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11 CORPORATION and CBS STUDIOS  
INC.  
12

13 UNITED STATES DISTRICT COURT  
14 CENTRAL DISTRICT OF CALIFORNIA  
15

16 PARAMOUNT PICTURES  
CORPORATION, a Delaware  
17 corporation; and CBS STUDIOS INC.,  
a Delaware corporation,  
18

19 Plaintiffs,

20 v.

21 AXANAR PRODUCTIONS, INC., a  
California corporation; ALEC PETERS,  
an individual, and DOES 1-20,  
22

23 Defendants.  
24  
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27  
28

Case No.: 2:15-cv-09938-RGK-E

**PLAINTIFFS' OPPOSITION TO  
DEFENDANTS' MOTION IN  
LIMINE NO. 4 TO PRECLUDE  
PLAINTIFFS FROM RELYING  
ON EVIDENCE REGARDING  
ITEMS THAT ARE  
UNORIGINAL, IN THE PUBLIC  
DOMAIN, OR FROM THIRD  
PARTIES**

Pre-Trial Conference: January 9, 2017  
Trial: January 31, 2017

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Plaintiffs Paramount Pictures Corporation (“Paramount”) and CBS Studios  
3 Inc. (“CBS”) (collectively, “Plaintiffs”) oppose the motion in limine by Defendants  
4 Axanar Productions, Inc. (“Axanar Productions”) and Alec Peters (“Peters”)  
5 (collectively, “Defendants”) No. 4 to exclude reference to substantial similarity to  
6 elements in the public domain, from third party sources, or that are purportedly  
7 unoriginal.

8 **I. INTRODUCTION**

9 By their motion in limine, Defendants seek to exclude from evidence claims  
10 of substantial similarity to elements that are in the public domain, are from third  
11 party sources, or that Defendants claim are unoriginal. For example, Defendants  
12 claim there is no dispute that the concept of spacecraft traveling faster than the  
13 speed of light is neither original, nor unique to Star Trek. First, Defendants’  
14 argument mischaracterize the works at issue, and Plaintiffs’ claim for copyright  
15 infringement. No claims have been asserted that Plaintiffs own the right to fictional  
16 depictions of light-speed travel. Plaintiffs are suing Defendants based on their  
17 wholesale, and deliberate, misappropriation of fictional and original elements of the  
18 Star Trek universe. Second, viewing each element in isolation, as Defendants  
19 suggest, mischaracterizes the scope of Plaintiffs’ copyright claims and would  
20 deprive the jury of the opportunity to accurately assess those claims. Furthermore,  
21 Defendants fail to recognize that the copying they engaged in, of numerous elements  
22 across the Star Trek universe, is relevant to show their copying of the look and feel  
23 of Star Trek, and to show their intentional infringement of the Star Trek works.

24 **II. FACTS**

25 **A. The Nature of the Evidence.**

26 Plaintiffs own the copyrights to over 700 Star Trek television episodes and  
27 thirteen films. Defendants have also licensed thousands of Star Trek novels, video  
28 games, and other products (collectively with television episodes and films, the “Star

1 Trek Copyrighted Works”). All of the Star Trek Copyrighted Works are a mixture  
2 of copyrightable elements that are wholly unique to Star Trek, and general science  
3 fiction elements, all of which are given original attributes or designs within the Star  
4 Trek Copyrighted Works, which original attributes or designs are equally subject to  
5 copyright protection. Plaintiffs will introduce evidence demonstrating that  
6 Defendants copied both types of elements. The jury should be given the opportunity  
7 to evaluate Defendants’ infringing material against the Star Trek Copyrighted  
8 works, both as to each element individually, and as the Star Trek Copyrighted  
9 Works were originally presented to the public.

10 Defendants also suggest that various elements of Star Trek that they copied,  
11 such as costumes and geometric shapes, even in distinct and recognizable  
12 configurations; the mood and theme of the Star Trek Copyrighted Works; the  
13 Klingon language; and multiple characters from the Star Trek Copyrighted Works  
14 are not copyrightable. This position also is not supported by copyright law, and the  
15 Court has already ruled that the elements cited by Defendants were copied from the  
16 Star Trek Copyrighted Works and, taken together, are “qualitatively important”  
17 enough for a finding of substantial similarity. Dkt. No. 163, p. 8 (see also pp. 6-7)  
18 (“Although each of these elements [including costumes, phasers, starship designs,  
19 fictional planets, architecture, spacedocks, the federation logo, stardates, warp drive,  
20 transporters, and the Klingon language] may not be individually original and  
21 copyright protectable, they are ‘numerous enough and their selection and  
22 arrangement original enough that their combination constitutes an original work of  
23 authorship,’ especially when combined with the costumes and fictional characters  
24 and species, examples of which are described above.”).

