



COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0365

November 14, 2023

Jean M. Guerrero

CLAIMANT

v.

The Rochester Oratorio Society, Inc.

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 **December 14, 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. 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.

Relief Requested

You have raised a claim of copyright infringement before the Board. It appears that you are seeking a larger statutory damages award than the Board can grant.

In the “Description of harm suffered and relief sought” section of your claim, you state that you are seeking the greater of either actual damages or statutory damages, and that your “losses amount to the nearly full \$30,000 maximum actual damages” available from the Board, while your “losses reach the \$15,000 maximum statutory damages.” In a supplemental document named [00 Claim OnwardUpward03.pdf](#), you further state that your “work is entitled to the maximum statutory damages of \$15,000 in this tribunal,” and refer again to the “maximum award of \$15,000 in statutory damages here.” However, the maximum award of statutory damages available in this proceeding would be \$7,500.

The most that respondents can be ordered to pay in damages (actual or statutory) in a Board proceeding is \$30,000. 17 U.S.C. § 1504(e)(1)(D). However, the maximum amount of statutory damages available from the Board is \$15,000 for each work that was infringed if the work was timely registered, and \$7,500 per work that was not timely registered. 17 U.S.C. § 1504(e)(1)(A)(ii)(I)-(II). A work is not timely registered if it was (1) unpublished

and the copyright was registered after the infringement started, or (2) published and the copyright was registered after the infringement started and more than three months after the publication of the work. 17 U.S.C. § 412. An exception to that rule applies in certain cases where the work was preregistered under 17 U.S.C. § 408(f) before the infringement commenced. *See id.* § 412. More information about the available forms of relief can be found in the [Damages](#) chapter and on pages 6-7 of the [Starting an Infringement Claim](#) chapter in the CCB Handbook.

You assert that the infringement commenced on November 3, 2020. The Certificate of Registration lists the effective date of registration as March 31, 2023, and indicates that the work was unpublished at that time. You do not allege a publication of the work before the infringement began. The [00_Claim_OnwardUpward03.pdf](#) document states that the work was published on April 4, 2023. It also states that the work was preregistered on March 16, 2023, more than two years and three months after the infringement commenced.

Based on those stated facts, it appears that the copyright for the unpublished work was registered and preregistered after the infringement commenced, so the Board may not award you more than \$7,500 total in statutory damages. 17 U.S.C. §§ 412(1) & 1504(e)(1)(A)(ii)(II). Because those are the facts alleged, your request for \$15,000 in statutory damages is not permissible and not compliant with the CASE Act.

If you file an amended claim, you will need to limit any request for statutory damages to an amount the Board can grant, in both the claim form and any supplemental document.

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