



# COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0230  
July 31, 2023

Larry Nash, Mr

CLAIMANT

v.

Discogs

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 **August 30, 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.

### Works Infringed – Clarity

Your claim presents conflicting information about the number of sound recordings that you believe were infringed. In the “Works infringed” section of the claim you list one sound recording “Lovin In The Livin Room” as the work that was allegedly infringed. However, in the “Describe the infringement” section of the claim, you state that “Discogs allowed its members to post and sell my prototype album” and list six songs that you believe were infringed. A Board search of Copyright Office records shows that all of the listed songs were registered as a Group of Unpublished Works with the same registration number (“SRu001507116”). Although the works were included in the same registration, each work that you believe has been infringed must be listed separately in the “Works infringed” section of the claim. To correct this issue, please include the additional works in the “Works infringed” section of the claim.

### Infringing Activity – Clarity

Your claim does not present enough facts to clearly state how the respondent used any of your exclusive rights in the your works without permission. Copyright law grants exclusive rights to copyright owners. These include the right to reproduce, distribute, and publicly display 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. More information about exclusive rights is available on page 3 of the [Starting an Infringement Claim](#) chapter of the CCB Handbook.

In your claim, you allege that Discogs “allowed its members to post and sell my prototype album” and manufactured the album. You have included with the claims several screenshots that show information about the album, including some statistics, which were posted by a Discogs member. However, you have not included any information or facts that show that the respondent, Discogs, sold the album. While there are references to lack of payment to you, your allegations do not appear to describe any infringing activity under copyright law, and do not offer enough detail about how the respondent *and not its members* used your work in a way that would infringe any of your exclusive rights.

These allegations do not offer any detail about the respondent using your work in a way that would infringe any exclusive rights. If you submit an amended claim, you must more fully explain how the respondent infringed your allegedly infringed work. To address this issue, your amended claim must include facts in the “Describe the infringement” section that describe acts infringing your copyrights, specifying how the respondent engaged in the infringing activity. You should be as detailed as possible, setting forth what the respondent did in relation to the work you allege was infringed.

### **Online Service Provider – Clarity**

Your infringement claim asserts that the respondent: is an “online service provider” (OSP); that you are bringing the claim against the respondent “due to their storage of or referral or linking to infringing material posted by others”; and that it failed to expeditiously remove or disable access to infringing material after you sent a takedown notice to the respondent as required by section 512 of the Copyright Act.

“Safe harbors” in section 512 shield certain online service providers from paying damages for copyright infringement claims if, among other things, the online service providers 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, online service providers 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 online service provider that is eligible for a section 512 safe harbor, the claimant must state facts that indicate that the respondent did not follow those procedures.

As noted above, you allege that Discogs “allowed its members to post and sell my prototype album.” However, it is unclear if you are asserting that your claim is based on Discogs continuing to allow its members to offer the album for sale or distribution after receiving a takedown notice. If your claim is based on the “storage of or referral or linking to infringing material posted by others,” you must include additional factual information about any takedown notices or responses sent to Discogs, and anything Discogs has (or has not) done following receipt of the takedown notices in addition to your answering “yes” to the online service provider questions in the claim. If, instead, Discogs sent a counter-notice to an OSP (which the OSP passed on to you) in response to a takedown

notice, you need to remove the allegation that Discogs is an OSP and provide details about what Discogs did to infringe your copyrights. Your infringement claim cannot proceed unless you file an amended claim that either (1) removes the allegations that the respondent is an online service provider to whom you sent a section 512 takedown notice, or (2) states facts supporting allegations that would make the respondent liable as an online service provider, despite the Section 512 safe harbor. 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 online service provider protected by a section 512 safe harbor.

## Misrepresentation Claim

You have alleged a claim of misrepresentation in connection with a takedown notice or counter-notice under 17 U.S.C. § 512(f). Misrepresentation under copyright law has a very specific meaning in copyright law dealing with false statements made in a takedown notice or counter-notice to an online service provider related to the posting of a copyright-protected work. However, you do not allege that the respondent sent a false takedown notice or counter-notice to an online service provider. Instead, your claim states that “This current incident I basically entered the conversation by asking for a percentage of sales. It was denied with explanation that they are working under the ‘fair use’ provisions in copyright bylaws.” In the questions posed in the misrepresentation section of the claim, you also state that a counter-notice was sent by [compliance@discogs](mailto:compliance@discogs) but instead of specifying which online service provider received the counter-notice, which is required, you answer the question with a question mark. Such allegations do not constitute misrepresentation under Section 512(f) and cannot be heard by the CCB. . You should only file a misrepresentation claim if you believe you actually have a claim under copyright law that could be heard by the CCB. Please review the [Starting a Misrepresentation Claim](#) in the CCB Handbook for more information.

## Supplemental Documentation

You uploaded three additional filings that seem to include supplemental information after filing your claim. These filings will not be reviewed by the Board or considered a part of your claim unless you upload them with your amended claim using the instructions below. Please make sure that any attachments to your amended claim are relevant to the claim.

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