



# COPYRIGHT CLAIMS BOARD

Docket number: 22-CCB-0086

## United States Copyright Claims Board

April A Phillips

CLAIMANT

V.

Amazon.com Services LLC

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 **January 23, 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 a second amended claim. If you amend your 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 a second amended claim. 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.

#### Infringement – Online Service Provider

Your amended claim cannot move forward because there are not enough allegations that Amazon Services LLC engaged in conduct that would hold it liable either directly for copyright infringement or for their activities as an online service provider (OSP). You will need to clarify in your amended claim whether the respondent engaged in conduct outside the scope of the Section 512 safe harbors or directly engaged in infringing activities.

Special rules apply to infringement claims brought against OSPs for storing, referring to, or linking to infringing material posted by others. OSPs include content-sharing websites and internet search engines, among other services. In many cases, OSPs are not liable for such claims because of protections in the copyright law under section 512 of the Copyright Act.

“Safe harbors” in section 512 shield certain OSPs from paying damages for copyright infringement claims if, among other things, they take 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 the safe harbor must state facts that indicate the respondent did not follow these procedures. Specifically, the claim 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. § 1506(f)(1)(C)(i).

Your amended claim added additional information about the takedown notice required by Section 512 of the Copyright Act. You’ve answered “yes” to the question “[d]id you send the OSP a ‘takedown notice’ as required by Section 512 of the Copyright Act?” but “no” to the question “[d]id the OSP fail to expeditiously remove or disable access to the material after you sent a takedown notice?” You also state, “I submitted the take down notice shortly after making the original claim on August 1, 2022. I’m assuming that the book was removed already as I can no longer find it on their site.”

These facts suggest that the respondent met the requirements of the safe harbor, and the claim must be found noncompliant. If you file an amended claim asserting that the respondent should be held liable for infringement for failing to quickly remove or disable access to infringing material posted by a third party, you will need to be able to answer “yes” to the final OSP question and provide facts that support the affirmation. As described above, 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 specific takedown procedures.

Please visit the [section 512 page](#) and the discussion at pages 18-19 of the chapter on [Starting an Infringement Claim](#) 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.

Your infringement claim cannot proceed unless you file an amended claim that either (1) answers “no” to the question “[a]re you bringing a claim against the OSP due to their storage of or referral or linking to infringing material posted by others?” (for their activities as a service provider) or (2) states facts supporting allegations that would make the respondent liable for its actions in storing, referring or linking to infringing material after receiving notice of the alleged infringement.

## Copyright Infringement Claim – Infringing Activity

Alternatively, if you are *not* bringing a claim against Amazon as an OSP, but as a direct infringer, you will need to clearly identify the allegedly infringing activities in which Amazon engaged. 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.

Your claim states that “[t]he files were never transferred and royalties have not been paid to date. Amazon, Barnes & Noble and Kindle have been selling my book on their sites and sending the money elsewhere.” However, the claim does not indicate how Amazon specifically acted to directly infringe your exclusive rights in your work. To address this issue, you must include facts in the “Describe the infringement” section that describe specific acts taken by the respondent that infringe your copyrights, such as facts describing how the respondent distributed your works without permission.

## Final Amendment

Your amended claim does not resolve the issue raised in the October 21, 2022, Order to Amend. If you file a second amended claim, it must state enough facts in support of the claim alleged. **This is your third and final opportunity to submit a compliant claim in this proceeding. If you raise any claims that your allegations do not support, the entire proceeding will be dismissed.** 17 U.S.C. § 1506(f)(1)(B). In the alternative, you can delete any unsupported claim allegations in your second amended claim.

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 your claim included supplementary documents, you must re-upload any documents you wish to include in the amended claim on the “**Documentation**” page. Please include only documents that are directly related to your claim.
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. You may also refer to the [Compliance Review](#) chapter of the CCB Handbook for more assistance.

Copyright Claims Attorney

December 22, 2022