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PARAMOUNT PICTURES
11 CORPORATION and CBS STUDIOS
INC.

12
13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA
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16 PARAMOUNT PICTURES
CORPORATION, a Delaware
17 corporation; and CBS STUDIOS INC.,
a Delaware corporation,

18 Plaintiffs,

19 v.

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

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

**PLAINTIFFS' REPLY RE:
DEFENDANTS' RESPONSE TO
PLAINTIFFS' STATEMENT OF
UNCONTROVERTED FACTS
AND CONCLUSIONS OF LAW
AND ADDITIONAL MATERIAL
FACTS IN OPPOSITION TO
PLAINTIFFS' MOTION FOR
PARTIAL SUMMARY
JUDGMENT**

Date: December 19, 2016
Time 9:00 a.m.
Dept.: 850

Discovery Cutoff: November 2, 2016
Pre-Trial Conference: January 9, 2017
Trial: January 31, 2017

1 Plaintiffs’ Paramount Pictures Corporation and CBS Studios Inc. submit this
 2 statement of genuine issues pursuant to Central District of California Local Rule
 3 56-2 in opposition to the motion for summary judgment herein filed by Defendants
 4 Axanar Productions, Inc. and Alec Peters.

5 Facts 1 through 117 below correspond to the facts and supporting evidence
 6 presented in the Statement of Uncontroverted Facts filed by the moving party.
 7 These facts are followed by additional material facts and supporting evidence.

8 **I. RESPONSE TO PLAINTIFFS’ STATEMENT OF UNCONTRO-**
 9 **VERTED FACTS**

“Undisputed” Facts	Opposing Party’s Responses
<p>11 1. Plaintiffs Paramount Pictures 12 Corporation (“Paramount”) and CBS Studios 13 Inc. (“CBS”) (collectively, “Plaintiffs”), own 14 the copyrights to the Star Trek films and 15 television series. 16 Declaration of David Grossman 17 (“Grossman Decl.”), ¶ 90, Ex. UU (copyright 18 registrations for the Star Trek Television 19 Series), ¶ 91, Ex. VV (copyright registrations 20 for the Star Trek Motion Pictures). 21 Declaration of John Van Citters (“Van 22 Citters Decl.”), ¶¶ 8, 10.</p>	<p>Undisputed See Evidentiary Objections to Van Citters Decl. PLAINTIFFS’ REPLY: The fact is undisputed.</p>
<p>23 2. Plaintiff CBS owns the rights to <i>The</i> 24 <i>Original Series</i>, as well as to all of the 25 subsequent Star Trek Television Series. 26 Van Citters Decl., ¶ 8. 27 Grossman Decl., ¶ 90, Ex. UU</p>	<p>Undisputed See Evidentiary Objections to Van Citters Decl.</p>

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“Undisputed” Facts	Opposing Party’s Responses
(copyright registrations for the Star Trek Television Series).	<p><i>See also</i> Evidentiary Objections to Grossman Decl.</p> <p>PLAINTIFFS’ REPLY: The fact is undisputed.</p>
<p>3. Paramount owns the copyrights in the Star Trek Motion Pictures.</p> <p>Van Citters Decl. ¶ 10. Grossman Decl., ¶ 91, Ex. VV</p> <p>(copyright registrations for the Star Trek Motion Pictures).</p>	<p>Undisputed</p> <p><i>See</i> Evidentiary Objections to Van Citters Decl.</p> <p><i>See also</i> Evidentiary Objections to Grossman Decl.</p> <p>PLAINTIFFS’ REPLY: The fact is undisputed.</p>
<p>4. Paramount owns the copyright in the novel entitled <i>Garth of Izar</i>.</p> <p>Van Citters Decl., ¶ 11. Grossman Decl., ¶ 94, Ex. WW</p> <p>(copyright registration for <i>Garth of Izar</i> novel), Ex. 21 (<i>Garth of Izar</i> novel).</p>	<p>Undisputed</p> <p><i>See</i> Evidentiary Objections to Van Citters Decl.</p> <p><i>See also</i> Evidentiary Objections to Grossman Decl.</p> <p>PLAINTIFFS’ REPLY: The fact is undisputed.</p>
<p>5. CBS owns the copyright in the novel</p>	<p>Undisputed</p>

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“Undisputed” Facts	Opposing Party’s Responses
<p>entitled <i>Strangers from the Sky</i>. Van Citters Decl., ¶ 11. Grossman Decl., ¶ 95, Ex. XX (copyright registration for <i>Strangers from the Sky</i>).</p>	<p><i>See</i> Evidentiary Objections to Van Citters Decl. <i>See also</i> Evidentiary Objections to Grossman Decl. PLAINTIFFS’ REPLY: The fact is undisputed.</p>
<p>6. CBS owns the copyright in the novel entitled <i>Infinity’s Prism</i>. Van Citters Decl., ¶ 11. Grossman Decl., ¶ 95, Ex. YY (copyright registration for <i>Infinity’s Prism</i>).</p>	<p>Undisputed <i>See</i> Evidentiary Objections to Van Citters Decl. <i>See also</i> Evidentiary Objections to Grossman Decl. PLAINTIFFS’ REPLY: The fact is undisputed.</p>
<p>7. The original Star Trek television series (“<i>The Original Series</i>”) debuted in 1966, and ran for three seasons, until 1969. Van Citters Decl., ¶ 5. Grossman Decl., ¶ 92, Ex. 1 (<i>The Original Series</i> DVDs).</p>	<p>Undisputed <i>See</i> Evidentiary Objections to Van Citters Decl. <i>See also</i> Evidentiary Objections to Grossman Decl.</p>

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“Undisputed” Facts	Opposing Party’s Responses
	<p>PLAINTIFFS’ REPLY: The fact is undisputed.</p>
<p>8. In addition to <i>The Original Series</i>, there have been five further Star Trek television series totaling more than 700 episodes (collectively with <i>The Original Series</i>, the “Star Trek Television Series”).</p> <p>Van Citters Decl., ¶¶ 3, 4. Grossman Decl., ¶ 90, Ex. UU (copyright registrations for the Star Trek Television Series), ¶ 92, Exs. 1-5 (Star Trek Television Series DVDs).</p>	<p>Undisputed</p> <p><i>See</i> Evidentiary Objections to Van Citters Decl.</p> <p><i>See also</i> Evidentiary Objections to Grossman Decl.</p> <p>PLAINTIFFS’ REPLY: The fact is undisputed.</p>
<p>9. <i>The Original Series</i> chronicled the adventures of the U.S.S. Enterprise (one of the ships of “Starfleet”) and its crew as they traveled through space during the twenty-third century, and featured numerous original and copyrightable elements, including but not limited to elements such as the plots of the episodes, mood, theme, characters, settings, pace and numerous original and copyrightable elements such as the Starship Enterprise (Starfleet registry number NCC-1701), original and fictitious races and species, including the Vulcan and Klingon races, the</p>	<p>Undisputed</p> <p><i>See</i> Evidentiary Objections to Van Citters Decl.</p> <p><i>See also</i> Evidentiary Objections to Grossman Decl.</p> <p>PLAINTIFFS’ REPLY: The fact is undisputed.</p>

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“Undisputed” Facts	Opposing Party’s Responses
<p>United Federation of Planets (the “Federation”), and fictional weapons and technology.</p> <p>Van Citters Decl., ¶ 5.</p> <p>Grossman Decl., ¶ 92, Ex. 1 (<i>The Original Series</i> DVDs).</p>	
<p>10. In “Whom Gods Destroy,” one of the episodes of <i>The Original Series</i>, James T. Kirk (played by the actor William Shatner), the Captain of the U.S.S. Enterprise, meets his hero, <i>Garth of Izar</i>, a former starship captain.</p> <p>Van Citters Decl., ¶ 6.</p> <p>Grossman Decl., ¶ 92, Ex. 1 (<i>The Original Series</i> DVDs).</p>	<p>Undisputed</p> <p><i>See</i> Evidentiary Objections to Van Citters Decl.</p> <p><i>See also</i> Evidentiary Objections to Grossman Decl.</p> <p>PLAINTIFFS’ REPLY:</p> <p>The fact is undisputed.</p>
<p>11. In “Whom Gods Destroy,” Kirk and Garth discuss Garth’s victory in the Battle of Axanar.</p> <p>Van Citters Decl., ¶ 6.</p> <p>Grossman Decl., ¶ 92, Ex. 1(<i>The Original Series</i> DVDs).</p>	<p>Undisputed</p> <p><i>See</i> Evidentiary Objections to Van Citters Decl.</p> <p><i>See also</i> Evidentiary Objections to Grossman Decl.</p> <p>PLAINTIFFS’ REPLY:</p> <p>The fact is undisputed.</p>

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“Undisputed” Facts	Opposing Party’s Responses
<p>12. The newest television series, <i>Star Trek: Discovery</i>, will premiere in 2017.</p> <p>Van Citters Decl., ¶ 7.</p>	<p>Undisputed</p> <p>See Evidentiary Objections to Van Citters Decl.</p> <p>PLAINTIFFS’ REPLY: The fact is undisputed.</p>
<p>13. <i>Star Trek: Discovery</i> takes place ten years before the events depicted in <i>The Original Series</i>.</p> <p>Van Citters Decl., ¶ 7.</p>	<p>Undisputed</p> <p>See Evidentiary Objections to Van Citters Decl.</p> <p>PLAINTIFFS’ REPLY: The fact is undisputed.</p>
<p>14. Plaintiffs have licensed numerous derivative works, including books, games and merchandise. These works also include reference guides, encyclopedias, documentaries, behind the scenes books, dictionaries and “companions” to various television series.</p> <p>Van Citters Decl., ¶¶ 12, 64-65.</p>	<p>Undisputed</p> <p>See Evidentiary Objections to Van Citters Decl.</p> <p>PLAINTIFFS’ REPLY: The fact is undisputed.</p>
<p>15. Klingons are an alien race, from the planet Qo’noS, who are portrayed as a serious and war-like species.</p> <p>Van Citters Decl., ¶ 25.</p>	<p>Undisputed</p> <p>See Evidentiary Objections to Van Citters Decl.</p>

