



COPYRIGHT CLAIMS BOARD

Docket number: 22-CCB-0177

January 24, 2023

United States Copyright Claims Board

Osagie Okoruwa

CLAIMANT

v.

Mark Saxenmeyer

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. 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 **February 23, 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. There is no additional filing fee for a second 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 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 Infringement Claim - Ownership

To bring a copyright infringement claim before the Board, the claimant must be “the legal or beneficial owner of the exclusive right [in a copyrighted work] at the time of the infringement.” 17 U.S.C. § 1504(c)(1). A legal owner is an author of the work who owns the exclusive rights at issue or a person or entity that has received a transfer of those rights, for example, by an assignment or an exclusive license. A beneficial owner is a legal owner who has transferred the rights at issue but retains some of the advantages of ownership, such as the right to receive royalties from the use of the work. More information about legal and beneficial ownership is available at page 4 of the [Starting an Infringement Claim](#) chapter of the CCB Handbook.

Your amended claim has two issues related to the ownership of the allegedly infringed work, a motion picture titled “The Innocent Convicts.” First, your infringement claim appears to be based on a dispute over ownership of the work that started no later than 2018. Your ownership dispute with The Reporters Inc. raises questions about

whether the statute of limitations prevents the Board from considering your infringement claim. Second, your allegations and supplemental documents filed with the amended claim leave it unclear whether you or Mankind Pictures holds the exclusive rights in the allegedly infringed work.

I. **Ownership Dispute with The Reporters Inc.**

You allege that your 2015 agreements with the media production agency The Reporters Inc., where respondent Mark Saxenmeyer is the Executive Director, “expressly provide[that] ownership of all videos created for The Innocent Convicts project belong to me and my studio - Mankind Pictures.” You further allege, “I later found out Mark Saxenmeyer was claiming ownership of The Innocent Convicts film, the name, my artistic creation, the video footage, contents and materials associated with my documentary film.” Supplemental documents filed with the claim, however, appear to show that ownership was claimed by The Reporters Inc., not by Mr. Saxenmeyer individually; and that your dispute with The Reporters Inc. over who owns the work is long-standing.

In [a letter](#) to you dated October 25, 2018, The Reporters Inc.’s attorney quoted from an email (not filed with the claim) that you apparently sent to Mr. Saxenmeyer on May 7, 2018, saying: “Whether the contract states Tim Cole: The Innocent Man or The Innocent Convicts, it doesn't matter. They are both my brain child and properties including all related contents.” The Reporters Inc.’s attorney rejected your claim, at least for footage shot between April 2015 and May 2018:

While *The Reporters Inc.* makes no claim to work product of your own efforts prior to contracting with *The Reporters Inc.*, i.e. interviews and b-roll you conducted and completed prior to April 2015 and after your separation from *The Reporters Inc.* in May 2018 – the March 30, 2015 contract did not expressly or impliedly grant or convey to you, or waive, any of *The Reporters Inc.*’s rights to its own work product or rights to develop its own film product. This includes the subject of wrongfully convicted criminal defendants, regardless of the title of said film(s). Specifically, *The Reporters Inc.* rejects any claim to its existing work product or future development rights concerning the convictions of Audrey Edmunds, Mike Hansen, Uriah Courtney, The Monfils Six, or Lamont McKoy. You have no permission to utilize any of this footage in any production you might complete on your own.

As for footage you shot in connection with the Tim Cole case during your tenure with *The Reporters Inc.*, both on your own and in conjunction with Mark Saxenmeyer, *The Reporters Inc.* reserves the right to utilize this footage in its own Tim Cole production but will credit you as a videographer on the project.

In [a response letter](#) dated January 16, 2019, your attorney disputed The Reporters Inc.’s claim of ownership rights. The response letter (which called the Project Document the “Project Agreement,” and referred to a document bearing your signature dated March 30, 2015 as the “Fundraising Agreement”) stated:

Your Client’s position that they own the rights to the Movie is fundamentally mistaken. The Project Agreement drafted by your Client expressly provides under the bold-faced heading “Ownership rights”, that “Mankind will retain permanent ownership rights to the completed video(s). However, The Reporters Inc. may use the videos as well, for marketing and promotional purposes.” The Project Agreement further provides that “All raw . . . digital video footage becomes permanent property of Mankind upon completion of the video project”. Thus, ownership of all videos created by the parties legally belongs to Mr. Okoruwa.

