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Ruling in “Star Trek” Fan Film Dispute

BY [NANCY LU](#)/ ON JANUARY 31, 2017

Earlier this month the Central District Court of California made a ruling that Axanar Productions cannot claim fair use as a defense in the Paramount and CBS copyright lawsuit over a fan-made prequel to the Star Trek series.

In 2015, Paramount Pictures and CBS Studios filed a lawsuit against the makers of a Star Trek-inspired fan film, accusing them of copyright infringement. The dispute centers around the well-received short film, *Star Trek: Prelude to Axanar*, and the planned follow-up feature film *Axanar*.

Prelude to Axanar is an American fan-made short film, which publicly debuted on July 26, 2014 at the San Diego Comic-Con.^[1] The short film was made to raise money to sponsor a proposed full version of the *Prelude to Axanar* film. It is set in the Star Trek universe and is presented as an episode of a Federation documentary pertaining to the Four Years War with the Klingon Empire.

On December 29, 2015, CBS and Paramount Pictures filed a copyright infringement lawsuit seeking damages in the U.S. District Court for the Central District of California, stating *Axanar* works infringe their rights by making use of the Klingon language and “innumerable copyrighted elements of Star Trek, including its settings, characters, species, and themes.”^[2]

On March 28, 2016, Axanar Productions filed a motion for summary judgment^[3] on Paramount and CBS’s claims. The summary judgment motion raised two core issues—whether the *Axanar* works are substantially similar to the Star Trek copyrighted works, and whether Defendants have a valid fair use defense under the Copyright Act. The motion for summary judgement was denied by the Court earlier this month and the case is currently scheduled for a jury trial in January, 2017.^[4]

The Court in its order addressed the two core issues separately. With respect to the first issue, the Court found that the *Axanar* works have objective substantial similarity to the Star Trek copyrighted works. The Court ruled that the question of subjective substantial similarity should be decided by the jury.^[5]

In addressing the second issue, the Court said, “[i]n the event that the jury finds substantial similarity under the intrinsic test and hence copyright infringement, Defendants nonetheless may be free from liability if they can establish that their copying falls within fair use.”^[6] The Court then listed the four factors to determine the fair use defense under the Copyright Act.

After weighing these factors, District Court Judge Robert Klausner concluded that the fan film is not entitled to a fair use defense, and stated that the rejection of *Axanar's* fair use defense is consistent with copyright law's very purpose because derivatives are "an important economic incentive to the creation of originals."^[7]

The case is now headed to trial, which means that the ultimate decision may sit in the hands of a jury. The Court's order on the motion provided two possible outcomes of the case. If the jury does not find subjective substantial similarity, *Axanar* did not infringe and fair use defense is moot. On the other hand, if the jury finds there is subjective substantial similarity, the *Axanar* works are rightfully considered derivative works of the Star Trek copyrighted works.^[8]

This means that a determination by a reasonable person as to whether the total concept and feel of the fan-film is substantially similar to the original Star Trek works will, to a large degree, decide the outcome of the case.

Moreover, despite settling the question of fair use, there is still a question of intent. Whether *Axanar* shows a "reckless disregard" or "willful blindness" to copyright, or whether they genuinely acted in good faith, will also be decided by the jury trial.^[9]

While it is still too early to draw any conclusions, the Court's denial of the motion for summary judgment is a victory for CBS and Paramount. With fair use out of the way, *Axanar's* fate now lies in the hands of the jury.

Nancy Lu is a second-year student at Benjamin N. Cardozo School of Law and a Staff Editor of the Cardozo Arts & Entertainment Law Journal.

^[1] Alan Devenish, *The Quest to Make a Studio-Quality Star Trek Movie on a Kickstarter Budget*, Wired (July 22, 2014, 6:30 AM), <https://www.wired.com/2014/07/star-trek-axanar-fan-film/>

^[2] Eriq Gardner, *Crowdfunded 'Star Trek' Movie Draws Lawsuit from Paramount, CBS*, The Hollywood Reporter (Dec. 30, 2015, 6:25 AM), <http://www.hollywoodreporter.com/thr-esq/crowdfunded-star-trek-movie-draws-851474>

^[3] *Paramount Pictures Corp. v. Axanar Productions, Inc.*, No. 2:15-CV-09938-RGK-E (C.D. CA. Jan. 3, 2017) (order denying motion for summary judgment).

^[4] Ashlee Kieler, *Lawsuit Over Star Trek Fan Flick Headed To A Jury Trial*, Consumerist (Jan. 4, 2017, 6:09 PM), <https://consumerist.com/2017/01/04/lawsuit-over-star-trek-fan-fiction-flick-headed-to-a-jury-trial/>

[5] Paramount Pictures Corp. v. Axanar Productions, Inc., No. 2:15-CV-09938-RGK-E (C.D. CA. Jan. 3, 2017) (order denying motion for summary judgment).

[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] *Id.*