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“Undisputed” Facts	Opposing Party’s Responses
	<p>PLAINTIFFS’ REPLY: The fact is undisputed.</p>
<p>16. Klingons have distinctive visual elements including large, protruding foreheads covered by symmetrical bumps and ridges, dark hair and skin and facial hair and upward sloping eyebrows. Van Citters Decl., ¶ 25.</p>	<p>Undisputed <i>See</i> Evidentiary Objections to Van Citters Decl. PLAINTIFFS’ REPLY: The fact is undisputed.</p>
<p>17. The Klingons were long-time enemies of the Federation, and engaged in a number of military battles with Starfleet. Van Citters Decl., ¶ 25.</p>	<p>Undisputed <i>See</i> Evidentiary Objections to Van Citters Decl. PLAINTIFFS’ REPLY: The fact is undisputed.</p>
<p>18. Vulcans are an iconic species, owned by Plaintiffs, first appearing in the form of Mr. Spock in <i>The Original Series</i>. Van Citters Decl., ¶ 30.</p>	<p>Undisputed <i>See</i> Evidentiary Objections to Van Citters Decl. PLAINTIFFS’ REPLY: The fact is undisputed.</p>
<p>19. Vulcans are depicted with their pointed ears and upswept eyebrows, they are portrayed</p>	<p>Undisputed</p>

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“Undisputed” Facts	Opposing Party’s Responses
<p>as stern and eschew emotions for logic and reason. Van Citters Decl., ¶ 29.</p>	<p>See Evidentiary Objections to Van Citters Decl. PLAINTIFFS’ REPLY: The fact is undisputed.</p>
<p>20. Vulcan men are usually depicted with straight, dark (or gray) hair cut in a “bowl” style. Van Citters Decl., ¶ 29.</p>	<p>Undisputed See Evidentiary Objections to Van Citters Decl. PLAINTIFFS’ REPLY: The fact is undisputed.</p>
<p>21. Vulcans are part of the Federation, and are portrayed as an advanced technological species. Van Citters Decl., ¶ 29.</p>	<p>Undisputed See Evidentiary Objections to Van Citters Decl. PLAINTIFFS’ REPLY: The fact is undisputed.</p>
<p>22. Ambassador Soval was first seen in the <i>Star Trek: Enterprise</i> pilot episode “Broken Bow” in 2001, and was featured many times throughout the <i>Enterprise</i> series such as in the episode “The Expanse” from 2003. Van Citters Decl., ¶¶ 21, 45. Grossman Decl., ¶ 92, Ex. 1(<i>The</i></p>	<p>Undisputed See Evidentiary Objections to Van Citters Decl. See also Evidentiary Objections to Grossman Decl.</p>

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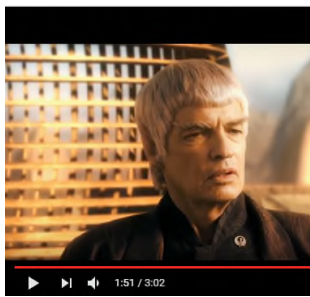
“Undisputed” Facts	Opposing Party’s Responses
<p><i>Original Series</i> DVDs).</p>	<p>PLAINTIFFS’ REPLY: The fact is undisputed.</p>
<p>23. Soval is portrayed by actor Gary Graham, who reprised his role as Ambassador Soval in Defendants’ infringing works, and even wore virtually identical makeup and costumes that he had in the <i>Enterprise</i> series, rendering the portrayal of that character all but identical to that seen in Plaintiffs’ works. Van Citters Decl., ¶¶ 21-24, 45-46.</p>	<p>Disputed. Gary Graham’s makeup and hair as Soval in Defendants’ Works were different from that of the Soval who appeared in Plaintiffs’ Works. The ears, while pointed, were different from those Gary Graham wore in “Enterprise.” Gary Graham’s costume was different in <i>Prelude to Axanar</i>, the <i>Vulcan Scene</i>, and in Plaintiffs’ Works. While in <i>Prelude</i>, Gary Graham’s robes were Chinese, in the <i>Vulcan Scene</i>, he wore Japanese-style robes over a business suit. These costumes were not identical to each other, much less to the one Soval wore in Plaintiffs’ Works. Grossman Decl., ¶ 13, Ex. A (Peters Tr., Vol. II at 425:11-22) ECF No. 75-19, Peters Decl., Ex. 1 (<i>Prelude to Axanar</i> at 45-:58, 2:32-</p>

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“Undisputed” Facts	Opposing Party’s Responses
	<p>45, 3:11-20, 3:49-58, 7:30-43, 9:30-43, 10:14-28)</p> <p>ECF No. 75-19, Peters Decl., Ex. 2 (<i>Vulcan Scene</i>)</p> <p><i>See also</i> Evidentiary Objections to Van Citters Decl.</p> <p>PLAINTIFFS’ REPLY:</p> <p>This is a false “dispute.”</p> <p>First, Gary Graham’s hair and makeup when he portrayed Soval in the Axanar Works is the same as when he portrayed Soval in the Star Trek Copyrighted Works. <i>See</i> Van Citters Decl., ¶¶ 21-24, 45-47. (Dkt. 72-60).</p> <p>The top image below is Soval from The Vulcan Scene. <i>See</i> Van Citters Decl., ¶ 43, Ex. 20 (Vulcan Scene at 1:55) (Dkt. 72-60). The bottom image below is Soval from <i>Enterprise</i>. Grossman Decl., ¶ 93, Ex. 5 (<i>Enterprise</i>, Season One, Episode 14, 0:53)(Dkt. 79-3).</p>

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“Undisputed” Facts	Opposing Party’s Responses
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Second, Gary Graham’s pointy ears when he portrayed Soval in the Axanar Works are the same as when he portrayed Soval in the Star Trek Copyrighted Works. *See* Van Citters Decl., ¶¶ 21-24, 45-47. (Dkt. 72-60).

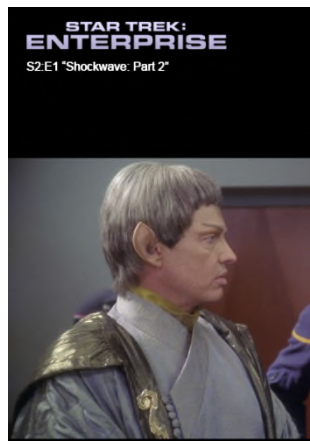
The top image below is Soval from *Prelude to Axanar*. *See* Van Citters Decl., ¶15, Ex. 19 (*Prelude to Axanar* at 1:12) (Dkt. 72-60).

The bottom image below is Soval

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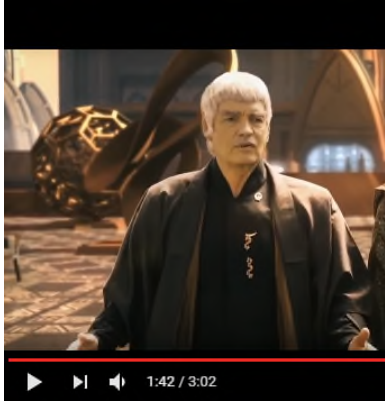

“Undisputed” Facts	Opposing Party’s Responses
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from *Enterprise*. Grossman Decl., ¶ 93, Ex. 5 (*Enterprise*, Season Two, Episode 1, at 5:14)(Dkt. 79-3).



Third, the Soval costume in the Axanar Works was copied from the Star Trek Copyrighted Works. In all of the works, Soval is wearing Asian-style robes in a green, grey, and/or brown color palette that features distinctive gold lettering. The lettering on all versions of Soval’s costumes is organized vertically. *See* Van Citters Decl., ¶¶

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“Undisputed” Facts	Opposing Party’s Responses
	<p>21-24, 45-47. (Dkt. 72-60).</p> <p>The top image below is Soval from The Vulcan Scene. <i>See</i> Van Citters Decl., ¶ 43, Ex. 20 (Vulcan Scene at 1:42) (Dkt. 72-60). The bottom image below is Soval from Enterprise. <i>See</i> Grossman Decl., ¶ 93, Ex. 5 (<i>Enterprise</i>, Season Four, Episode 8, at 18:41) (Dkt. 79-3).</p>  

24. Defendants’ works incorporate

Undisputed that Garth of Izar is

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“Undisputed” Facts	Opposing Party’s Responses
<p>Plaintiffs’ character, <i>Garth of Izar</i>. Van Citters Decl., ¶¶ 17-20.</p>	<p>incorporated, but disputed that Defendants have portrayed him in the same way as Defendant, and disputed that Plaintiffs have copyright protection in <i>Garth of Izar</i>.</p> <p><i>See</i> Evidentiary Objections to Van Citters Decl.</p> <p>PLAINTIFFS’ REPLY: This is a false “dispute.” Defendants do not cite any evidence to contradict this undisputed testimony.</p>
<p>25. <i>Garth of Izar</i>, like Captain Kirk, was a Starfleet Captain. Van Citters Decl., ¶ 18.</p>	<p>Disputed. <i>Garth of Izar</i> was a Fleet Captain, and thus closer to an Admiral, commanding many ships, than a ship captain like Kirk.</p> <p>ECF Nos. 72-2, 79, Grossman Decl., Ex. 1 (<i>Whom Gods Destroy</i> at 32:20)</p> <p><i>See also</i> Evidentiary Objections to Van Citters Decl.</p>

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“Undisputed” Facts	Opposing Party’s Responses
	<p>PLAINTIFFS’ REPLY:</p> <p>This is a false “dispute.” The cited evidence does not support the claimed dispute. In addition, on Kickstarter, Defendants explained that Garth is: “Captain Kirk’s hero and the role model for a generation of Starfleet officers. Garth charted more planets than any other Captain and was the hero of the Battle of Axanar. His exploits are required reading at Starfleet Academy.” Grossman Decl., ¶ 54, Ex. HHH (Kickstarter fundraising page) (Dkt. No. 88-1).</p>
<p>26. In <i>The Original Series</i>, Garth of Izar was introduced and portrayed as a former starship captain whose exploits were “required reading” at the Starfleet Academy due to his heroic conduct during the Battle of Axanar.</p> <p>Van Citters Decl., ¶ 18.</p>	<p>Undisputed</p> <p><i>See</i> Evidentiary Objections to Van Citters Decl.</p> <p>PLAINTIFFS’ REPLY:</p> <p>The fact is undisputed.</p>
<p>27. In the episode that introduced Garth (entitled “Whom Gods Destroy”), Captain Kirk finds Garth in an asylum after he had</p>	<p>Undisputed</p> <p><i>See</i> Evidentiary Objections to Van</p>

