



# COPYRIGHT CLAIMS BOARD

Docket number: 24-CCB-0129

May 14, 2024

Aaron Fields

CLAIMANT

v.

Microsoft Corporation

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 **June 13, 2024**. 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.

### Allegedly Infringed Works

You allege infringement of three registered works:

- a dramatic work titled “Orpheus and the Underworld Musical” (Reg. No. PAu 3-374-346) (the “Dramatic Work”), which is a musical rendition of the myth of Orpheus and Eurydice, and which you describe as a “[s]cript with lyrics for my musical;”
- a sound recording titled “Orpheus Sound Recording By Aaron Fields” (Reg. No. SRu 891-437) (the “Sound Recording”) of a performance of that musical, which you describe as “[m]usic, lyrics, and sound recording;” and
- a motion picture titled “Orpheus: A Musical” (Reg. No. PA 2-463-128) (the “Motion Picture”) of a performance of a revised version of the musical, which you describe as a “[v]ideo recording of the Musical Theater Southwest Production.”

It is not clear from the claim which material from each of those works, if any, was allegedly infringed.

Copyright Office records indicate that the Dramatic Work and Sound Recording were completed in 2008, while the Motion Picture was completed in 2014. The Certificate of Registration for the Motion Picture, filed with the claim

as [VideoCopyright.pdf](#), specifically excludes the “script/screenplay” and “preexisting music” covered by the earlier registration for the dramatic work. The Motion Picture registration covers “all other cinematographic material, production as a motion picture, revisions/additions to script, Expanded music, new and revised lyrics, and script.”

The claim does not clearly identify and distinguish what allegedly infringed content is from the 2008 Dramatic Work as opposed to the revised script incorporated in the 2014 Motion Picture. If you file an amended claim, include more details to specifically identify infringed content covered by each of your registrations, and describe or show how elements of the respondent’s material infringed each of your works.

## **Substantial Similarity**

Your copyright infringement claim does not include enough facts that explain the similarities between your works and any allegedly infringing work. If it is not readily apparent from supplemental documents that are submitted with the claim, you must provide some specific allegations about how the allegedly infringing works are substantially similar to elements of your works that copyright protects.

You allege that Microsoft Corporation has infringed your works via its AI chatbot Copilot by “generating substantially similar derivatives of my songs, and in several places virtually identical copies of my lyrics and scenes.” It appears that you repeatedly prompted Copilot to generate songs for Orpheus and Hades to sing to Eurydice in a musical, and you contend that its resulting lyrical outputs are infringing.

The similarities that you identify do not show substantial similarities in copyrightable expression. Information about copyrightable authorship is available in Sections 302, 308, and 313 of [Chapter 300](#) of the *Compendium of U.S. Copyright Office Practices, Third Edition*. A valid copyright only extends to copyrightable subject matter, and copyright law only protects the components of a work that are original to the author. Copyright law does not protect ideas; it only protects original elements of expression.

You emphasize that the chatbot responded to your prompts by generating several songs in which Orpheus or Hades sings Eurydice’s name to her and repeats it: “Eurydice, Eurydice!” You describe that two-word repetition as the “critical hook/motif/refrain” from your musical, and you cite no other element of your works that appears in the chatbot-generated lyrics. However, copyright does not protect personal names, character names, or other short phrases. More information is available in [Circular 33: Works Not Protected by Copyright](#). Repeating the name of a song’s subject is too common a lyrical device for copyright protection. “Repetition is ubiquitous in popular music.” *Hobbs v. John*, 722 F.3d 1089, 1096 (7th Cir. 2013). Further, the character name Eurydice originates not in your works but in Greek mythology. The use of “Eurydice, Eurydice!” as a lyric does not support a finding of substantial similarity, and it appears that the works are otherwise not substantially similar.

You have not identified any original elements of expression in your allegedly infringed works that are substantially similar to any aspect of the allegedly infringing chatbot output. If there are such areas of substantial similarity, you must state facts that detail the similarity. If you submit an amended claim, include more specific allegations, identifying specific copyrightable subject matter in your work that the respondent copied.

You may include your works and the allegedly infringing works as supplemental documents if they are sufficient to show substantial similarities. You filed selected excerpts of your scripts as exhibits to the claim, along with excerpts from various Copilot chats in which it generated allegedly infringing responses to your prompts, but you have not included any of your recordings. 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.

More information about what to include in the “Describe the infringement” section is available at pages 15-16 of the [Starting an Infringement Claim](#) chapter of the CCB Handbook.

### Authorized Use

In several of your prompts, it appears that you directed the respondent’s Copilot chatbot to use your works to make derivative works. The [EXHIBIT3F.PDF](#) document shows that you prompted the chatbot to “write a jubilant song for orpheus to sing to eurydice while she is still alive. make it derivative of a song by attorney aaron fields. do not write it merely in the style of aaron fields,” and to “write another derivative version for orpheus to sing to eurydice. make it jubilant. orpheus is going to rescue eurydice.” Exhibit 3F/15 & Exhibit 3F/21. The [EXHIBIT5FTOSEND.PDF](#) document shows that you told the chatbot to “write a derivative of an original song by aaron fields for orpheus to sing to eurydice. make it jubilant and substantially similar such that a reviewing judge would acknowledge substantial similarity,” and to “write a derivative of an original song by aaron fields for orpheus to sing to eurydice. make it jubilant, substantially similar, such that I can copy the song legally.” Exhibit 5F/3 & Exhibit 5F/8. The following note appears in the exhibit: “Copilot shouldn’t have complied with the prompt request. I am the copyright holder with the sole right to produce derivatives.” Exhibit 5F/3. However, by definition, authorized use is not infringing use. It appears that your prompts specifically asked the respondent’s chatbot to generate derivatives of your songs, and therefore gave the respondent license to generate some or all of the allegedly infringing works. If you file an amended claim, it must include facts that indicate that you did not license, permit, or authorize the respondent to generate derivative works based on your works.

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