



COPYRIGHT CLAIMS BOARD

Docket number: 22-CCB-0275
January 25, 2023

United States Copyright Claims Board

Wesley Morrow
CLAIMANT

v.

Nicholas Gwizdak
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 **February 24, 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. 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, meaning a reasonable opportunity to view or hear your work, and
4. The respondent’s work is substantially similar to the original elements of expression in your work.

Your claim does not present clear facts to support the elements of a copyright infringement claim related to the access to your work and substantial similarity, as discussed further below.

Copyright Infringement – Access

Your claim does not provide facts about how the respondent had access to your work. “Access” means a reasonable opportunity to view or hear your work before the alleged infringement took place. Your claim does not include allegations about how the respondent had an opportunity to see your work before the alleged infringement.

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.

Copyright Infringement – Substantial Similarity

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

Your claim states that your work, titled “night lewps,” is a “Recorded/uploaded LIVE video game play.” However, you do not provide enough information describing or showing your work. No allegations in the “Describe the infringement” field of the claim further describe your work, or state or show how it is identical or substantially similar to the allegedly infringing work. You allege that the respondent recorded and edited your “content into a 30 minute youtube video,” and that “he continues to make youtube content about me using my content,” but you do not describe how much of your work or which elements of your work are used in the respondent’s work. In addition, you have not provided a copy of your work or the allegedly infringed work as supplemental documents. As a result, the claim does not provide enough information to enable the respondent to understand the claim and respond to it.

If you submit an 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 amended claim, including a clear, detailed statement regarding which portions of your work were taken by the respondent in the allegedly infringing work, or documents that are sufficient to show the similarities. 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 supplementary 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