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“Undisputed” Facts	Opposing Party’s Responses
<p>been declared criminally insane. Van Citters Decl., ¶ 18.</p>	<p>Citters Decl. PLAINTIFFS’ REPLY: The fact is undisputed.</p>
<p>28. This character was further developed and explored by Plaintiffs in the 2003 novel entitled “<i>Garth of Izar</i>.” Van Citters Decl., ¶ 18.</p>	<p>Undisputed <i>See</i> Evidentiary Objections to Van Citters Decl. PLAINTIFFS’ REPLY: The fact is undisputed.</p>
<p>29. Paramount has a licensed work called <i>Star Trek: The Role Playing Game</i>. Van Citters Decl., ¶ 12.</p>	<p>Undisputed but immaterial, as Plaintiffs have not alleged infringement of that work in this action. ECF No. 75-3, Oki Decl., Ex. 1 (CBS Studios Inc.’s Amended Responses to Interrogatories, Set One, Response to Interrogatory Nos. 4-9) ECF No. 75-4, Oki Decl., Ex. 2 (Paramount Pictures Corporations Amended Responses to Interrogatories, Set One, Response</p>

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“Undisputed” Facts	Opposing Party’s Responses
	<p>to Interrogatory Nos. 4-9)</p> <p>ECF No. 26, FAC, Appendix A ¶¶ 2-6</p> <p>See Evidentiary Objections to Van Citters Decl.</p> <p>PLAINTIFFS’ REPLY:</p> <p>This fact is undisputed and Defendants misrepresent the evidence. The cited evidence does include <i>Star Trek: The Role Playing Game</i> and its related supplements as infringed works. See Oki Declaration, Dkt. 75-3 (CBS’ interrogatory responses) at 3:8-9 (items 15 and 16), 4:10-11 (items 14 and 15) and 7:16-21. See also Dkt. 75-4 (Paramount’s interrogatory responses) at 3:8-9 (items 14 and 15) , 4:11-12 (items 14 and 15), and 7:16-21.</p>
<p>30. <i>Garth of Izar</i>’s military battles against the Klingon Empire, including the Battle of Axanar, were explored by Paramount’s</p>	<p>Undisputed</p> <p>See Evidentiary Objections to Van</p>

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“Undisputed” Facts	Opposing Party’s Responses
<p>licensee, FASA, in <i>Star Trek: The Role Playing Game</i>. Van Citters Decl., ¶ 19.</p>	<p>Citters Decl. PLAINTIFFS’ REPLY: The fact is undisputed.</p>
<p>31. The <i>Four Years War</i> supplement is a guide that was used in connection with <i>Star Trek: The Role Playing Game</i>. Van Citters Decl., ¶ 13.</p>	<p>Undisputed, but immaterial, as Plaintiffs have not alleged infringement of that work in this action..</p> <p>ECF No. 75-3, Oki Decl., Ex. 1 (CBS Studios Inc.’s Amended Responses to Interrogatories, Set One, Response to Interrogatory Nos. 4-9)</p> <p>ECF No. 75-4, Oki Decl., Ex. 2 (Paramount Pictures Corporations Amended Responses to Interrogatories, Set One, Response to Interrogatory Nos. 4-9)</p> <p>ECF No. 26, FAC, Appendix A ¶¶ 2-6</p> <p>See Evidentiary Objections to Van Citters Decl.</p>

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“Undisputed” Facts	Opposing Party’s Responses
	<p>PLAINTIFFS’ REPLY:</p> <p>This fact is undisputed and Defendants misrepresent the evidence. The cited evidence does include <i>Star Trek: The Role Playing Game</i> and its related supplements as infringed works. See Oki Decl., Dkt. 75-3 (CBS’ interrogatory responses) at 3:8-9 (items 15 and 16), 4:10-11 (items 14 and 15) and 7:16-21. See also Dkt. 75-4 (Paramount’s interrogatory responses) at 3:8-9 (items 14 and 15), 4:11-12 (items 14 and 15), and 7:16-21.</p>
<p>32. The <i>Four Years War</i> supplement also describes the Battle of Axanar (a related mission guide for the role-playing game was called “Return to Axanar”), and the military campaigns of Federation Fleet Captain <i>Garth of Izar</i>.</p> <p>Van Citters Decl., ¶¶ 13, 14, Ex. AAA (The <i>Four Years War</i> supplement).</p>	<p>Disputed. The Battle of Axanar is discussed on only two pages of <i>The Four Years War</i> supplement. The Battle of Axanar discussed in <i>The Four Years War</i> supplement is entirely different than the battle portrayed in <i>Prelude to Axanar</i>. <i>The Four Years War</i> supplement does not describe the military campaigns of Garth of Izar. Garth</p>

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“Undisputed” Facts	Opposing Party’s Responses
	<p>of Izar is only mentioned twice in the supplement: once in a discussion of the Battle of Axanar, and in a one-sentence summary of the Battle of Axanar in a timeline.</p> <p>ECF No. 72-60, Van Citters Decl., ¶¶ 13, 14, Ex. AAA (<i>The Four Years War</i> supplement at pp. 16, 35).</p> <p><i>See also</i> Evidentiary Objections to Van Citters Decl.</p> <p>PLAINTIFFS’ REPLY:</p> <p>This is a false “dispute.” <i>The Four Years War</i> Supplement is not a narrative description of the fictional Four Years War. Instead, this document mimics a reference library with articles sourced from many different “authors.” Of the document’s multiple sections, one provides a history of the Four Years War. The remaining sections are reserved for</p>

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“Undisputed” Facts	Opposing Party’s Responses
	<p>background information such as weapons technology, galactic politics, and military tactics.</p> <p>Within the narrative section of <i>The Four Years War</i>, Garth of Izar is the most prominent individual mentioned and the Battle of Axanar is among the most important engagements described. Overall, Garth is mentioned by name more often than any other character and his exploits, which include two separate battles around the planet Axanar, are pivotal to turning the tide of the war against the Klingons. Defendants described, and used, <i>The Four Years War Supplement</i> as their “bible” in creating <i>Prelude to Axanar</i>. Grossman Decl., ¶ 14, Ex. C (Gossett tr. at 48:10-50:10), Ex. I (April 26, 2014 email from Christian Gossett to Alec Peters). (Dkt. 79-3).</p>

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“Undisputed” Facts	Opposing Party’s Responses
	<p>Contrary to Defendants’ count, Garth is mentioned in five sections of the <i>Four Years War</i> Supplement, including in three timeline entries. Van Citters Decl., ¶¶ 13, 14, Ex. AAA (<i>The Four Years War</i> supplement) (Dkt. 72-60).</p>
<p>33. The copyright in <i>The Four Years War</i> is owned by Paramount.</p> <p>Van Citters Decl., ¶ 14, Ex. AAA (<i>The Four Years War</i> supplement), Ex. BBB (copyright registration for <i>The Four Years War</i>).</p>	<p>Undisputed</p> <p>See Evidentiary Objections to Van Citters Decl.</p> <p>PLAINTIFFS’ REPLY: The fact is undisputed.</p>
<p>34. <i>The Four Years War</i> was used as source material by Defendants in order to create their Axanar Works.</p> <p>Grossman Decl., ¶ 13, Ex. A (Peters tr. at 38:22-41:17); ¶ 14, Ex. C (Gossett tr. at 48:10-50:10), Ex. I (April 26, 2014 email from Christian Gossett to Alec Peters).</p>	<p>Undisputed that Defendants had a copy of the <i>Four Years War</i>, but disputed that it was used as source material besides in a <i>de minimus</i> way. Grossman Decl., ¶ 13, Ex. A (Peters tr. at 40:19-41:17)</p> <p>See Evidentiary Objections to Van Citters Decl.</p> <p>See also Evidentiary Objections to Grossman Decl.</p>

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“Undisputed” Facts	Opposing Party’s Responses
	<p>PLAINTIFFS’ REPLY:</p> <p>This fact should be deemed to be undisputed.</p> <p>Defendants’ argument that <i>The Four Years War</i> was not used as source material ignores, and fails to refute, the testimony of <i>Prelude’s</i> director, Christian Gossett, that Peters used <i>The Four Years War</i> supplement as a “bible,” or the email describing it as such.</p>
<p>35. Defendants admitted that they used <i>The Four Years War</i> to create the Axanar Works.</p> <p>Van Citters Decl., ¶ 14, Ex. AAA (<i>Four Years War</i>).</p> <p>Grossman Decl., ¶ 13, Ex. A (Peters tr. at 38:22-41:17), ¶ 14, Ex. C (Gossett tr. at 48:10-50:5), Ex. I (April 26, 2014 email from Christian Gossett to Alec Peters).</p>	<p>Disputed. Defendants had a copy of the <i>Four Years War</i>, but did not use to create Axanar Works besides in a <i>de minimus</i> way with respect to the name of a planet. Grossman Decl., ¶ 13, Ex. A (Peters tr. at 40:19-41:17);</p> <p>Grossman Decl., ¶ 13, Ex. A (Peters Tr. Vol. I at 41:8-17)</p> <p><i>See also</i> Evidentiary Objections to Van Citters Decl.</p>

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“Undisputed” Facts	Opposing Party’s Responses
	<p><i>See also</i> Evidentiary Objections to Grossman Decl.</p> <p>PLAINTIFFS’ REPLY:</p> <p>This fact should be deemed to be undisputed.</p> <p>Defendants’ argument that <i>The Four Years War</i> was not used as source material ignores, and fails to refute, the testimony of <i>Prelude’s</i> director, Christian Gossett, that Peters used <i>The Four Years War</i> supplement as a “bible,” or the email describing it as such.</p>
<p>36. Star Trek: <i>Prelude to Axanar</i>, is a twenty-one minute film.</p> <p>Grossman Decl., ¶ 18, Ex. A (Peters tr. at 34:10-12).</p>	<p>Undisputed</p> <p><i>See</i> Evidentiary Objections to Grossman Decl.</p> <p>PLAINTIFFS’ REPLY:</p> <p>The fact is undisputed.</p>
<p>37. Star Trek: <i>Prelude to Axanar</i> was funded on Kickstarter.</p> <p>Grossman Decl., ¶ 18, Ex. A (Peters tr. at 34:5-9).</p>	<p>Undisputed</p> <p><i>See</i> Evidentiary Objections to Grossman Decl.</p>

