



COPYRIGHT CLAIMS BOARD

Docket number: 24-CCB-0023

February 27, 2024

Victor R. Wallner

CLAIMANT

v.

Meta Platforms, Inc.

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 January 24, 2024 Order to Amend Noncompliant Claim (“January 24 Order”). 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 25, 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.

Access

You have not provided enough information about where or how your work was available to the public or the allegedly infringing Facebook users before the alleged infringement took place. As the January 24 Order stated:

You allege that Facebook users have posted copies of your work on Facebook. However, your claim does not provide facts that indicate how the Facebook users had access to your work. “Access” means a reasonable opportunity to see or copy your work before the alleged infringement took place. Your claim does not state allegations about where or how your work was available to the Facebook users before the alleged infringement so that they had an opportunity to see it and post it on Facebook.

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 respondents or a close associate of the respondents; (b) was widely disseminated or was available to the public or respondents; or (c) is so strikingly similar to the work that appeared on the respondents’ website that they could not have created it independently.

You state in a document filed with the amended claim that you “don’t know how they have gotten the image,” but you are not required to explain exactly how the Facebook users obtained your work. You only need to state enough facts to show a reasonable possibility that the alleged infringers had the chance to view or copy your work.

For example, if the photograph was widely disseminated because you posted, published, displayed, or distributed it to a large enough audience, you may state facts that indicate when and where it was available, and how many people the photograph likely reached with an explanation of why you believe that. Or, for example, if the photograph posted on Facebook was identical to your photograph, or so strikingly similar that the people who posted it could not have created it themselves, you may allege access by stating such facts. Alternatively, as the January 24 Order stated:

you can upload a copy of your work and the allegedly infringing works posted on Facebook, if they demonstrate that the works are so strikingly similar that they could not have been created independently. You included an image file with your claim, labeled Shallowshark Image-690.jpg, which appears to be your work, but you have not provided a copy of any allegedly infringing work that appeared on Facebook. 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.

Substantial Similarity

You have not provided enough information about how similar your photograph is to the allegedly infringing work that was posted on Facebook. As the January 24 Order stated:

In the “Works infringed” section of the claim, you describe your work as “A bridge in Yuma Az with lightning striking behind it,” titled “Shallowshark Image-690,” and a supplemental document filed with the claim appears to be your work. However, the claim does not clearly describe the allegedly infringing work that was posted on Facebook or include it as a supplemental document. As a result, the claim does not provide enough information to enable the Board to understand the similarity of the works.

To address this issue in a second amended claim, you must include more facts that indicate how the work posted on Facebook was identical or substantially similar to your photograph. Identify some specific creative elements that the works had in common, such as the camera angles, camera position, timing, or shutter speed. For instance, if the Facebook users posted an image of the same “bridge in Yuma Az with lightning striking behind it,” showing the same lightning bolts and cloud patterns to indicate that they capture the same moment in time, taken from the same location at the same camera angle, you should state facts that describe such similarities, or include documents that are sufficient to show the similarities. If you include copies of the works at issue as supplemental documents, then as discussed above, they must be clearly labeled and identified so they can be properly compared to each other.

Online Service Provider

You also have not provided enough information to show that the respondent Meta Platforms, Inc. (Meta) is liable for infringement, rather than the Facebook users who you allege posted the photograph. You assert that Meta is an online service provider (“OSP”) that failed to “expeditiously remove or disable access” to the photograph after you sent Meta a takedown notice, as required by section 512 of the Copyright Act, but you have not provided enough information to support those allegations. As the January 24 Order stated:

“Safe harbors” in section 512 shield certain OSPs from paying damages for copyright infringement claims if, among other things, the OSPs 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. To avoid liability, OSPs must follow procedures specified in section 512 when they receive takedown notices alleging infringement, and counter-notices seeking the re-posting of the allegedly infringing material. In an infringement claim against an OSP that is eligible for a section 512 safe harbor, the claimant must state facts that indicate that the respondent did not follow those procedures.

Your infringement claim does not provide enough information about the respondent’s activities to overcome the safe harbor provisions. Specifically, you do not provide information supporting your allegations that you sent a takedown notice to Meta, and that it failed to expeditiously remove or disable access to infringing material upon receiving notice of infringement. Without more specifics, those bare allegations do not provide sufficient details for Meta to understand what its allegedly infringing acts were.

In a document filed with the amended claim, you state generally that you “filed a copyright infringement with Meta at least two times and they said they couldn’t verify it was my work.” You also indicate that the two pages where you allege the infringing image was posted were both taken down by the time you filed the amended claim. You have not provided enough information to show that those pages were not taken down quickly enough. As the January 24 Order stated (emphasis added):

If you submit an amended claim, **you must include more details about the takedown notice to support your claim, such as when and how it was submitted to Meta, what you stated in the takedown notice, whether Meta responded to your takedown notice, and if so, when, and what Meta said in response.** Alternatively, when you submit the amended claim, you may include copies of your takedown notice to Meta and other communications with Meta about this claim as supplemental documents, if they are sufficient to show that your takedown notice complied with section 512 and that Meta did not take action in a timely manner.

If you submit a second amended claim against Meta, to show that it failed to expeditiously respond to your takedown notices, you must provide more specific information about those takedown notices, including when you sent them and what they said, when Meta responded and what it said in response, and when the allegedly infringing pages were taken down.

Final Amendment

Your amended claim does not resolve the compliance issues raised in the January 24 Order. **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. 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