
Whimsical Fair Use Ruling Undermines Copyright Law

Summary Judgment Ruling Finds that Dr. Seuss-*Star Trek* Mashup Constitutes Fair Use

By: Chris Eggert & Reid Huefner | March 25, 2019

A California District Court has ruled on summary judgment that a publication entitled “*Oh, the Places You’ll Boldly Go!*”—a self-described “mashup” of the Dr. Seuss copyrighted publication “*Oh, the Places You’ll Go!*” and *Star Trek*—is fair use of the Dr. Seuss elements. Despite the Defendants admitting that they copied liberally from the copyrighted work, and admittedly not having a license for the *Star Trek* elements either, the Court nonetheless found that the accused work, despite being commercial in nature, was “highly transformative” due to the inclusion of *Star Trek* elements, and that the Defendants “only copied as much as was necessary for their intended use,” i.e., creating a parody of the copyrighted work (though the Court determined that the created work did not actually rise to the level of a parody). Finding two factors weighed in favor of the Defendants (the purpose and character of the use and the amount and substantiality of the portion used in relation to the copyrighted work as a whole), one factor weighed in favor of the Plaintiff (the nature of the copyrighted work), and the final factor was neutral (the market effect of the use), the Court concluded that the Defendants’ use constituted fair use.

The Plaintiff had made the argument, based on the 2018 Federal Circuit case *Oracle America, Inc. v. Google LLC*, 886 F.3d 1179, that the Defendants’ addition of new content “stolen” from another copyright holder (i.e., *Star Trek* trademarks and references) did not lessen the substantiality of elements taken from the copyrighted work. The Court did not expressly address this argument, instead finding that *Oracle* was inapposite as, instead of the complete copying that characterized *Oracle*, the “copied elements are always interspersed with original writing and illustrations that transform [the copyrighted work]’s pages into repurposed, *Star-Trek* centric ones.” Additionally, the Court found that the case was most analogous to *Liebovitz v. Paramount Pictures Corp.*, 137 F.3d 109 (2d Cir. 1998), and analyzed the taking of non-protected elements of the copyrighted work that appeared in the allegedly infringing work.

As the fair use analysis is a multi-factor balancing test, results are difficult to predict. However, the Court’s decision is surprising, considering the Defendants’ detailed copying of several complete images from the copyrighted work and the lack of a license to the *Star Trek* elements as well. If the decision stands, further “mash-ups” are likely to be attempted with this decision being cited to as a shield in subsequent litigations.