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“Undisputed” Facts	Opposing Party’s Responses
	<p>PLAINTIFFS’ REPLY: The fact is undisputed.</p>
<p>38. Kickstarter is a crowdsourcing website where parties can raise money to fund their projects. Grossman Decl., ¶ 18, Ex. A (Peters tr. at 69:14-70:6).</p>	<p>Undisputed <i>See</i> Evidentiary Objections to Grossman Decl. PLAINTIFFS’ REPLY: The fact is undisputed.</p>
<p>39. In exchange for donations on <i>Prelude to Axanar</i>, Defendants provided donors with perks that included various branded merchandise. Grossman Decl., ¶ 69, Ex. D (Kingsbury tr. at 114:16-25).</p>	<p>Disputed. The merchandise did not include any Star Trek marks and was “Axanar” branded, not Star Trek branded. Peters Decl., ¶ 11 <i>See also</i> Evidentiary Objections to Grossman Decl. PLAINTIFFS’ REPLY: This fact should be deemed undisputed. The fact does not state that the merchandise was branded with the name “Star Trek.”</p>
<p>40. <i>Prelude to Axanar</i> was released on YouTube in August of 2014.</p>	<p>Undisputed</p>

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“Undisputed” Facts	Opposing Party’s Responses
<p>Grossman Decl., ¶ 19, Ex. L (YouTube page).</p>	<p>See Evidentiary Objections to Grossman Decl.</p> <p>PLAINTIFFS’ REPLY: The fact is undisputed.</p>
<p>41. Defendant Peters wrote the <i>Prelude to Axanar</i> screenplay.</p> <p>Grossman Decl., ¶ 23, Ex. A (Peters tr. at 57:1-58:25).</p>	<p>Disputed. Defendant Alec Peters collaborated with Christian Gossett in writing the screenplay for <i>Prelude to Axanar</i>.</p> <p>Peters Decl., ¶ 2</p> <p>ECF No. 75-19, Peters Decl., Ex. 1 (<i>Prelude to Axanar</i>)</p> <p>See also Evidentiary Objections to Grossman Decl.</p> <p>PLAINTIFFS’ REPLY: This is not a “dispute” of the stated fact.</p>
<p>42. Star Trek: <i>Prelude to Axanar</i> features Plaintiffs’ character, <i>Garth of Izar</i>, and describes his military exploits during the war between the Federation and the Klingon Empire.</p>	<p>Undisputed</p> <p>See Evidentiary Objections to Van Citters Decl.</p>

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“Undisputed” Facts	Opposing Party’s Responses
<p>Van Citters Decl. ¶¶ 15, 17, Exhibit 19 (<i>Prelude to Axanar</i>).</p> <p>Grossman Decl., ¶ 23, Ex. A (Peters tr. at 36:20-37:25; 46:18-48:1); ¶ 24, Ex. B (Burnett tr. at 191:17-192:25).</p>	<p><i>See also</i> Evidentiary Objections to Grossman Decl.</p> <p>PLAINTIFFS’ REPLY: The fact is undisputed.</p>
<p>43. <i>Prelude to Axanar</i> features the Federation.</p> <p>Van Citters Decl., ¶¶ 15, 37, 38 Exhibit 19 (<i>Prelude to Axanar</i>).</p> <p>Grossman Decl., ¶ 23, Ex. A (Peters tr. at 44:21-55:20 , ¶ 24, Ex. B (Burnett tr. at 107:6-15); ¶ 22, Ex. C (Gossett tr. at 67:5-70:23), Ex. N (brochure for <i>Prelude to Axanar</i>).</p>	<p>Undisputed</p> <p><i>See</i> Evidentiary Objections to Van Citters Decl.</p> <p><i>See also</i> Evidentiary Objections to Grossman Decl.</p> <p>PLAINTIFFS’ REPLY: The fact is undisputed.</p>
<p>44. <i>Prelude to Axanar</i> features Klingons.</p> <p>Van Citters Decl., ¶¶ 15, 25-28, Exhibit 19 (<i>Prelude to Axanar</i>).</p> <p>Grossman Decl., ¶ 23, Ex. A (Peters tr. at 44:21-55:20); ¶ 22, Ex. C (Gossett tr. at 67:5-70:23), Ex. N (brochure for <i>Prelude to Axanar</i>).</p>	<p>Disputed. <i>Prelude to Axanar</i> features only one Klingon, Kharn.</p> <p>Peters Decl., ¶ 9</p> <p>ECF No. 75-19, Peters Decl., Ex. 1 (<i>Prelude to Axanar</i>)</p> <p><i>See also</i> Evidentiary Objections to Van Citters Decl.</p>

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“Undisputed” Facts	Opposing Party’s Responses
	<p><i>See also</i> Evidentiary Objections to Grossman Decl.</p> <p>PLAINTIFFS’ REPLY:</p> <p>This is a false “dispute” because the Klingon race is central to the story of <i>Prelude</i>. There are several references to Klingons in the dialogue:</p> <p>(1) “But it represents something very different to the Klingon Empire. Growing tired of diplomacy, the [Klingon] high-chancellor proclaims...” Peters Decl., Ex. 1, <i>Prelude to Axanar</i> (Dkt. No. 75-19) and Van Citters Decl., ¶ 15, Ex. 19, <i>Prelude to Axanar</i> at 1:00-:05 (Dkt. No. 72-60).</p> <p>(2) “Klingons were certain that they could merely take anything they wanted.” (<i>Id.</i> at 2:33-36);</p> <p>(3) “Unfortunately, the Klingons were unconvinced the Federation was any sort of match for them.” (<i>Id.</i> at 3:11-16);</p>

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“Undisputed” Facts	Opposing Party’s Responses
	<p>(4) “Yes, the Klingons were toying with us. They were using a strategy known to the Klingon people as wuvHa’chu’wl’to’” (<i>Id.</i> at 4:31-42).</p> <p>In addition, <i>Prelude</i> has Klingon ships. Van Citters Decl. ¶¶ 15, 35-36, Exhibit 19 (<i>Prelude to Axanar</i>) (Dkt. 72-60). Peters Decl., ¶ 10 (Dkt. 90-10).</p>
<p>45. <i>Prelude to Axanar</i> features Vulcans. Van Citters Decl. ¶¶ 15, 29-32, Exhibit 19 (<i>Prelude to Axanar</i>).</p> <p>Grossman Decl., ¶ 23, Ex. A (Peters tr. at 44:21-55:20).</p>	<p>Disputed. <i>Prelude to Axanar</i> features only one Vulcan, Soval</p> <p>Peters Decl., ¶ 8</p> <p>ECF No. 75-19, Peters Decl., Ex. 1 (<i>Prelude to Axanar</i>)</p> <p><i>See also</i> Evidentiary Objections to Van Citters Decl.</p> <p><i>See also</i> Evidentiary Objections to Grossman Decl.</p> <p>PLAINTIFFS’ REPLY:</p> <p>This is a false “dispute” because</p>

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“Undisputed” Facts	Opposing Party’s Responses
	<p>the Vulcan race is central to the story of <i>Prelude</i>. For example, there are several references to Vulcans in the dialogue:</p> <p>(1) “...the job of preventing war and leading the peace delegations, fell to Vulcan.” Peters Decl., Ex. 1, <i>Prelude to Axanar</i> (Dkt. 75-19) and Van Citters Decl., ¶ 15, Ex. 19, (<i>Prelude to Axanar</i>) at 1:15-20 (Dkt. 72-60).</p> <p>(2) Vulcan intelligence is, if I may say, unparalleled, but...” (<i>Id.</i> at 3:48-54).</p> <p>(3) “As for Vulcans..., though we had limited our contribution to propulsion, environmental, and defensive technologies...” (<i>Id.</i> at 10:14-23).</p>
<p>46. <i>Prelude to Axanar</i> features Starfleet. Van Citters Decl. ¶¶ 15, 33-34, Exhibit 19 (<i>Prelude to Axanar</i>). Grossman Decl., ¶ 23, Ex. A (Peters tr. at 44:21-55:20).</p>	<p>Disputed. “Starfleet” is a generic term used in science fiction generally, and in Star Trek itself, to indicate space ships from different races.</p> <p>Peters Decl., ¶ 7</p>

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“Undisputed” Facts	Opposing Party’s Responses
	<p>ECF Nos. 72-2, 79, Grossman Decl., Ex. 1 (<i>Errand of Mercy</i> at 42:28)</p> <p><i>See also</i> Evidentiary Objections to Van Citters Decl.</p> <p><i>See also</i> Evidentiary Objections to Grossman Decl.</p> <p>PLAINTIFFS’ REPLY:</p> <p>This fact should be deemed undisputed as Peters admitted that [REDACTED] [REDACTED] (Grossman Decl., ¶ 23, Ex. A (Peters tr. at 44:21-55:20), ¶ 33, Ex. A (Peters tr. at 414:2-415:19), ¶ 37, Ex. A (Peters tr. at 373:10-375:16)(Dkt. 79-3)).</p> <p>Further, there is no evidence to support the claim that “Starfleet” is or was a “generic” term used in other science fiction works.</p>
47. <i>Prelude to Axanar</i> features Starfleet	Undisputed

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“Undisputed” Facts	Opposing Party’s Responses
<p>officers and commanders, including <i>Garth of Izar</i>. Van Citters Decl. ¶¶ 15, 17-18, Exhibit 19 (<i>Prelude to Axanar</i>). Grossman Decl., ¶ 23, Ex. A (Peters tr. at 36:20-37:16; 414:2-415:19), ¶¶ 33, Ex. S (July 8, 2014 email from Alec Peters to Christian Gossett and Rocio Everett).</p>	<p><i>See</i> Evidentiary Objections to Van Citters Decl. <i>See also</i> Evidentiary Objections to Grossman Decl. PLAINTIFFS’ REPLY: The fact is undisputed.</p>
<p>48. <i>Prelude to Axanar</i> features the character Soval. Van Citters Decl. ¶¶ 15, 21-24, Exhibit 19 (<i>Prelude to Axanar</i>).</p>	<p>Undisputed <i>See</i> Evidentiary Objections to Van Citters Decl. PLAINTIFFS’ REPLY: The fact is undisputed.</p>
<p>49. <i>Prelude to Axanar</i> features Klingon battlecruisers. Van Citters Decl. ¶¶ 15, 35-36, Exhibit 19 (<i>Prelude to Axanar</i>).</p>	<p>Disputed. <i>Prelude to Axanar</i> features different Klingon battlecruisers from those seen in Plaintiffs’ Works. The battlecruisers featured in <i>Prelude to Axanar</i> are original designs created by Axanar VFX coordinator Tobias Richter. Peters Decl., ¶ 10</p>