### 25 **III. ARGUMENT**

#### 26 **A. Elements Allegedly in the Public Domain or Common to All** 27 **Science Fiction.** 28

1 Whether each of the items that Defendants argue should be excluded are  
2 individually protectable by copyright is not relevant to their admissibility. Even  
3 potentially unprotected elements “may gain some protection in combination with  
4 each other. Specific combinations of unprotectable elements may be copyrightable,  
5 provided that the elements combined ‘are numerous enough and their selection and  
6 arrangement original enough that their combination constitutes an original work of  
7 authorship.’” *Muromura v. Rubin Postaer & Assocs.*, CV 12-09263 DDP AGRX,  
8 2015 WL 1728324, at \*3-4 (C.D. Cal. 2015) citing *Satava v. Lowry*, 323 F.3d 805,  
9 810 (9th Cir. 2003). This position was adopted by this court in the context of the  
10 infringing elements of the Axanar Works. Dkt. No. 163, pp. 6-7

11 Given its long history, Star Trek does use, and in some cases created, many  
12 established elements of the outer-space science fiction genre. However, the  
13 particular combination of these elements, and their unique attributes, especially  
14 when viewed alongside elements unique to the franchise, creates the unmistakable  
15 Star Trek universe. Under 17 U.S.C. section 106, Plaintiffs have the exclusive right  
16 to create derivative works by recasting, transforming, or adapting those elements to  
17 tell new stories in the same Star Trek universe. *DC Comics v. Towle*, 802 F.3d  
18 1012, 1023 (9th Cir. 2015). Incorporating similar themes and mood is an important  
19 factor in connecting a the derivative work to the original. *Benay v. Warner Bros.*  
20 *Entertainment, Inc.*, 607 F.3d 620, 625 (9th Cir. 2010) (“protectable elements”  
21 include “plot, themes, dialogue, mood, setting, pace, characters, and sequence of  
22 events . . . .”). Therefore, the jury should be permitted to consider every aspect of  
23 the Star Trek Copyrighted Works, including the themes and mood, when deciding  
24 whether the Axanar Works copied the Star Trek Copyrighted Works.

25 It should also be noted that several of the items listed as being in the public  
26 domain are over-generalizations of elements found in the Star Trek Copyrighted  
27 Works. As they are described (or perhaps more accurately, mis-described) by  
28 Defendants, these elements might not be individually subject to copyright protection

1 but, as they appear in the Star Trek Copyrighted Works, they undoubtedly are. For  
2 example, the appearance of Vulcans in Star Trek is more than just “pointy ears,” as  
3 Defendants suggest. Vulcans in the Star Trek Copyrighted Works eschew emotions  
4 for logic and reason. They are also depicted with straight dark (or gray) hair cut in a  
5 “bowl” style. Their characteristics are distinct and have been developed over many  
6 works. Taken together, these additional original elements make Vulcans easily  
7 distinguishable from the other fictional, pointy-eared, races listed by Defendants,  
8 and certainly subject to copyright protection. In fact, they have become iconic  
9 characters, completely and easily identified with Star Trek. Again, this Court has  
10 already found that the characteristics of both Klingons and Vulcans, “may be  
11 entitled to copyright protection.” Dkt. No. 163, p. 6.

12 “Transporters” in the Star Trek Copyrighted Works are also unique.  
13 Teleportation is not a novel concept, but the method of achieving the effect in Star  
14 Trek is extremely particular: the subject is converted into an energy pattern and  
15 stored in the ship memory banks, then is “beamed” to a target location where it  
16 rematerializes. In the Star Trek Copyrighted Works, transporters have various  
17 recognizable features and limitations that Defendants appropriate, such as the use of  
18 . Declaration of  
19 David Grossman (“Grossman Decl.”) ¶ 2, Ex. A at p. 34. All of these elements are  
20 original and protected by copyright.

