



# COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0230

September 12, 2023

Larry Nash, Mr

CLAIMANT

v.

Discogs

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 **October 12, 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.

### Infringing Activity – Clarity

Your claim does not present enough facts to clearly state how the respondent used any of your exclusive rights in your works without permission. Copyright law grants exclusive rights to copyright owners. These include the right to reproduce, distribute, and publicly display 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 your claim, you allege that “No one at Discogs has permission or license to reproduce my album. 106-107 says the most that could be reproduce are 3 three copies for specific purposes.” You have included with the claims several screenshots that show information about the album, including some statistics, which were posted by a Discogs member. However, you have not included any information or facts that show that the respondent, Discogs, sold the album (and, if so, why such a sale would be an infringement) or otherwise engaged in any

infringing activity. While there are references to lack of payment to you, your allegations do not appear to describe any infringing activity under copyright law, and do not offer enough detail about how the respondent, *and not its members*, used your work in a way that would infringe any of your exclusive rights.

These allegations do not offer any detail about the respondent using your work in a way that would infringe any exclusive rights. If you submit an amended claim, you must more fully explain how the respondent, Discogs, infringed your allegedly infringed work. To address this issue, your amended claim must include facts in the “Describe the infringement” section that describe acts infringing your copyrights, specifying how the respondent engaged in the infringing activity. You should be as detailed as possible, setting forth what the respondent did in relation to the work you allege was infringed, and how those activities amount to infringement. For example, selling an authorized copy of your work, but merely presenting incorrect information related to the work, would not amount to copyright infringement.

### **Misrepresentation Claim**

You have alleged a claim of misrepresentation in connection with a takedown notice or counter-notice under the Digital Millennium Copyright Act (DMCA). 17 U.S.C. § 512(f). A copyright owner can send a “takedown” notice to an online service provider (such as a content-sharing website) describing material that someone has posted through the online service without the copyright owner’s permission. To avoid potential liability, online service providers must follow specified procedures when they receive these notices. When a notice is received, the online service provider will remove the content and notify the poster of the content. The individual who posted the allegedly infringing can send a counter-notice seeking the re-posting of the allegedly infringing material.

Misrepresentation under copyright law has a very specific meaning in copyright law dealing with false statements made specifically in a takedown notice or counter-notice.

In your claim you include a [supplemental document](#) that appears to be a request to take down certain material. This request appears to be in an online message board post and not a “takedown” or “counter-notice” as defined by the DMCA. Therefore, it does not appear that a valid takedown or counternotice was ever submitted to the respondent. You also do not allege that the respondent sent a counternotice with a false statement to an online service provider. Instead, your claim states that “They had a vote amongst themselves and decided to not take it down, as you see in the conversation page. Screenshot I felt useless with their decision.” The referenced screenshot does not appear to constitute a counter-notice under 17 U.S.C. § 512(f). As only misrepresentations in an actual takedown notice or counternotice can be heard by the CCB, your claim, as alleged, cannot be heard by the CCB. You should only file a misrepresentation claim if you believe you actually have a claim that satisfies the above-stated requirements. Please review the [Starting a Misrepresentation Claim](#) in the CCB Handbook for more information.

## Final Amendment

Your amended claim resolved some, but not all, of the compliance issues raised in the July 31, 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](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