

Of Klingons and Copyrights: Trekkie Fan Film Hits Fair Use Flameout

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by Case Collard



A Star-Trek fan-film is boldly headed to a jury trial to determine whether Axanar Productions—the company behind the fan-film—is liable for copyright infringement. Paramount Pictures and CBS

Studios sued Axanar Productions in December 2015 after it created a 20 minute fan-film that was based in the Star Trek universe, and to stop the company's planned feature length follow-up.

The dispute started after Axanar Productions created and released a 20 minute "mockumentary" in 2014 called *Prelude to Axanar*. Axanar spent over \$100,000 that it raised through crowdfunding to create the short and upon release, it was a big success. Due to the success of *Prelude*, Axanar Productions was able to raise over \$1,000,000 through crowdfunding to fund the production of a feature length follow up. It would have been the highest budget for a piece of fan-fiction ever.

The funds were raised and production was underway, but the lawsuit changed everything. Movie studios often let fan-fiction proceed without legal action. The projects are usually supported by the most hardcore fans of the studios' projects, so it may not serve their interests to shut them down and potentially alienate fans. Paramount and CBS decided that the chance they would alienate some fans should not stop them from enforcing their copyrights against Axanar Productions.

Both parties filed summary judgment motions, but it was Axanar's shields that took a serious phaser blast. The Hon. Gary Klausner of the U.S. District Court for the Central District of California ruled that the case will proceed to trial and Axanar Productions **cannot** assert fair use. Judge Klausner found all four fair use factors weighed (heavily) in favor of Paramount and CBS. One problem for Axanar Productions that appeared in multiple factors was that, "Defendants intentionally use elements from the Star Trek

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Copyrighted Works to create works that stay true to Star Trek canon down to excruciating details.” Opinion at 11. In other words, Axanar Production’s fidelity to the existing—and copyrighted—Star Trek canon ultimately may have been its undoing.

The jury will still decide whether the projects at issue have “subjective substantial similarity” that would render Axanar Productions liable for copyright infringement. As Judge Klausner said, “If the jury finds subjective substantial similarity, the *Axanar* Works are rightfully considered derivative works of the Star Trek Copyrighted Works. Rejection of Defendants’ fair use defense is consistent with copyright’s very purpose because derivatives are an important economic incentive to the creation of originals.” Opinion at 13 (case citations omitted).

Stay tuned to see how this unique copyright dispute is resolved in the next episode.