



# COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0370

November 20, 2023

Cheyenne Weil

CLAIMANT

v.

Etsy Inc.

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 **December 20, 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.

### Online Service Provider

In response to questions in the claim form, you indicate that the respondent is an online service provider (OSP) and that your infringement claim is based on its “storage of or referral or linking to infringing material posted by others,” and that you sent the OSP the “takedown notice” required by Section 512 of the Copyright Act; however, you also answer “no” to the question of whether the OSP failed to “expeditiously remove or disable access to the material after you sent a takedown notice?” This, and the allegation that Etsy restored material in response to counter notices filed by the individuals who posted your works, suggests you cannot maintain a claim against the respondent. You can only bring an infringement claim against an OSP if it failed to take down third-party material in response to your takedown notice, but not when it has restored the photographs due to a counter-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 indicate that the OSP “failed to remove or disable access to the material expeditiously upon the provision of such notice.” 17 U.S.C. § 1506(f)(1)(c)(i); 37 C.F.R. § 222.2(c)(7)(iii)(G).

Your claim explicitly states that the respondent did not fail to timely remove or disable access to your works. As a result, your infringement claim cannot go forward against this respondent unless you file an amended claim that either (1) removes the allegation that the respondent is an OSP and truthfully alleges facts that indicate that the respondent committed infringement directly, not just by hosting third-party material and complying with section 512 or (2) truthfully alleges that the respondent did not comply with a takedown notice you sent—which cannot be the case if the respondent took the material down but restored it after receiving a counter-notice—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.

### **Amended Claim Against the Uploader**

Alternatively, you may file an amended claim against the uploader rather than Etsy Inc., but only if you can provide an address for the uploader and the uploader is a United States resident. The Board may not hear claims against anyone who is not a United States resident. 17 U.S.C. § 1504(d)(4). The claim must include the respondent’s address. 37 C.F.R. § 222.2(c)(6). If Etsy provided a copy of the counter-notice, the address may be found there. If the uploader is a United States resident and you file an amended claim naming the uploader as the respondent, the Board will engage in a full compliance review, so you should review the [CCB Handbook](#) and make sure the rest of your amended claim is compliant.

In particular, make sure that you address how the uploader had access to your work and how the work is substantially similar to yours. Access means that the respondent had a reasonable opportunity to view your work. In your claim, you include pictures of your works as supplemental documents. If you bring an amended claim against the uploader, you may include clearly labeled copies of the allegedly infringing works. Uploading the allegedly infringing works along with your works may demonstrate how the works are similar, and whether they are so strikingly similar that they could not have been created independently.

If you do not provide copies of the allegedly infringed works, be sure to include in your amended claim sufficient written allegations to show how the respondent accessed your work and the similarities between works. For example, if the respondents are making a direct copy of your photograph, you may state that in the claim.

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](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