

1 LOEB & LOEB LLP
DAVID GROSSMAN (SBN 211326)
2 dgrossman@loeb.com
JENNIFER JASON (SBN 274142)
3 jjason@loeb.com
10100 Santa Monica Blvd., Suite 2200
4 Los Angeles, CA 90067
Telephone: 310.282.2000
5 Facsimile: 310.282.2200

6 LOEB & LOEB LLP
JONATHAN ZAVIN (Admitted *pro hac vice*)
7 jzavin@loeb.com
345 Park Avenue
8 New York, NY 10154
Telephone: 212.407.4000
9 Facsimile: 212.407.4990

10 Attorneys for Plaintiffs
PARAMOUNT PICTURES
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
25
26
27
28

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

**PLAINTIFFS' OPPOSITION TO
RENEWED APPLICATION FOR
LEAVE TO FILE BRIEF AS
AMICUS CURIAE BY
LANGUAGE CREATION
SOCIETY AND REQUEST FOR
SANCTIONS**

Trial: January 31, 2017

I. INTRODUCTION

Well after completion of all of the briefing on Plaintiffs’ and Defendants’ Motions for Summary Judgment (the “Motions”), and well after the Court took the Motions under submission, the Language Creation Society (“LCS”) renewed its application to file an amicus curiae brief, which was previously filed after the parties fully briefed Defendants’ Motion to Dismiss the First Amended Complaint, arguing the hypothetical issue of whether a fictional language is copyrightable, and asking the Court to make factual findings based on hearsay. This renewed application was filed one month before trial, despite the fact that LCS was given notice of the Motions over a month prior. The purported authority LCS has submitted for this filing is California Code of Civil Procedure Section 1008, which is a rule that has no application to this Court, and would not permit the proposed filing even if this case were pending in state court.

Courts may grant leave to file an amicus brief if the information provided is timely and useful. *Nat’l Petrochemical & Refiners Ass’n v. Goldstene*, 2010 U.S. Dist. LEXIS 61394 (E.D. Cal. June 3, 2010). The proposed amicus brief is neither. Moreover, LCS failed to meet and confer with Plaintiffs seven days prior to filing its application. Here, LCS’ request should be denied as untimely, irrelevant, and procedurally improper, and Plaintiffs seek sanctions for this improper filing. In the alternative, if the Court grants the request, Plaintiffs respectfully request that they be given the time to meaningfully respond to the amicus brief.

II. ARGUMENT

A. This Application is Untimely and Improper.

The Federal Rules of Civil Procedure do not provide for LCS’ filing of an amicus brief in a district court. Further, even if there were a procedure for such a filing, amicus briefs are not permitted when they are untimely. *Jamul Action Comm. v. Jonodev Chaudhuri*, 2015 U.S. Dist. LEXIS 51133 (E.D. Cal. Apr. 16, 2015), citing *Cnty. Ass’n for Restoration of Env’t (CARE) v. DeRuyter Bros. Dairy*, 54 F.

1 Supp. 2d 974, 975 (E.D. Wash. 1999) and *Northern Sec. Co. v. United States*, 191
2 U.S. 555, 556 (1903). Courts have held that amicus briefs are untimely when they
3 are filed after the parties' briefing on the pertinent motion has already been
4 completed. *See, e.g., Hawksbill Sea Turtle v. FEMA*, 11 F. Supp. 2d 529, 541
5 (D.V.I. 1998) (denying motion for leave to submit amicus brief as untimely when it
6 was submitted after the briefing was completed).

7 Here, Plaintiffs and Defendants each moved for summary judgment on
8 November 16, 2016. Plaintiffs and Defendants each submitted their opposition to
9 the Motions on November 28, and Plaintiffs and Defendants submitted their replies
10 on December 5. The hearing on the Motions was originally set for December 19,
11 and it was taken off calendar, having been fully submitted to the Court. LCS waited
12 a month and a half after the filing of the Motions, after both sides had already
13 completed their briefing, to file its renewed application to file an amicus brief. Its
14 filing was on December 29, 10 days *after* the hearing date set for the Motions. This
15 is extraordinarily untimely. There is no provision in the Federal Rules or in this
16 Court's local rules for filing a separate opposition to an amicus brief, and Plaintiffs
17 do not have enough time to provide a substantive response, nor would the Court
18 have sufficient time to review that response, in advance of ruling on the Motions.
19 LCS offers no justification for its failure to submit an amicus brief earlier.

20 Further, although there are no applicable district court rules, in a federal
21 appellate court, LCS would have been permitted to file only a 10 page brief, or half
22 the length of the Motions for Summary Judgment. Fed. R. App. P. 29(d) ("Except
23 by the court's permission, an amicus brief may be no more than one-half the
24 maximum length authorized by these rules for a party's principal brief."). This was
25 pointed out to LCS the first time that it attempted to file its amicus brief, in May
26 2016. Here, on an issue to which each of the parties devoted no more than a few
27 sentences in their respective briefs, LCS submitted 19 page brief – virtually the
28 same length as allowed to the Plaintiffs to respond to Defendants' entire

1 multifaceted Motion for Summary Judgment. This alone makes the amicus brief
2 completely improper.