21 “Warp” drive is another element that Defendants characterize as generic, but  
22 is unique in its execution in the Star Trek Copyrighted Works. Starships in the Star  
23 Trek Copyrighted Works generate a “warp field” by mixing matter and anti-matter  
24 in a “warp core” and distributing the resulting energy to “warp nacelles” that  
25 protrude from the sides of the ship. The fictional science behind this technology  
26 underlies the design language used in the Star Trek Copyrighted Works, most  
27 prominently that warp-capable starships feature “warp nacelles” and “warp cores.”  
28 Defendants’ use of the same fictional science requires that they adopt the same

1 design language, which is visible in the final design of the USS Ares and all concept  
2 art produced for the Axanar Works. *See* Grossman Decl. ¶ 4, Exs. B-C.

3 The use of “phasers” is another element that is unique to the Star Trek  
4 Copyrighted Works. Defendants describe phasers as a heat-ray weapon similar to  
5 those that appear in H. G. Wells’ “War of the Worlds.” However, a phaser is a  
6 particle-beam weapon that was originated for the Star Trek Copyrighted Works and,  
7 like transporter technology, has original unique and recognizable features and  
8 limitations that Defendants appropriate. For example, the proposed Axanar feature  
9 film includes [REDACTED]. Grossman Decl.

10 ¶ 2, Ex. A at page 28. Defendants also created phaser designs, using Star Trek  
11 phasers as a template, in creating the Axanar Works. Grossman Decl. ¶ 5, Exs. D-E.

12 In all cases where Defendants’ defense to infringement is based on part of the  
13 infringed elements being in the public record, or of a common origin, Defendants  
14 have mischaracterized the nature of the copied elements, or have mischaracterized  
15 Plaintiffs’ claims. The fictional elements that make up the Star Trek universe are  
16 creative and original and Defendants’ motion in limine is not the appropriate vehicle  
17 to argue issues that have already been determined by the Court. Only a “scintilla of  
18 creativity” is sufficient to obtain copyright protection, and the Court has already  
19 ruled that original elements from Plaintiffs’ works have been copied by Defendants.  
20 *See Luck’s Music Library, Inc. v. Ashcroft*, 321 F. Supp. 2d 107, 118 (D.D.C. 2004),  
21 *aff’d sub nom. Luck’s Music Library, Inc. v. Gonzales*, 407 F.3d 1262 (D.C. Cir.  
22 2005) (describing originality as requiring independent creation and “just a scintilla  
23 of creativity”).

#### 24 **B. Characters Taken from Star Trek.**

25 Defendants list a number of characters as being too ‘minor’ to warrant  
26 copyright protection, which may be properly afforded to characters in a television  
27 program or motion picture. *See Olson v. National Broadcasting Co., Inc.*, 855 F.2d  
28 1446 (9th Cir. 1988). Again, this issue has already been determined by the Court,

1 and Defendants' arguments regarding characters copied from the Star Trek  
2 Copyrighted Works has been rejected.

3 While it is possible for a stock character to lack the unique attributes  
4 necessary for copyright protection, none of the characters listed by Defendants are  
5 so "lightly sketched" in the Star Trek Copyrighted Works as to be unprotectable.  
6 *See Rice v. Fox Broadcasting Co.*, 330 F.3d 1170, 1175 (9th Cir. 2003) (magician in  
7 standard magician garb performing magic tricks not sufficiently distinctive). Rather  
8 each of the characters is "sufficiently delineated" and displays, "consistent, widely  
9 identifiable traits" as described below. *DC Comics*, 802 F.3d at 1019.

10 Garth of Izar, the U.S.S. Enterprise, Soval the Vulcan Ambassador, Klingons  
11 and Vulcans are all copyrightable characters, and the Court has already ruled that  
12 Defendants' Axanar Works copied these characters and original elements, and are  
13 substantially similar to Plaintiffs' works. Dkt. No. 163, p. 8-9 ("The Axanar Works  
14 are substantially similar to the Star Trek Copyrighted Works, at least under the  
15 extrinsic test."). And with respect to Garth of Izar, the Court has already held that it  
16 "does not agree that Garth, being a featured character in one television episode, the  
17 title character of one novel, and having appeared in *Four Years War*, is obscure or  
18 lightly sketched." Dkt. No. 163, p. 8.

### 19 **C. Geometric Shapes, Costumes, and the Klingon Language.**

20 "An author's expressive combination or arrangement of otherwise noncopy-  
21 rightable elements (like geometric shapes) may satisfy the originality requirement."  
22 *Kelley v. Chicago Park Dist.*, 635 F.3d 290, 303 (7th Cir. 2011) citing *Roulo v. Russ*  
23 *Berrie & Co.*, 886 F.2d 931, 939 (7th Cir. 1989). Here, the jury should be permitted  
24 to evaluate the various elements that make up the Star Trek universe, including the  
25 symbols, insignia, dialogue, costumes and props used in the Star Trek Copyrighted  
26 Works, and appropriated by the Defendants.