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“Undisputed” Facts	Opposing Party’s Responses
	<p><i>See also</i> Evidentiary Objections to Van Citters Decl.</p> <p>PLAINTIFFS’ REPLY:</p> <p>This is a false “dispute.”</p> <p>The works speak for themselves, and Defendants clearly used Klingon battlecruisers in the Axanar Works. Defendants’ cited evidence, Peters’ declaration, in fact concedes that <i>Prelude</i> features Klingon Battlecruisers. (Dkt. 90-10, ¶ 10).</p>
<p>50. Defendants have created substantially similar representations of Klingons, and in doing so have copied the makeup, hair, costumes, weaponry and accessories worn by those species.</p> <p>Van Citters Decl. ¶¶ 15, 25-28, Exhibit 19 (<i>Prelude to Axanar</i>).</p> <p>Grossman Decl., ¶¶ 30, 31 Ex. B (Burnett tr. at 202:21-203:25; 215:4-216:9); ¶ 26, Ex. A (Peters tr. at 82:6-85:12), ¶ 45 (Peters tr. at 44:21-55:20); ¶ 41, Ex. A (Peters tr. at 77:5-9), ¶ 42, Ex. AA (Axanar Script at page 3 for use of Bat’leth and page 30 for use</p>	<p>Disputed. The representation of Kharn, the only Klingon featured in <i>Prelude to Axanar</i>, is not substantially similar to the Klingons seen in Plaintiffs’ Works. Klingons did not even have a consistent appearance across Plaintiffs’ Works, appearing as little more than actors wearing brown makeup to darken their skin in <i>Star Trek: The Original Series</i>, and appearing as characters with large head ridges, and big, dog-like</p>

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“Undisputed” Facts	Opposing Party’s Responses
<p>of Mek’leth).</p>	<p>teeth in later television episodes and motion pictures.</p> <p>Peters Decl., ¶ 9</p> <p>Grossman Decl., ¶ 13, Ex. A (Peters Tr., Vol. II at 360:12-361:11)</p> <p>ECF No. 75-19, Peters Decl., Ex. 1 (<i>Prelude to Axanar</i>)</p> <p><i>See also</i> Evidentiary Objections to Van Citters Decl.</p> <p><i>See also</i> Evidentiary Objections to Grossman Decl.</p> <p>PLAINTIFFS’ REPLY:</p> <p>This is a false “dispute.” Mr. Peters testified that [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>

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"Undisputed" Facts	Opposing Party's Responses
	<p>██████████. (Grossman Decl., ¶ 23, Ex. A (Peters tr. 46:18-48:1) (Dkt. 79-3). Mr. Burnett also testified ██████████ ██████████ ██████████ ██████████ ██████████ Grossman Decl., ¶ 30, Ex. B (Burnett tr. at 203:17-19) (Dkt. 79-3).</p>
<p>51. Defendants have created substantially similar representations of Vulcans, and in doing so have copied the makeup, hair, costumes, and accessories worn by those species.</p> <p>Grossman Decl., ¶ 26, Ex. A (Peters tr. at 82:6-85:12); Grossman Decl., ¶ 23, Ex. A (Peters tr. at 44:21-55:20).</p>	<p>Disputed. The one Vulcan appearing in Defendants' Works is substantially different: his hair, age, and costume are different from any Vulcan seen in Plaintiffs' Works.</p> <p>Peters Decl., ¶ 8</p> <p>Grossman Decl., ¶ 13, Ex. A (Peters Tr., Vol. II at 360:12-361:11)</p> <p>ECF No. 75-19, Peters Decl., Ex. 1 (<i>Prelude to Axanar</i>)</p>

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“Undisputed” Facts	Opposing Party’s Responses
	<p><i>See also</i> Evidentiary Objections to Van Citters Decl.</p> <p><i>See also</i> Evidentiary Objections to Grossman Decl.</p> <p>PLAINTIFFS’ REPLY:</p> <p>This fact should be deemed admitted.</p> <p>Defendants do not dispute that Peters conceded that he intentionally copied elements such as the character Soval, Vulcans, the planet Vulcan, Vulcan architecture, and the Vulcan council to create a Star Trek film. Grossman Decl., ¶ 26, Ex. A (Peters tr. at 82:6-85:12) (Dkt. 79-3) (UMF 77). Defendants also do not dispute that Peters admitted that he directed Vulcan writing to be placed on the costume of Vulcan Ambassador Soval. Grossman Decl., ¶ 25, Ex. A (Peters tr. at 319:8-323:10), Ex. O (March 17, 2014 email from Alec</p>

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“Undisputed” Facts	Opposing Party’s Responses
	<p>Peters to Christian Gossett and Hamilton Cox) (Dkt. 79-3) (UMF 53).</p> <p>Moreover, Defendants’ portrayal of Soval is the same as Soval in the Star Trek Copyrighted Works, including his hair, makeup, ears, and costume.</p> <p>See Van Citters Decl., ¶¶ 21-24, 45-47. (Dkt. 72-60).</p>
<p>52. Mr. Peters also admitted that [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>Grossman Decl., ¶ 26, Ex. A (Peters tr. at 82:6-85:12); ¶ 23, Ex. A (Peters tr. at 44:21-55:20).</p>	<p>Disputed.</p> <p>Peters Decl., ¶¶ 8-9</p> <p>Grossman Decl., ¶ 13, Ex. A (Peters Tr., Vol. II at 360:12-361:11)</p> <p>ECF No. 75-19, Peters Decl., Ex. 1 (<i>Prelude to Axanar</i>)</p> <p>See also Evidentiary Objections to Grossman Decl.</p> <p>PLAINTIFFS’ REPLY:</p>

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“Undisputed” Facts	Opposing Party’s Responses
	<p>This fact should be deemed undisputed.</p> <p>Peters’ testimony is quoted in the stated fact and nothing in Peters’ declaration can, or does, contradict his sworn deposition testimony.</p> <p>Grossman Decl., ¶ 26, Ex. A (Peters tr. at 82:6-85:12); ¶ 23, Ex. A (Peters tr. at 44:21-55:20) (Dkt. 79-3).</p>
<p>53. Mr. Peters admitted that he [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED].</p> <p>Grossman Decl., ¶ 25, Ex. A (Peters tr. at 319:8-323:10), Ex. O (March 17, 2014 email from Alec Peters to Christian Gossett and Hamilton Cox).</p>	<p>Undisputed</p> <p><i>See</i> Evidentiary Objections to Grossman Decl.</p> <p>PLAINTIFFS’ REPLY: The fact is undisputed.</p>
<p>54. Mr. Peters stated “I am the keeper of the faith with fans. They love that about us. Our faithfulness to the universe.”</p> <p>Grossman Decl., ¶ 34, Ex. A (Peters tr. at 471:25-475:1), Ex. U (March 7, 2015 email from Alec Peters to Christian Gossett).</p>	<p>Undisputed</p> <p><i>See</i> Evidentiary Objections to Grossman Decl.</p> <p>PLAINTIFFS’ REPLY: The fact is undisputed.</p>
<p>55. Mr. Peters testified that [REDACTED]</p> <p>[REDACTED]</p>	<p>Undisputed</p>

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“Undisputed” Facts	Opposing Party’s Responses
<p>[REDACTED]</p> <p>Grossman Decl., ¶ 34, Ex. A (Peters tr. at 420:13-421:19; 471:25-475:1), Ex. T (July 15, 2014 email from Christian Gossett to Alec Peters); Ex. U (March 7, 2015 email from Alec Peters to Christian Gossett); ¶ 27, Ex. A (Peters tr. at 347:4-348:10), Ex. P (email exchange between Mr. Peters and Mr. Gossett); ¶ 47, Ex. A (Peters tr. at 456:24-458:18), Ex. BB (Peters email exchange), ¶ 28, Ex. A (Peters tr. at 376:16-377:11), ¶ 38, Ex. A (Peters tr. at 377:17-378:13), Ex. Y (email exchange), ¶ 37, Ex. A (Peters tr. at 373:10-375:16), Ex. X (Peters email exchange).</p>	<p>See Evidentiary Objections to Grossman Decl.</p> <p>PLAINTIFFS’ REPLY: The fact is undisputed.</p>
<p>56. The director of <i>Prelude to Axanar</i> testified that <i>Prelude to Axanar</i> is an infringing work.</p> <p>Grossman Decl., ¶ 21, Ex. C (Gossett tr. at 185:25-186:8).</p>	<p>Disputed. Calls for a legal conclusion, fails to consider fair use, and is based on a fundamental misunderstanding of copyright law, as he also testified that more original elements make it more infringing, which is incorrect. Also, Mr. Gossett has a personal vendetta against Mr. Peters and is no longer associated with Axanar,</p>

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“Undisputed” Facts	Opposing Party’s Responses
	<p>so his credibility on these issues at the very least creates yet another factual dispute.</p> <p>Ranahan Decl., ¶ 5, Ex. E (Gossett Tr. at 124:7-14, 139:5-140:18, 187:25-188:7)</p> <p>Peters Decl., ¶¶ 22-23</p> <p><i>See also</i> Evidentiary Objections to Grossman Decl.</p> <p>PLAINTIFFS’ REPLY:</p> <p>This is a false “dispute.”</p> <p>Mr. Gossett testified that he believed that <i>Prelude</i> was <u>infringing in response to a question by Defendants’ counsel</u>.</p> <p>Defendants cannot dispute Mr. Gossett’s testimony on the basis that he supposedly “dislikes” Peters. Peters Decl., ¶ 22 (Dkt. 90-10).</p>
<p>57. Prior to the filing of this lawsuit, Axanar, Defendants drafted a final shooting</p>	<p>Disputed. Defendants still do not have a “final shooting script” for</p>