Moreover, the terms of the Project Agreement spell out clearly that your Client was hired to assist with the functions enumerated therein in exchange for the payments set forth in that agreement.

Accordingly, your Client was hired to perform certain work and in no way acquired any rights in the product or the intellectual property rights, consistent with the express provision that my client retained all ownership rights to all the episodes of the Movie, which includes (but is not limited to) any videos or other material relating to Timothy Cole, Audrey Edmunds, Mike Hansen, Uriah Courtney, Monfils Six and Lamont McKoy.

In addition, there is no license or other agreement other than the Fundraising Agreement (and the Project Agreement incorporated therein) between your Client and Mr. Okoruwa. Therefore, exclusive ownership of everything related to the project remains with Mr. Okoruwa, except only your Client's right to use any videos for "marketing and promotional purposes".

This dispute over who owns rights to "The Innocent Convicts" appears to be central to your claim against Mr. Saxenmeyer, especially since your claim appears entirely reliant on activities Mr. Saxenmeyer took in his role as Executive Director of The Reporters, Inc. If that is the case, the Board may not be able to resolve your infringement claim because that ownership dispute began more than three years before you filed the claim.

A "statute of limitations" is a time limit set by law for starting a claim. The statute of limitations period for copyright claims, for both federal court and the Board, is three years after the claim "accrues." 17 U.S.C. §§ 507(b) & 1504(b)(1). A claim accrues when the claimant knows, or has reason to know, about the injury that is the basis of the claim. *Pritchett v. Pound*, 473 F.3d 217, 220 (5th Cir. 2006); *Scott Breuer Constr., Inc. v. Koch*, No. 12-cv-3182, 2014 WL 2893200, *1 (D. Minn. June 26, 2014). If ownership of the copyright is at the heart of an infringement claim, then the claim accrues when one party expressly repudiates the other party's ownership. *Kwan v. Schlein*, 634 F.3d 224, 229-30 (2d Cir. 2011). "An ownership claim therefore must be brought within three years after the purported owner's status as such is challenged by a party with a competing claim of ownership." *Everly v. Everly*, 958 F.3d 442, 450-51 (6th Cir. 2020). And "the statute of limitations cannot be defeated by portraying an action as one for infringement when copyright ownership rights are the true matter at issue." *Kwan*, 634 F.3d at 229 (quoting *Big East Entm't, Inc. v. Zomba Enters., Inc.*, 453 F. Supp. 2d 788, 796 (S.D.N.Y. 2006)). See also *Seven Arts Filmed Entm't Ltd. v. Content Media Corp. PLC*, 733 F.3d 1251, 1255 (9th Cir. 2013) (a "claim for copyright infringement in which ownership is the disputed issue is time-barred if a freestanding ownership claim would be barred").

On October 25, 2018, The Reporters Inc. apparently repudiated your ownership of any footage shot in connection with "The Innocent Convicts" between April 2015 and May 2018, and seemed to describe much of that footage as its own "work product." Your attorney's January 16, 2019 response letter acknowledged The Reporters Inc.'s position and challenged it, asserting that you retained "exclusive ownership of everything related to the project," including "ownership of all videos created by the parties." You filed your claim with the Board on September 29, 2022, more than three years later. The footage shot between April 2015 and May 2018, which The Reporters Inc. claims as its work product, has been the subject of your ownership dispute for more than three years, so it cannot be the subject of this infringement claim unless you can show in a second amended claim that your allegations against Mark Saxenmeyer are separate from his role at The Reporters Inc. and not based on the barred ownership dispute.

If you file a second amended claim, it cannot be based on any allegations that Mr. Saxenmeyer, in his role as Executive Director of The Reporters Inc., made infringing uses of footage that The Reporters Inc. has spent three

years claiming to own. For example, in the October 25, 2018 letter, The Reporters Inc. specifically did not claim to own any “work product of your own efforts prior to contracting with *The Reporters Inc.*, i.e. interviews and b-roll you conducted and completed prior to April 2015 and after your separation from *The Reporters Inc.* in May 2018[.]” The dispute over ownership would not stop you from claiming infringement based on use of that specific earlier and later footage without permission. If you file a second amended claim, it must state facts that clearly show that the infringement claim relates only to footage that The Reporters Inc. has not argued that it owns.

