make

that respondent liable as an OSP, despite the Section 512 safe harbor. Please review the [section 512 page](#) and pages 19-21 of the [Starting an Infringement Claim](#) chapter in the CCB Handbook for additional information about what is required for an infringement claim against an OSP protected by a section 512 safe harbor.

Supplemental Documents

The supplemental documents filed with the claim appear to include multiple, confusing lists of certain alleged elements of *9Eyes 9Deceiving Faces* and *Captive State*, without clearly explaining how they support the infringement claim. For instance, a document labeled “[CHICAGO ILLINOIS.pdf](#)” appears to list scenes in both works that are set in Chicago, and a document labeled “[Mayor vs Mayor Elite Discoveries.pdf](#)” seems to list appearances or discussions of a fictional Chicago mayor in each work, but those documents do not indicate any similarities in the works based on the incidents listed. For another example, it is not clear whether the document labeled “[banned religion.pdf](#)” lists elements of your book, the allegedly infringing work, or both, because the document does not identify the source of any the elements listed. It is not clear how these documents support or relate to your copyright claim.

If you submit an amended claim, please include only documents that directly pertain or relate to the claim, and provide an explanation of their relevance if it is not clear. You may also submit copies of your work and the allegedly infringing motion picture, or its screenplay, as supplemental documents if they are sufficient to show the similarities between the two works. 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.

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