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"Undisputed" Facts	Opposing Party's Responses
<p>script. Grossman Decl., ¶ 41, Ex. A (Peters tr. at 77:5-9), Ex. AA (script).</p>	<p>the unmade Potential Fan Film. Grossman Decl., ¶ 13, Ex. A (Peters Tr., Vol. I at 77:5-9) ECF. No. 75-8, Oki Decl., Ex. 6 (Hunt Tr. at 49:10-50:24) <i>See also</i> Evidentiary Objections to Grossman Decl. PLAINTIFFS' REPLY: This is a false "dispute." This fact is based on Mr. Peters' sworn deposition testimony. Mr. Peters testified that, [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]. Grossman Decl., ¶ 41, Ex. A (Peters tr. at 77:5-9), Ex. AA (script) (Dkt. 79-3). Mr. Hunt's testimony cited by</p>

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“Undisputed” Facts	Opposing Party’s Responses
	Defendants does not contradict Peters’ testimony and therefore does not create an issue of fact.
<p>58. In 2015, Defendants released one scene from the full-length film, which they call the “Vulcan Scene.”</p> <p>Van Citters Decl., ¶ 43, Exhibit 20 (Vulcan Scene).</p> <p>Grossman Decl., ¶ 43, Ex. A (Peters tr. at 79:11-17).</p>	<p>Undisputed</p> <p><i>See</i> Evidentiary Objections to Van Citters Decl.</p> <p><i>See also</i> Evidentiary Objections to Grossman Decl.</p> <p>PLAINTIFFS’ REPLY:</p> <p>The fact is undisputed.</p>
<p>59. The Vulcan Scene features Vulcans.</p> <p>Van Citters Decl., ¶ 43, Exhibit 20 (Vulcan Scene); ¶ 47.</p> <p>Grossman Decl., ¶ 43, Ex. A (Peters tr. at 425:11-426:3; 77:5-9); Ex. AA (script at pages 21-23).</p>	<p>Undisputed</p> <p><i>See</i> Evidentiary Objections to Van Citters Decl.</p> <p><i>See also</i> Evidentiary Objections to Grossman Decl.</p> <p>PLAINTIFFS’ REPLY:</p> <p>The fact is undisputed.</p>
<p>60. The Vulcan Scene features the character Soval.</p> <p>Van Citters Decl., ¶ 43, Exhibit 20</p>	<p>Undisputed</p> <p><i>See</i> Evidentiary Objections to Van</p>

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“Undisputed” Facts	Opposing Party’s Responses
<p>(Vulcan Scene); ¶¶ 45-46.</p> <p>Grossman Decl., ¶ 41, Ex. A (Peters tr. at 77:5-9), Ex. AA (script at pages 21-23).</p>	<p>Citters Decl.</p> <p><i>See also</i> Evidentiary Objections to Grossman Decl.</p> <p>PLAINTIFFS’ REPLY: The fact is undisputed.</p>
<p>61. The Vulcan Scene features the planet Vulcan.</p> <p>Van Citters Decl., ¶ 43, Exhibit 20 (Vulcan Scene); ¶¶ 48, 49.</p> <p>Grossman Decl., ¶ 41, Ex. A (Peters tr. at 77:5-9), Ex. AA (script at pages 21-23); ¶ 44, Ex. N (Burnett tr. at 103:13-18).</p>	<p>Undisputed</p> <p><i>See</i> Evidentiary Objections to Van Citters Decl.</p> <p><i>See also</i> Evidentiary Objections to Grossman Decl.</p> <p>PLAINTIFFS’ REPLY: The fact is undisputed.</p>
<p>62. The shot of planet Vulcan in the Vulcan Scene was copied from <i>Star Trek III: The Search for Spock</i>.</p> <p>Van Citters Decl., ¶ 43, Exhibit 20 (Vulcan Scene); ¶ 48.</p> <p>Grossman Decl., ¶ 43, Ex. A (Peters tr. at 82:2-85:12); ¶ 44, Ex. B (Burnett tr. at 106:11-17).</p>	<p>Disputed. The shot of planet Vulcan in the <i>Vulcan Scene</i> was not copied from <i>Star Trek III: The Search for Spock</i>.</p> <p>Grossman Decl., ¶ 13, Ex. A (Peters Tr., Vol. I at 84:9-11)</p> <p><i>See also</i> Evidentiary Objections to</p>

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“Undisputed” Facts	Opposing Party’s Responses
	<p>Van Citters Decl.</p> <p><i>See also</i> Evidentiary Objections to Grossman Decl.</p> <p>PLAINTIFFS’ REPLY:</p> <p>This fact should be deemed undisputed. Peters’ own sworn deposition testimony confirms this fact, and his subsequently-filed declaration cannot create a factual dispute.</p> <p>In the testimony that Defendants cite, Peters states: [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>Grossman Decl., ¶ 13, Ex. A (Peters tr. at 84:9-11) (Dkt. 79-3). Defendants’ cited evidence does not support their assertion that “[t]he shot of planet Vulcan in the <i>Vulcan Scene</i> was not copied from <i>Star Trek III: The Search for Spock</i>.” Rather, all of the evidence shows that Defendants did copy</p>

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“Undisputed” Facts	Opposing Party’s Responses
<p>63. The Vulcan Scene features Vulcan ships. Van Citters Decl., ¶ 43, Exhibit 20 (Vulcan Scene); ¶50. Grossman Decl., ¶ 43 Ex. A (Peters tr. at 82:2-85:12).</p>	<p>that Star Trek work.</p> <p>Undisputed</p> <p><i>See</i> Evidentiary Objections to Van Citters Decl.</p> <p><i>See also</i> Evidentiary Objections to Grossman Decl.</p> <p>PLAINTIFFS’ REPLY: The fact is undisputed.</p>
<p>64. Defendant Alec Peters himself announced, on August 15, 2015, that he had completed the “fully revised and locked script” which he referred to as “the best Star Trek movie script ever!” Grossman Decl., ¶ 40, Ex. Z (Facebook post).</p>	<p>Disputed. A “locked” script simply means that writers do not add sets, scenes or characters before shooting begins. Mr. Peters did not refer to it as “the best Star Trek movie script ever!” He was expressly restating a comment by someone else.</p> <p>ECF No. 75-19, Peters Decl., ¶ 13</p> <p>ECF Nos. 75-22, 77-8, 77-9, Peters Decl., Ex. 3 (July 1, 2016 <i>Axanar</i> Script)</p>

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"Undisputed" Facts	Opposing Party's Responses
	<p><i>See also</i> Evidentiary Objections to Grossman Decl.</p> <p>PLAINTIFFS' REPLY: This fact should be deemed undisputed. The cited evidence is hearsay, lacks foundation, and most importantly, does not contradict the fact that Peters made the announcement on Facebook.</p>
<p>65. The Axanar Script features [REDACTED] [REDACTED].</p> <p>Grossman Decl., ¶ 41, Ex. A (Peters tr. at 77:5-9), ¶ 42, Ex. AA (Axanar Script at page 8), ¶ 22, Ex. C (Gossett tr. at 112:14-113:8).</p>	<p>Undisputed</p> <p><i>See</i> Evidentiary Objections to Grossman Decl.</p> <p>PLAINTIFFS' REPLY: The fact is undisputed.</p>
<p>66. The Axanar Script features [REDACTED] [REDACTED].</p> <p>Grossman Decl., ¶ 41, Ex. A (Peters tr. at 77:5-9), ¶ 42, Ex. AA (Axanar Script at page 21).</p>	<p>Undisputed</p> <p><i>See</i> Evidentiary Objections to Grossman Decl.</p> <p>PLAINTIFFS' REPLY: The fact is undisputed.</p>
<p>67. The Axanar Script features [REDACTED]</p>	<p>Undisputed</p>

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“Undisputed” Facts	Opposing Party’s Responses
<p>[REDACTED]</p> <p>Grossman Decl., ¶ 41, Ex. A (Peters tr. at 77:5-9), ¶ 42, Ex. AA (Axanar Script at page 8), ¶ 45, Ex. A (Peters tr. at 362:9-363:13); ¶ 46, Ex. B (Burnett tr. at 195:18-23).</p>	<p>See Evidentiary Objections to Grossman Decl.</p> <p>PLAINTIFFS’ REPLY: The fact is undisputed.</p>
<p>68. Klingon Commander Chang was the villain featured in Star Trek VI: The Undiscovered Country.</p> <p>Grossman Decl., ¶ 45, Ex. A (Peters tr. at 44:21-55:20; 362:9-363:13).</p>	<p>Undisputed</p> <p>See Evidentiary Objections to Grossman Decl.</p> <p>PLAINTIFFS’ REPLY: The fact is undisputed.</p>
<p>69. [REDACTED]</p> <p>Grossman Decl., ¶ 41, Ex. A (Peters tr. at 77:5-9, ¶ 42, Ex. AA (Axanar Script), ¶ 46, Ex. B (Burnett tr. at 194:9-195:16).</p>	<p>Disputed. Of the 57 characters that appear in the most recent script of the unmade Potential Fan Film, there are only seven characters that have appeared previously in Plaintiffs’ Works. All seven of those characters played minor roles.</p> <p>ECF Nos. 72-30, 79, Grossman Decl., Ex. AA (Nov. 26, 2015 Axanar Script)</p>

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“Undisputed” Facts	Opposing Party’s Responses
	<p>Peters Decl., ¶ 29</p> <p>ECF No. 75-19, Peters Decl., Ex. 1 (<i>Prelude to Axanar</i>)</p> <p><i>See also</i> Evidentiary Objections to Grossman Decl.</p> <p>PLAINTIFFS’ REPLY:</p> <p>The Axanar Script does not contain 50 “original” characters. The referenced characters are Klingons, Vulcans, and Starfleet officers and personnel. Van Citters Decl., ¶ 59 (Dkt. 72-60). Grossman Decl., ¶ 42, Ex. AA (Axanar Script) (Dkt. 79-3).</p>
<p>70. The Axanar Script features the character, [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED].</p> <p>Grossman Decl., ¶ 45, Ex. A (Peters tr. at 362:9-363:13); ¶ 93, Ex. 11 (Star Trek VI: Undiscovered Country DVD).</p>	<p>Undisputed</p> <p><i>See</i> Evidentiary Objections to Grossman Decl.</p> <p>PLAINTIFFS’ REPLY:</p> <p>The fact is undisputed.</p>
<p>71. The Axanar [REDACTED]</p> <p>[REDACTED]</p>	<p>Undisputed</p>

