



COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0202
July 11, 2023

Poitier D. Mcdaniel

CLAIMANT

v.

Laff TV

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 10, 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.

Copyright Registration

The Board can only hear a copyright infringement claim if, before the claim was filed, (1) the Copyright Office issued a registration certificate for the copyrighted work or (2) the legal or beneficial owner of the copyright applied to register the copyright by delivering a completed application, deposit, and fee to the Copyright Office, and the Copyright Office has not refused the application. 17 U.S.C. § 1505(a); 37 C.F.R. § 221.1(a). The claim must include the registration number and effective date of registration for the allegedly infringed work, if it has been registered. 37 C.F.R. § 222.2(c)(7)(ii)(C).

In your claim, you describe the allegedly infringed work as a sound recording titled “Dr sicness instrumental slaps.” You list PAu0037755717 as its registration number and an effective date of registration of February 9, 2014. A Board search of Copyright Office records indicates that the correct registration number is PAu003775717 (with just one “5”), and September 3, 2014 as the effective date of registration. If you file an amended claim, please enter the correct registration number and date in the “Works infringed” section.

Clarity – Infringing Activity

Your claim does not present facts that clearly state how the respondent used any of your exclusive rights in the work without permission.

Copyright law grants exclusive rights to copyright owners. These include the right to reproduce, distribute, and publicly perform 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 the “Describe the infringement” section of the claim, you allege: “The instrumental that is on laff tv was took from me and used by them so they could make millions of dollars from people laughing but with my sound. It is a violin play that coincides with the dance that they do when they hold hands and walk across the floor[.]” You do not identify any particular program, episode, or advertisement where the alleged infringement occurred. Generally alleging that an instrumental recording was heard somewhere in connection with a dance scene, does not clearly describe any infringing activity. In addition, your allegation in the “Where the alleged infringing acts occurred” section, that where the infringement occurred is “unknown,” is inconsistent with your allegation that the work “is on laff tv.”

If you submit an amended claim, you must include facts in the claim form that more fully explain where and how the respondent infringed your work. Provide more details in the “Where the alleged infringing acts occurred” section, including a description of what “laff tv” is (for example, a cable network, over-the-air network, or an online service) and where on “laff tv” the alleged infringing use appeared. The claim must provide enough information to enable the respondent to understand the claim and respond to it.

Access

Your claim does not provide facts about how the respondent had access to your work. “Access” means a reasonable opportunity to hear your work before the alleged infringement took place. Your general allegation that the instrumental “was took from me” does not offer any specific information about how the respondent had an opportunity to access your work before the alleged use.

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 allegations of facts showing that your work (a) was sent directly to the respondent or a close associate of the respondent; (b) was widely disseminated or was available to the public or respondent; or (c) is so strikingly similar to the respondent’s work that they could not have been created independently.

Alternatively, you can upload copies of your work and the allegedly infringing work if they demonstrate that the works are so strikingly similar that they could not have been created independently. 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

Your claim also does not include enough facts that explain the similarities between your work and the respondent's allegedly infringing work. If it is not readily apparent from supplemental documents that are submitted with the claim, you must provide some specific allegations about how your work and the allegedly infringing work are similar.

Your claim describes your work as an "Italian sound for drama movies, in violin." However, you do not provide enough information describing or showing your work or the respondent's allegedly infringing work. The allegations in the "Describe the infringement" section of the claim generally describe the respondent's use of your work as "a violin play that coincides with the dance that they do when they hold hands and walk across the floor," but you do not clearly describe the allegedly infringing work, and you do not provide any more specific information about how your work and the respondent's work are identical or substantially similar. In addition, you have not provided a copy of your work or the allegedly infringing work as supplemental documents. As a result, the claim does not provide enough information to enable the respondent to understand the claim and respond to it.

If you submit an amended claim, it must include more factual allegations that support the element of substantial similarity, including a clear, detailed statement regarding which portions of your work were taken by the respondent in the allegedly infringing work, or documents that are sufficient to show the similarities. 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.

Online Service Provider

In response to questions in the claim form, you indicate that the respondent is an online service provider (OSP) and that your infringement claim against the OSP is based on "their storage of or referral or linking to infringing material posted by others," but that you did not send the OSP the "takedown notice" required by Section 512 of the Copyright Act. Your claim cannot go forward with those responses because you can only bring an infringement claim against an OSP if it failed to take down third-party material in response to a takedown notice.

Special rules apply to infringement claims brought against OSPs, which provide online services to store (and make available), refer to, provide access to, or link to material that is available online. OSPs include content-sharing websites and internet search engines, among other services. Section 512 of the Copyright Act provides what are known as "safe harbors," which shield certain OSPs from paying damages for copyright infringement claims if, among other things, the OSP takes steps to quickly remove or disable access to infringing material when a copyright owner notifies them about the infringement through a proper takedown notice. An infringement claim against an OSP that is eligible for a section 512 safe harbor must state facts that indicate that the respondent did not follow those procedures. An infringement claim against an OSP eligible for a section 512 safe harbor cannot be compliant unless you affirm that you sent the OSP a section 512 notice of infringement, and that it "failed to remove or disable access to the material expeditiously upon the provision of such notice." 17 U.S.C. § 1506(f)(1)(C)(i); 37 C.F.R. § 222.2(c)(7)(iii)(G).

Your infringement claim is not compliant because you affirm that it is based on the respondent's actions as an OSP, and that you did not send the OSP a proper takedown notice. Your claim does not include any facts that support your allegation that the respondent is an OSP that stored, referred, or linked to infringing material *provided by others*. Instead, your allegations seem to relate to the creation of an allegedly infringing motion picture. Because you have not stated facts that suggest the respondent is an OSP, you may want to reconsider whether your answer should be “yes” to the question, “Are any of the respondents online service providers?”

Your infringement claim cannot proceed unless you file an amended claim that either (1) removes the allegation that the respondent is an OSP, or (2) alleges that the respondent did not comply with a takedown notice you sent, and states facts in support of those allegations that would make that respondent liable as an OSP, despite the Section 512 safe harbor. Please review the [section 512 page](#) and pages 19-21 of the [Starting an Infringement Claim](#) chapter in the CCB Handbook for additional information about what is required for an infringement claim against an OSP protected by a section 512 safe harbor.

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