

Trekkies Beware! Paramount Pictures v. Axanar Productions

By Joel M. Grossman

Movie and TV studios often allow their fans to engage in behavior which technically might violate copyright or trademark law. For example, the studio which owns the copyright to *Star Wars* might let fans produce a short video in which fans dress up as Darth Vader or Princess Leia, and act out a scene from the film. If the fans post their homemade 10 minute video on You Tube, the studio probably wouldn't mind. They might even encourage such amateur tributes, as they might keep interest in the product alive until the next sequel or prequel hits the multiplex.

But what happens if, in a studio's view, the fans go too

far and actually produce a very professional movie funded by crowdsourcing? That is the question raised by the case of *Paramount Pictures Corp. v. Axanar Productions, Inc.* The case has not been fully litigated, but the district court's ruling on cross-motions for summary judgment is both amusing and instructive.

To begin with the basic facts, plaintiff Paramount Pictures and CBS own the copyright to the *Star Trek* television shows and Paramount owns the copyright to the thirteen full-length movies that followed. While the copyright owners allowed fans to make their own amateur films, they sued when, in their view, Axanar Productions crossed the line. As the court explained, while other Trekkies have made their own Star



Trek films before with no lawsuit from Paramount, Axanar sought to go "where no man has gone before" and produce a professional Star Trek film, with a fully professional crew, many of whom worked on one or more Star Trek productions. Axanar raised over a million dollars through crowdsourcing websites to finance the production. Axanar produced and publicly released what it called

“Star Trek: Prelude to Axanar,” in order to raise money to make the full-length film. At this point Paramount sued, and each side moved for summary judgment. Paramount sought a ruling from the court of copyright infringement, while Axanar sought summary judgment on the defense of fair use.

In seeking a ruling of copyright infringement, Paramount pointed to Axanar’s use of copyright-protected elements, such as Klingons and Vulcans, and the human character Garth of Izar, all of whom appeared in the television series. In addition, Axanar used phasers, the Federation logo and even the Klingon language. While

the court noted many such similarities, it denied Paramount’s motion for summary judgment, holding that a jury must ultimately decide the issue. At the same time, the court denied Axanar’s motion seeking a judicial approval of its fair use defense. The court denied the motion, based on its application of the fair use factors. While Axanar argued that its film is actually a parody, or “mockumentary,” of the original Star Trek, the court was not convinced, noting that “Defendants set out to create films that stay faithful to the Star Trek canon and appeal to Star Trek fans.”

While neither side won its summary judgment motion, the court’s analysis leads to

the conclusion that Paramount will most likely prevail and the distribution of Axanar’s film will be enjoined. As the court stated: “Here, there is no dispute that [Paramount and CBS] have ownership of copyrights to [Star Trek], and that [Axanar]’s works are substantially similar to [Star Trek]. Thus, the copyright infringement claim can live long and prosper..”

Joel M. Grossman, Esq. has been exclusively devoted to mediation and arbitration since 2004, following his 25-year legal career as a litigator, labor negotiator, and in-house counsel overseeing complex entertainment disputes. He may be reached at jgrossman@jamsadr.com