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"Undisputed" Facts	Opposing Party's Responses
<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED].</p> <p>Van Citters Decl., ¶ 15, Ex. 19 (<i>Prelude to Axanar</i>).</p> <p>Grossman Decl., ¶ 42, Ex. AA (<i>Axanar Script</i>).</p>	<p>See Evidentiary Objections to Van Citters Decl.</p> <p>See also Evidentiary Objections to Grossman Decl.</p> <p>PLAINTIFFS' REPLY: The fact is undisputed.</p>
<p>72. Defendants also took characters, sequence, themes, mood, dialogue, and settings from the Star Trek Copyrighted Works.</p> <p>Van Citters Decl., ¶¶ 15-62.</p>	<p>Disputed. Defendants did not "take" characters, sequence, themes, moods, or dialogue from Plaintiffs' Works. None of the settings in <i>Prelude to Axanar</i> is the same as any setting used in Plaintiffs' Works. As for the <i>Vulcan Scene</i>, Defendants used only one setting that was similar to one that had appeared in Plaintiffs' Works.</p> <p>ECF Nos. 72-30, 79, Grossman Decl., Ex. AA (Nov. 26, 2015 <i>Axanar Script</i>)</p> <p>Peters Decl., ¶ 6</p>

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“Undisputed” Facts	Opposing Party’s Responses
	<p>ECF No. 75-19, Peters Decl., Ex. 1 <i>(Prelude to Axanar)</i></p> <p><i>See also</i> Evidentiary Objections to Van Citters Decl.</p> <p>PLAINTIFFS’ REPLY:</p> <p>This is a false “dispute,” and the Axanar Works speak for themselves.</p> <p>The Axanar Works contain and copy settings such as the planets Vulcan and Qo’noS, and bridges of Federation and Klingon ships, along with specific characters, dialogue and themes from Plaintiffs. Moreover, Peters testified that [REDACTED] [REDACTED] [REDACTED] [REDACTED] Grossman Decl., Ex. A (Peters tr. at 55:6-9) (Dkt. 79-3).</p>
73. Defendants expressly set out to create an authentic and “independent Star Trek film”	Undisputed

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“Undisputed” Facts	Opposing Party’s Responses
<p>that stayed true to Star Trek canon [REDACTED]</p> <p>[REDACTED]</p> <p>Grossman Decl., ¶ 54, Ex. A (Peters tr. at 97:14-98:22), Ex. HH (screenshot from Defendants’ Kickstarter fundraising page); ¶ 34, Ex. A (Peters tr. at 471:25-474:20), Ex. U (March 7, 2015 email from Alec Peters to Christian Gossett); ¶ 29, Ex. C (Gossett tr. at 36:11-37:8), Ex. R (March 24, 2013 email from Sean Tourangeau to Christian Gossett and Alec Peters); ¶ 38, Ex. C (Gossett tr. at 92:14-93:13), Ex. Y (April 13, 2014 email exchange between Alec Peters, Tobias Richter, and Christian Gossett); ¶ 10, Ex. C (Gossett tr. at 30:7-31:13, Ex. F (January 4, 2011 email from Alec Peters to Christian Gossett), Ex. A (Peters tr. at 332:15–334:4); ¶ 12, Ex. C (Gossett tr. at 32:7–34:16), Ex. H (November 13, 2013 email exchange between Alec Peters and Christian Gossett), Ex. A (Peters tr. at 359:18-361:11).</p>	<p>See Evidentiary Objections to Grossman Decl.</p> <p>PLAINTIFFS’ REPLY:</p> <p>The fact is undisputed.</p>
<p>74. Defendants have set the Axanar Works in 2241.03 to 2245.1, which is twenty-one years before <i>The Original Series</i> episode “Where No Man Has Gone Before.”</p> <p>Van Citters Decl., ¶ 15, Ex. 19 (<i>Prelude</i></p>	<p>Undisputed</p> <p>See Evidentiary Objections to Van Citters Decl.</p>

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“Undisputed” Facts	Opposing Party’s Responses
<p><i>to Axanar</i>); ¶ 39.</p>	<p>PLAINTIFFS’ REPLY: The fact is undisputed.</p>
<p>75. Defendants set out to create a motion picture “prequel” to <i>The Original Series</i>. Grossman Decl., ¶ 16, Ex. A(Peters tr. at 143:13-145:7), ¶ 35, Ex. V (blueprints for the soundstage at Paramount Studios that was used for Star Trek); ¶ 36, Ex. A (145:12-147:10), Ex. W (blueprints from the set of The Next Generation), ¶ 32, Ex. C (Gossett tr. at 47:22-48:6); ¶ 15, Ex. A (Peters tr. at 371:13-372:9), Ex. J (Mr. Gossett email exchange with Mr. Peters) ¶ 17, Ex. B (Burnett tr. at 202:12-203:4).</p>	<p>Undisputed <i>See</i> Evidentiary Objections to Van Citters Decl. PLAINTIFFS’ REPLY: The fact is undisputed.</p>
<p>76. The element of stardates was first used in the second pilot of <i>The Original Series</i> “Where No Man Has Gone Before” in 1966 (Reg. No. PA-58-303), and was subsequently used in The Next Generation, Deep Space Nine, Voyager, and every Star Trek Motion Picture. Van Citters Decl., ¶ 39.</p>	<p>Disputed. Defendants’ system of stardates is merely the year followed by a decimal point and a number to indicate the month. Defendants do not know how Stardates were measured in Plaintiffs’ Works, as Plaintiffs have never provided a formula. Peters Decl., ¶ 7 ECF No. 75-19, Peters Decl., Ex. 1</p>

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"Undisputed" Facts	Opposing Party's Responses
	<p><i>(Prelude to Axanar)</i></p> <p><i>See also</i> Evidentiary Objections to Van Citters Decl.</p> <p>PLAINTIFFS' REPLY:</p> <p>This is a false "dispute." The cited evidence does not contradict the stated fact.</p> <p>Peters testified [REDACTED] [REDACTED] [REDACTED]</p> <p>Grossman Decl, Ex. A (Peters tr. at 52:22-24) (Dkt. 79-3).</p> <p>Peters also testified two other times that [REDACTED] [REDACTED] [REDACTED]. Grossman Decl, Ex. A (Peters tr. at 54:5-12; 54:12-55:6) (Dkt. 79-3).</p>
<p>77. Defendant Peters conceded that [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]</p> <p>Grossman Decl., ¶ 26, Ex. A (Peters tr.</p>	<p>Undisputed</p> <p><i>See</i> Evidentiary Objections to Grossman Decl.</p> <p>PLAINTIFFS' REPLY:</p>

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“Undisputed” Facts	Opposing Party’s Responses
at 82:6-85:12).	The fact is undisputed.
<p>78. The sequence of events of Defendants’ works is taken from the Star Trek Copyrighted Works – the events depicted and discussed therein take place in and around the Battle of Axanar, as described both in <i>The Original Series</i> and in greater detail in <i>The Four Years War</i>.</p> <p style="padding-left: 40px;">Van Citters Decl., ¶ 60.</p>	<p>Disputed that the sequence of events is taken from the Star Trek Copyrighted Works, as the sequence of events and timing is original.</p> <p>Van Citters Decl., ¶ 15, Ex. 19 (<i>Prelude to Axanar</i>); ¶ 39.</p> <p>See Evidentiary Objections to Van Citters Decl.</p> <p>PLAINTIFFS’ REPLY:</p> <p>This is a false “dispute,” and <i>Prelude</i> speaks for itself and is explicitly based on the Four Years War and the Battle of Axanar, which were described in <i>The Original Series</i>, and were also discussed in the <i>Four Years War</i> supplement. Van Citters Decl., ¶¶ 5-6, ¶ 14, Ex. AAA (<i>Four Years War</i>), ¶ 15, Ex. 19, (<i>Prelude to Axanar</i>)(Dkt. 72-60), ¶¶ 18, 19. Grossman Decl., ¶ 13, Ex. A</p>

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“Undisputed” Facts	Opposing Party’s Responses
	<p>(Peters tr. at 38:22-41:17), ¶ 14, Ex. C (Gossett tr. at 48:10-50:5), Ex. I (April 26, 2014 email from Christian Gossett to Alec Peters) (Dkt. 79-3).</p> <p>Defendants admit that <i>Prelude</i> was a prequel to <i>The Original Series</i>. (UMF 75). Grossman Decl., ¶ 16, Ex. A(Peters tr. at 143:13-145:7), ¶ 35, Ex. V (blueprints for the soundstage at Paramount Studios that was used for Star Trek); ¶ 36, Ex. A (145:12- 147:10), Ex. W (blueprints), ¶ 32, Ex. C (Gossett tr. at 47:22-48:6); ¶ 15, Ex. A (Peters tr. at 371:13-372:9), Ex. J (Mr. Gossett email exchange with Mr. Peters) ¶ 17, Ex. B (Burnett tr. at 202:12-203:4) (Dkt. 79-3).</p>
<p>79. Defendants’ works take place in the same settings as the Star Trek Copyrighted Works as they are set in alien star systems created by Plaintiffs, on spaceships belonging to the United Federation of Planets, on Klingon battlecruisers fighting for the Klingon</p>	<p>Undisputed that the works are set in the same universe, but disputed to the extent the time frame, aesthetics and other elements are the same Van Citters Decl., ¶ 15, Ex. 19 (<i>Prelude to Axanar</i>); ¶ 39.</p>