3 **B. LCS Failed to Meet and Confer.**

4 LCS was required to meet and confer seven days before filing its application
5 pursuant to Local Rule 7-3. LCS never met and conferred with Plaintiffs. Instead, a
6 law clerk for counsel for LCS sent an email to counsel for Plaintiffs the day before
7 LCS filed its application, stating that counsel for LCS would like to meet and confer
8 about the renewed application “soon.” Declaration of David Grossman, ¶ 2, Ex. A.
9 Less than 24 hours later, LCS filed its improper, renewed application. Dkt. No. 156.
10 The Court should deny the application because LCS failed to meet and confer.

11 **C. The Issues in the Amicus Brief Are Not Before The Court.**

12 An application to file an amicus brief should be denied when it addresses
13 issues that are not before the court or issues that are not necessary for the Court’s
14 disposition of the motion at issue. *See Juniper Networks v. Shipley*, 2010 U.S. Dist.
15 LEXIS 24889, 94 U.S.P.Q.2d (BNA) 1934 (N.D. Cal. Mar. 16, 2010)(denying
16 motion for leave to file amicus brief when the brief addressed an issue that the court
17 would not even reach); *Gingery v. City of Glendale*, 2014 U.S. Dist. LEXIS 107598
18 (C.D. Cal. Aug. 4, 2014)(denying request to appear as amicus curiae when “none of
19 the information provided by the proposed Amicus applicants [wa]s necessary for the
20 Court’s disposition of the present motions”).

21 In its application and amicus brief, LCS is asking the Court for an advisory
22 opinion on whether fictional languages are copyrightable. This is not at issue in the
23 Motions for Summary Judgment. At the summary judgment stage, the Court will
24 determine whether there are no material facts in dispute that Defendants have
25 infringed Plaintiffs’ Star Trek Copyrighted Works. The Court has not been asked to
26 determine the independent copyrightability of the Klingon language (or fictitious
27 languages in general) outside of context of Star Trek works. It is the use of the
28

1 Klingon language in this context that will be before the Court, not the
2 copyrightability of languages in general.

3 **D. LCS is Improperly Asking the Court to Make Factual Findings**
4 **Based on Hearsay.**

5 LCS's primary argument is that, because the fictitious Klingon language has
6 become a "living language," it is not copyrightable, or at least is no longer
7 copyrightable. To support this factual contention regarding whether or not Klingon
8 is a "living language," LCS submits numerous hearsay exhibits. Based on these
9 exhibits, which are hearsay, irrelevant and outside of the record in this case, LCS
10 invites the Court to make factual findings as to whether Klingon is a "living
11 language."¹ Because it relies on exhibits not properly before the Court, the renewed
12 application to file an amicus brief should be denied.

13 **E. LCS Should be Sanctioned.**

14 Local Rule 11-9 provides that: "The presentation to the Court of frivolous
15 motions or opposition to motions (or the failure to comply fully with this rule)
16 subjects the offender at the discretion of the Court to the sanctions of L.R. 83-7."²

17 LCS should be sanctioned for filing a renewed application over a month after
18 the parties filed their Motions, which were fully briefed and submitted, of improper

19 _____
20 ¹ While not attempting to substantively respond to amicus's arguments, it is
21 worth noting that LCS's purported 'evidence' of the Klingon language not being
22 copyrightable includes such things as an unauthenticated news report that one couple
23 "spoke" Klingon while getting married at a Star Trek convention. Under this
theory, had the couple dressed up as Professor Higgins and Eliza Doolittle and been
married in Covent Garden, presumably *My Fair Lady* would no longer be
copyrightable.

24 ² Local Rule 83-7 states that "The violation of or failure to conform to any of
these Local Rules may subject the offending party or counsel to:

25 (a) monetary sanctions, if the Court finds that the conduct was willful, grossly
negligent, or reckless;

26 (b) the imposition of costs and attorneys' fees to opposing counsel, if the
27 Court finds that the conduct rises to the level of bad faith and/or a willful
disobedience of a court order; and/or

28 (c) for any of the conduct specified in (a) and (b) above, such other sanctions
as the Court may deem appropriate under the circumstances."

1 length, and without a reasonable attempt to meet and confer. Plaintiffs seek their
2 attorneys' fees in opposition this application.

3 **F. If the Brief is Allowed, Plaintiffs Seek Leave to File a Response.**

4 If the brief by LCS is allowed, Plaintiffs request a meaningful opportunity to
5 respond. The LCS brief was filed on December 29, after the parties had completed
6 their briefing on the Motions and after the Motions had been taken under submission
7 by the Court. In the event that the Court allows the filing of the amicus brief,
8 Plaintiffs request that the Court set a date by which they can file a substantive
9 response. Plaintiffs further request that such response be permitted to be 15 pages in
10 length given that LCS submitted a 19-page brief.

11 **III. CONCLUSION**

12 LCS' brief is untimely, of improper length, and attempts to have the Court
13 review information based on inadmissible hearsay. Nonparty LCS should not be
14 permitted to insert itself in the litigation at this stage in the proceedings, one month
15 before trial, to add unnecessary complication. Moreover, LCS should be sanctioned
16 for its frivolous filing.

17
18 Dated: December 30, 2016

LOEB & LOEB LLP
JONATHAN ZAVIN
DAVID GROSSMAN
JENNIFER JASON

19
20 By: /s/ David Grossman
21 David Grossman
22 Attorneys for Plaintiffs
23 PARAMOUNT PICTURES
24 CORPORATION and CBS STUDIOS
25 INC.
26
27
28