II. Mankind Pictures

As the November 21, 2022 noncompliance order explained:

When you submitted your claim, you certified that you were the legal or beneficial owner of rights in the allegedly infringed work, and the Copyright Office has registered the work under your personal name. However, a [document](#) that you filed with the claim dated February 24, 2015, titled “Project Assistance Areas” (the “Project Document”) indicates that the owner of the work was Mankind Pictures, and not you personally. The Project Document states that “Mankind will retain permanent ownership rights to the completed video(s)” and that “All raw (unedited and/or unused) digital video footage becomes permanent property of Mankind upon completion of the video project.” The Project Document therefore appears to contradict your basis to bring a claim as the legal or beneficial owner.

Your amended claim adds the following allegations: “Mankind Pictures is the production studio I created. If the ownership of the original works belongs to Mankind Pictures, it belongs to my studio because I am the owner of Mankind Pictures.” However, it is not clear from your claim what the status of Mankind Pictures is: is it a separate legal entity, such as a corporation, or is it simply a “dba,” i.e., a name under which you engage in business in your personal capacity? If Mankind Pictures is a separate legal entity, then by asserting that the ownership belongs to Mankind Pictures, your amended claim establishes that Mankind Pictures, not you, would be the proper claimant. Your claim could be maintained under your personal name only if you, not Mankind Pictures, are the legal or beneficial owner of exclusive rights in the work.

If however, Mankind Pictures is just a name that you use for the business that you operate in your personal capacity, then your assertion that “ownership of the original work belongs to Mankind Pictures” would not be inconsistent with raising the claim in your own name.

To clarify this issue, if you submit a second amended claim, you must provide some specific allegations about how you own, or have an exclusive license to use, the exclusive rights at issue. For example, if the statements in the Project Document about Mankind Pictures’ ownership do not reflect the current copyright owner of the work at issue, you should explain the inaccuracy. If Mankind Pictures is not a separate entity but is simply a name under which you do business, you may amend the claim to explain that relationship. In the alternative, if Mankind Pictures (rather than you) owns the exclusive rights in the work, then you may amend the claim to name Mankind Pictures as the claimant. If you submit a second amended claim with Mankind Pictures named as the claimant, then the claim allegations should explain any inaccuracy in the copyright registration records in which you claimed ownership in your own name, or explain how Mankind Pictures obtained legal or beneficial ownership of the copyright from you.

Copyright Infringement – Clarity – Infringing Activity

Your amended claim also does not include enough information or clarity about the allegedly infringing acts committed specifically by the respondent, Mark Saxenmeyer. You also do not appear to allege that The Reporters Inc. itself has infringed your copyright, or show or explain how Mr. Saxenmeyer would be responsible for any such infringement. Instead, you have focused your claim on Mr. Saxenmeyer, but you do not clearly state how *he* used any exclusive rights you have in the allegedly infringed 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.

The only factual allegation in the amended claim related to copyright infringement is: “Mark Saxenmeyer has continued to distribute The Innocent Convicts film online and at educational institutions without my permission, and has continued to profit from my work without my consent.” That bare allegation does not provide sufficient details for the Board or the respondent to understand what his allegedly infringing acts were, especially given your contradicting supplemental material. Your amended claim adds that your attorney’s January 16, 2019 letter “describes the infringing act in detail,” but the letter appears to neither describe infringing activities nor mention any activities taken by Mr. Saxenmeyer at all. Your other allegations regarding his acts, including that he “refused to provide the videos to me,” that he “was claiming ownership of The Innocent Convicts film, the name, my artistic creation, the video footage, contents and materials associated with my documentary film,” and that he “has seized the raw and final work product of The Innocent Convicts film unlawfully and has refused to provide accounting for the money raised for this project which is a breach of our agreement,” do not describe infringing activity or any other claim that the Board has the authority to resolve.

If you file a second amended claim, include more specific allegations about how the respondent himself took actions to distribute or publicly display the work. In addition, because of the statute of limitations issue discussed above, you should clearly indicate how any alleged infringement involved the unauthorized use of materials that are outside of your ownership dispute with The Reporters Inc.

Final Amendment

Your amended claim does not resolve the issues raised in the November 21, 2022 noncompliance order. If you file a second amended claim, it must state enough facts in support of the claim alleged. **This is your third and final opportunity to submit a compliant claim in this proceeding. If you raise any claims that your allegations do not support, the entire proceeding will be dismissed.** 17 U.S.C. § 1506(f)(1)(B). In the alternative, you can delete any unsupported claim allegations in your second amended claim.

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 supplementary 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