



# COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0351

February 21, 2024

Barbara M. Bonneau

CLAIMANT

v.

Delia Owens and Penguin Group

RESPONDENTS

## 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 **March 22, 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. 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 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.

### Contact Information

The claim must include the phone number of the claimant, or of its legal counsel or authorized representative. 37 C.F.R. § 222.2(c)(3)-(4). In the “Claimant” section of the amended claim, you provide a phone number under both “Address” and “Phone number,” but with different leading digits, which indicates that one of those listings is not accurate. If you file a second amended claim, ensure that your phone number is entered correctly.

### Substantial Similarity

You have brought a claim for copyright infringement. You allege that your novel *These Beans Have Too Much Salt* (Beans) is infringed by a Delia Owens novel published by Penguin Group titled *Where the Crawdads Sing* (Crawdads). As amended, your claim still does not clearly identify enough substantial similarity between *Crawdads* and original elements of expressive material in Beans that copyright protects.

The amended claim includes a 680-page chart comparing the two works, labeled [Analysis of infringement of These Beans Have Too Much Salt in Where the Crawdads Sing 01DEC2023.pdf](#) (Chart). The Chart presents more than 250 “scenes” you compiled in which you outline and compare structural and semantic similarities you identify between excerpts of Beans and Crawdads. The “scenes” in your Chart do not appear wholesale in Beans but are compiled from multiple sections. Such lists are inherently subjective and unreliable, particularly where the list emphasizes random similarities scattered throughout the works.

You assert that the following aspects of the works are similar: plot, genre, landscape, character, emotions, themes, and actual wording. As described below, you have not shown that Crawdads is substantially similar to any such aspects of Beans’ expressive material. If you amend your claim a second time, you will need to provide concrete allegations that the two works are substantially similar in the expression, or written words, contained in the books. You note that the similarities laid out in the Chart may not be obvious to “the average reader.” *Id.* p. 2. If there is substantial similarity between protectable elements of the two works, however, it must be perceptible to the ordinary, reasonable reader.

## **I. Plot**

Your Chart includes summaries of Beans and promotional text from Crawdads that outline the plots of the works. *Id.* pp. 45-46. Those summaries describe only one plot element that the books have in common—a murder. You note that in both novels, an outcast woman who is gossiped about kills a sexual assailant, and then goes to jail. *Id.* These are common elements to revenge and outcast narratives, and copyright does not protect stock characters, settings, and events that are common to a particular subject matter. For more information on this concept, known as *scènes à faire*, please see Section 313.4(I) in [Chapter 300](#) of the *Compendium of U.S. Copyright Office Practices, Third Edition* (“*Compendium*”). Copyright law protects original elements of expression, not ideas that are common or necessary to a particular genre. A suspected murderer is likely to be arrested in a revenge plot. An outcast is likely to be gossiped about.

Further, upon analysis, the plots of Beans and Crawdads diverge beyond these broad commonalities. The murders and who commits them are dissimilar, the characters that drive the plot are different, and only Beans includes a plot that focuses on the religious life of the community. You acknowledge that “the resolution of the plot of the characters is altered as well.” Chart p. 7. These significant differences do not support an infringement claim.

## **II. Genre**

In the “Works infringed” section of the amended claim, you describe Beans as “a psychological literary suspense novel.” You allege that “[t]he genre is the same” for both books (Chart p. 6) but not only is that not apparent, it is not sufficient to establish substantial similarity. As explained above, the two works must be substantially similar in the *expression* in the works. The genre, or broad category, into which a work falls is not individual expression.

### **III. Landscape**

You allege that the books have similar landscapes, even though the locations are different (coastal North Carolina in *Crawdads*, and the Louisiana bayou in *Beans*). You describe the landscape of both novels as “swampy” and “marshy,” and state that it is significant in both works. Chart p. 79. Wetlands are common in the southern United States, and in works set there. Your copyright in *Beans* cannot prevent another author from using the idea of a swamp or marsh setting and describing it in their own words.

### **IV. Characters**

In the “Describe the infringement” section of the amended claim, you contend that “[t]he characters are stolen and characteristics reassigned, mostly to affix these to one character” and that certain names have been “copied, cut, and remixed” from your work. Copyright does not protect names or general ideas for a character. *See Compendium* Section 313.4(H). Copyright can protect the expression of a character that conveys consistent, identifiable traits and attributes that are sufficiently delineated to be recognizable as the same character wherever it appears.

The few character traits you cite as points of similarity, however, are personality characteristics or physical features that are not especially distinctive, such as black hair and dark or tanned skin, without actual copying of substantial expression. *See* Chart pp. 93, 140-41. You state that “the preoccupations of the female characters, from [*Beans*], with nature are similar to that of Kya,” *Crawdads*’ main character. *Id.* p. 46. Such a preoccupation could be a basis of substantial similarity, but you have not shown that it is expressed or manifested in substantially similar ways. Without a showing of specific common expression, two stories “featuring human contact with wildlife,” is insufficient. *Id.* p. 13. You also assert that “Jim’s character [in *Beans*] as a black man who listens and tries to help a young (eleven-year-old) white girl is the same” as the character Jumpin’ in *Crawdads*. *Id.* pp. 428-29. Friends helping and listening to each other are standard aspects of friendship that copyright does not protect.

### **V. Themes and Emotions**

You contend that “[a]lmost all the themes used in *Beans* are repeated in *Crawdads*.” Chart p. 49. Broad thematic similarity alone is not infringement; rather, it is similarity in particular *expression* that matters. The themes and emotional states that you identify as present in both works are too general to be protected by copyright, such as “disappointment, adversity, loneliness, and identity,” and “freedom, the feeling of being abandoned by everyone, and music.” *Id.* pp. 7, 273. To the extent that you identify themes that might support an infringement claim, you have not described or shown how these themes are expressed in substantially similar ways in both works. For example, you identify a shared “theme of classical music in a harsh environment,” *id.* p. 384, but you do not identify how particular words in each work related to this theme are substantially similar.

## VI. Actual Wording

You assert that there are similarities in “the actual wording of the novel.” Chart p. 27. Each “scene” in your Chart offers excerpts from each book as examples, but they appear to have little expressive content in common beyond a few scattered words and common short phrases. Copyright does not protect individual words or short phrases. *See Compendium* Section 313.4(C). If you amend the claim again, it would assist the Board if you identify a selection of ten to twenty actual excerpts from *Crawdads* (whether previously presented in the Chart or not) that you consider the clearest examples or most substantial instances of infringing use, and state or show why.

### Final Amendment

Your amended claim resolved some, but not all, of the compliance issues raised in the November 8, 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 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