27 Again, the Court has already addressed, and rejected, Defendants' assertion  
28 that these elements are not the proper subject of this suit. Dkt No. 163, pp. 6-7 ("All

1 these elements appear in the Axanar Works. Although each of these elements may  
2 not be individually original and copyright protectable, they are ‘numerous enough  
3 and their selection and arrangement original enough that their combination  
4 constitutes an original work of authorship,’ especially when combined with the  
5 costumes and fictional characters and species, examples of which are described  
6 above.”).

7 The elements taken by Peters in order to painstakingly re-create the Star Trek  
8 universe are original and, even those elements that Defendants argue are not subject  
9 to independent copyright protection, when combined with other elements, may be  
10 analyzed by the jury to determine that Defendants appropriated the concept and feel  
11 of the Star Trek Copyrighted Works.

12 Moreover, Defendants are incorrect in their assertion that the elements  
13 identified in their motion are not original or copyrightable. For example, the  
14 Klingon logo that Defendants refer to as “simply a three-pointed star” is actually an  
15 intricate combination of three different triangular shapes partly surrounded by a  
16 circle (reproduced below from Plaintiffs’ First Amended Complaint (*See* Dkt. No.  
17 47 at ¶ 46, 28:3-15)).



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22 Defendants also misapply the “useful article doctrine” to the costumes they  
23 appropriated from the Star Trek Copyrighted Works. In the realm of costumes, this  
24 doctrine does not prevent copyright protection for “individual design elements... so  
25 long as those design elements are physically or conceptually separable from the  
26 article itself.” *Chosun v. Int’l., Inc. v. Chrisha Creations, Ltd.*, 413 F.3d 324, 326  
27 (2nd Cir. 2005). Importantly, no Court has ever held that fictional uniforms and  
28 costumes are “useful articles” – which is obvious as those costumes are neither

1 “useful” nor are they physical “articles.” Furthermore, although colored shirts may  
2 not be copyrightable in isolation, the color patterns utilized in the Star Trek works,  
3 and copied by Defendants, are original and unique to Star Trek, and the jury should  
4 be allowed to consider Defendants’ appropriation of the original Star Trek pattern of  
5 clothing when determining whether Defendants copied the look and feel of the Star  
6 Trek Copyrighted Works. The jury should also be able to consider similar designs  
7 of clothing with respect to the other races, such as the use of particular robes for  
8 Vulcans and battle gear for Klingons.

9 The jury should also be able to decide that Defendants’ incorporation of the  
10 Klingon language into their Axanar Works contributed to Defendants’ appropriation  
11 of the concept and feel of the Star Trek Copyrighted Works. Although Defendants  
12 argue that the Klingon language is not subject to copyright, that is not determinative  
13 of whether or not Defendants’ use of that language may be considered in  
14 determining copyright infringement.<sup>1</sup> Klingon is a completely original and fictitious  
15 language to be spoken by Klingons, and Defendants’ use of that language in order to  
16 faithfully recreate the look and feel of the Star Trek Copyrighted Works is an  
17 appropriate part of the infringement analysis.

#### 18 **IV. CONCLUSION**

19 For the foregoing reasons, Plaintiffs respectfully request that Defendants’  
20 motion in limine no. 4 to preclude Plaintiffs from relying on evidence regarding  
21 items that they claim are unoriginal, in the public domain, or from third parties, be  
22 denied.

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23  
24 <sup>1</sup> Further *Klingon* is not a complete system as contemplated by some courts in  
25 discussing the lack of copyright protection for systems of expression. *See Oracle*  
26 *Am., Inc. v. Google Inc.*, 750 F.3d 1339 (Fed. Cir. 2014) (discussing copyright  
27 protection in computer source code). Instead, the language, licensed by Paramount,  
28 has only 3000 words and is difficult to use outside of describing life for a space-  
faring warrior race of aliens, or satirizing Star Trek fans. For comparison, according  
to Miriam-Webster, English may have as many as one million words. *See Help –*  
*How many words are there in English?*, [https://www.merriam-](https://www.merriam-webster.com/help/faq-how-many-english-words)  
[webster.com/help/faq-how-many-english-words](https://www.merriam-webster.com/help/faq-how-many-english-words) (last visited Dec. 29, 2016).

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