



COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0243
September 27, 2023

Raymond Hughes

CLAIMANT

v.

WGBH EDUCATIONAL FOUNDATION

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. You have not resolved any of the compliance issues raised in the noncompliance order issued on August 28, 2023 (August 28 Order), and they must be resolved so that the claim can go forward.

If you wish to proceed with this claim, you must file a second amended claim by **October 27, 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. Merely resubmitting your claim without any edits or additions will not allow your claim to move forward. 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 amended 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

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, and
4. The respondent’s work is substantially similar to the original elements of expression in your work.

Your amended claim does not provide clear facts to support the elements related to the respondent's access to your work and substantial similarity, as described below. Please provide more details and background regarding these elements in your amended claim.

Access

Your amended 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.

As set forth in detail in the [August 28 Order](#), you do not provide facts showing that WGBH had a reasonable opportunity to view or hear your work. You allege that *Nature* magazine received a copy of your work when you submitted an unpublished version for publication consideration. You do not, however, allege any reasonable facts that WGBH would have received or viewed a copy of your work from someone at *Nature*. Again, the allegation that "WGBH must have received the article" from *Nature* is speculative.

You must amend your claim with allegations that make access a reasonable possibility, not just hypothetically or theoretically possible. Acceptable allegations of access may include that, before the alleged infringement, your work (a) was sent directly to WGBH, or a close associate of WGBH or (b) is so strikingly similar to the *Nova* episodes that WGBH could not have created them independently. As reiterated below, you have not identified sufficient similarities between the two works establishing that they are strikingly similar.

Substantial Similarity

Your claim does not include enough facts that explain the similarities between your article and the allegedly infringing *Nova* episodes. The allegedly infringing works must be substantially similar to copyright-protected elements in the allegedly infringed work. If it is not readily apparent from supplemental documents that are submitted with the claim, you must provide more specific allegations about how the allegedly infringing works are similar to expressive material in your work that copyright protects.

In the [August 28 Order](#), the CCB provided an explanation that copyright law only protects the creative expression of a work original to a particular author. It also explained that ideas, theories, processes, and facts cannot be protected by copyright. You state that your work contains a "process of evolution" that "has no precedent . . . because my process of evolution has never been discovered until I discovered it." You also allege that, in the *Nova* episodes, there are scientists performing experiments "in correlation with my theory" and that the second episode includes "a new team . . . researching and testing my theory of fear and evolution." Here, you are describing similarities between theories and processes, which are categorically not protected by copyright.

Accordingly, you have not provided any allegations that the creative expression in your work, the particular words and way in which you describe the theories, are similar to the respondent's work. You have not identified substantial expressive elements of your article that appeared in *Nova*. You assert that "many direct quotes" from your theory appear in the episodes, but as identified in the August 28 Order the few quotes listed in your amended claim are not substantial enough to support an infringement claim.

Your allegations do not provide enough information to enable the respondent to understand your amended claim and respond to it because you have not identified any copyright-protected expression from your article that is used in the allegedly infringing *Nova* episodes.

If you submit a second amended claim, you must include more specific allegations that support the element of substantial similarity, for example, by identifying particular expressions and details in the respondent's works that are similar to copyrightable expression in your work, and describing how they are similar. Include a clear, detailed statement regarding which portions of your work were taken by the respondent in the allegedly infringing works, or documents that are sufficient to show the similarities. Your description should help the respondent and the Board understand the similarities you see between the allegedly infringing episodes and protectable aspects of your work.

Final Amendment

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 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 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 amended 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