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“Undisputed” Facts	Opposing Party’s Responses
<p>Empire, and on planets such as Qo’noS, Vulcan and Axanar.</p> <p>Van Citters Decl., ¶ 62.</p>	<p>See Evidentiary Objections to Van Citters Decl.</p> <p>PLAINTIFFS’ REPLY:</p> <p>This fact is undisputed, <i>Prelude</i> speaks for itself and the cited evidence does not contradict the stated fact.</p>
<p>80. Defendants’ works use the protected characters embodied by the U.S.S. Enterprise and Klingon starships.</p> <p>Van Citters Decl., ¶ 59.</p>	<p>Disputed that any used by Defendants is “protected” which calls for a legal conclusion</p> <p>See Evidentiary Objections to Van Citters Decl.</p> <p>PLAINTIFFS’ REPLY:</p> <p>This fact should be deemed undisputed.</p> <p>Defendants do not cite to any evidence to refute the fact that they copied the U.S.S. Enterprise and Klingon starships.</p>
<p>81. Defendants appropriated the mood and theme from the Star Trek Copyrighted Works, attempting to recreate the drama between the</p>	<p>Disputed. The mood and themes of <i>Prelude to Axanar</i> and <i>Axanar</i> have never been seen in Plaintiffs’</p>

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“Undisputed” Facts	Opposing Party’s Responses
<p>Federation and the Klingon Empire in a military space drama.</p> <p>Van Citters Decl., ¶¶ 55, 56.</p>	<p>Works.</p> <p>Peters Decl., ¶ 6</p> <p>ECF No. 75-19 Peters Decl., Ex. 1 (<i>Prelude to Axanar</i>)</p> <p><i>See also</i> Evidentiary Objections to Van Citters Decl.</p> <p>PLAINTIFFS’ REPLY:</p> <p>This is a false “dispute,” and <i>Prelude</i> speaks for itself.</p> <p>Moreover, Peters testified [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED] Grossman Decl., Ex. A (Peters tr. at 55:6-9) (Dkt. 79-3).</p>
<p>82. The second Star Trek motion picture, <i>The Wrath of Khan</i>, was a derivative work that expanded upon one of the episodes of <i>The Original Series</i> which featured a villain named Khan.</p> <p>Van Citters Decl., ¶ 20.</p>	<p>Undisputed</p> <p><i>See</i> Evidentiary Objections to Van Citters Decl.</p> <p>PLAINTIFFS’ REPLY:</p>

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“Undisputed” Facts	Opposing Party’s Responses
<p>83. Defendants raised [REDACTED].</p> <p>Grossman Decl., ¶ 73, Ex. A (Peters tr. at 70:24-71:4).</p>	<p>The fact is undisputed.</p> <p>Undisputed that Defendants have raised over a million dollars from Axanar donors</p> <p><i>See</i> Evidentiary Objections to Grossman Decl.</p> <p>PLAINTIFFS’ REPLY:</p> <p>The fact is undisputed. Defendants do not offer any evidence in support of their claim that the money raised was not from Star Trek fans.</p>
<p>84. Defendants spent [REDACTED].</p> <p>Grossman Decl., ¶ 73, Ex. A (Peters tr. at 190:19-191:24).</p>	<p>Undisputed that Defendants have spent over a million dollars from Axanar donors to create <i>Prelude</i> and <i>Axanar</i></p> <p><i>See</i> Evidentiary Objections to Grossman Decl.</p> <p>PLAINTIFFS’ REPLY:</p> <p>The fact is undisputed. Defendants do not offer any evidence in support of their claim that the</p>

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"Undisputed" Facts	Opposing Party's Responses
<p>85. Mr. Peters [REDACTED] [REDACTED]. Grossman Decl., ¶ 74, Ex. A(Peters tr. at 189:2-23), Ex. SS (financial summary at AX031122-AX031129).</p>	<p>money raised was not from Star Trek fans.</p> <p>Disputed. [REDACTED] [REDACTED].</p> <p>Peters Decl., ¶ 2, Ex. 2 (Second Financial Summary, AX035571-AX035736)</p> <p>Peters Decl., ¶¶ 14-15</p> <p><i>See also</i> Evidentiary Objections to Grossman Decl.</p> <p>PLAINTIFFS' REPLY: This is a false "dispute." Peters' testimony, and the original financial ledger produced establish the stated fact and none of the evidence cited by Peters refutes this fact. The evidence shows [REDACTED] [REDACTED] [REDACTED]</p>

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"Undisputed" Facts	Opposing Party's Responses
	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>is irrelevant and an attempt to mislead the court and the public. Grossman Decl., ¶ 75, Ex. A (Peters tr. at 394:20-396:7; 398:24-399:10; 401:7-403:5), ¶ 76 (Dkt. 79-3). <i>See also</i> Peters Decl., ¶ 19 [REDACTED] [REDACTED] (Dkt. 90-10).</p>
<p>86. Defendants [REDACTED] [REDACTED].</p> <p>Grossman Decl., ¶ 61, Ex. B (Burnett tr.at 61:24-62:11); ¶ 74, Ex. A (Peters tr. at 122:21-25), Ex. SS (financial summary at AX030960, AX030959, AX031046, AX031128).</p>	<p>Undisputed</p> <p><i>See</i> Evidentiary Objections to Grossman Decl.</p> <p>PLAINTIFFS' REPLY:</p> <p>The fact is undisputed.</p>
<p>87. Defendants [REDACTED] [REDACTED].</p> <p>Grossman Decl., ¶ 61, Ex. B (Burnett tr.at 62:12-18; 93:23-25; 140:21-141:3); ¶ 70</p>	<p>Undisputed</p> <p><i>See</i> Evidentiary Objections to Grossman Decl.</p>

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“Undisputed” Facts	Opposing Party’s Responses
<p>(Kingsbury tr. at 39:22-41:9); ¶ 74, Ex. SS (financial summary at AX030958-AX030964).</p>	<p>PLAINTIFFS’ REPLY: The fact is undisputed.</p>
<p>88. Defendants [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
<p>Grossman Decl., ¶ 74, Ex. A (Peters tr. at 65:7-18; 193:22-194:18), Ex. SS (financial summary at AX031058-AX031059).</p>	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
<p>Grossman Decl., ¶ 63, Ex. A (Peters tr. at 353:8-13; 487:21-488:8; 225:12-227:20), Ex. NN (lease).</p>	<p>Grossman Decl., ¶ 13, Ex. A (Peters Tr., Vol. II at 487:21-488:8)</p>
<p>Grossman Decl., ¶ 62, Ex. C (Gossett tr. at 35:11-36:7).</p>	<p><i>See also</i> Evidentiary Objections to Grossman Decl.</p>
	<p>PLAINTIFFS’ REPLY: This is a false “dispute.” There is no evidence to support Defendants’ claim that [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>

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"Undisputed" Facts	Opposing Party's Responses
	<p>[REDACTED]</p> <p>[REDACTED]</p>
<p>89. Defendants [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>Grossman Decl., ¶ 74, Ex. A (Peters tr. at 209:15-212:22), Ex. SS (financial summary at AX031019-AX031033).</p>	<p>Disputed. [REDACTED]</p> <p>[REDACTED]</p> <p>Peters Decl., ¶ 2, Ex. 2 (Second Financial Summary, AX035571-AX035736)</p> <p>Peters Decl., ¶ 15</p> <p><i>See also</i> Evidentiary Objections to Grossman Decl.</p> <p>PLAINTIFFS' REPLY:</p> <p>This is a false "dispute."</p> <p>Peters' sworn testimony, and the original financial ledger produced in this case, establish the stated fact and Defendants' cited evidence does not contradict that fact.</p> <p>The evidence shows that [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>

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"Undisputed" Facts	Opposing Party's Responses
	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>is irrelevant and an attempt to mislead the court and the public. Grossman Decl., ¶ 75, Ex. A (Peters tr. at 394:20-396:7; 398:24-399:10; 401:7-403:5), ¶ 76 (Dkt. 79-3). <i>See also</i> Peters Decl., ¶ 19 [REDACTED] [REDACTED] (Dkt. 90-10).</p>
<p>90. Defendants [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>Grossman Decl., ¶ 74, Ex. A (Peters tr. at 195:21-198:1; 213:5-10), Ex. SS (financial summary at AX031051-AX031055).</p>	<p>Disputed. [REDACTED]</p> <p>[REDACTED]</p> <p>Peters Decl., ¶ 2, Ex. 2 (Second Financial Summary, AX035571-AX035736)</p> <p>Peters Decl., at ¶ 15</p> <p><i>See also</i> Evidentiary Objections to</p>

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“Undisputed” Facts	Opposing Party’s Responses
	<p>Grossman Decl.</p> <p>PLAINTIFFS’ REPLY:</p> <p>This is a false “dispute.”</p> <p>Peters’ sworn testimony, and the original financial ledger produced in this case, establish the stated fact and Defendants’ cited evidence does not contradict that fact.</p> <p>The evidence shows that [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED],</p> <p>is irrelevant and an attempt to mislead the court and the public.</p> <p>Grossman Decl., ¶ 75, Ex. A</p> <p>(Peters tr. at 394:20-396:7; 398:24-</p>

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"Undisputed" Facts	Opposing Party's Responses
	<p>399:10; 401:7-403:5), ¶ 76 (Dkt. 79-3). <i>See also</i> Peters Decl., ¶ 19</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED].</p>
<p>91. Defendants [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED].</p> <p>Grossman Decl., ¶ 74, Ex. A (Peters tr. at 201:6-204:7), Ex. SS (financial summary at AX030967-AX030981).</p>	<p>Disputed. [REDACTED]</p> <p>[REDACTED].</p> <p>Peters Decl., ¶ 2, Ex. 2 (Second Financial Summary, AX035571-AX035736)</p> <p>Peters Decl., ¶ 15</p> <p><i>See also</i> Evidentiary Objections to Grossman Decl.</p> <p>PLAINTIFFS' REPLY:</p> <p>This is a false "dispute."</p> <p>Peters' sworn testimony, and the original financial ledger produced in this case, establish the stated fact and Defendants' cited evidence does not contradict that fact.</p>

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“Undisputed” Facts	Opposing Party’s Responses
	The fact is undisputed.
<p>93. Mr. Peters [REDACTED] [REDACTED] [REDACTED].</p>	<p>Disputed. [REDACTED] [REDACTED].</p>
<p>Grossman Decl., ¶ 74, Ex. A (Peters tr. at 204:11-16, 205:3-16), Ex. SS (financial summary at AX030985-AX030986).</p>	<p>Peters Decl., ¶ 2, Ex. 2 (Second Financial Summary, AX035571-AX035736)</p>
	<p>Peters Decl., ¶ 15</p>
	<p><i>See also</i> Evidentiary Objections to Grossman Decl.</p>
	<p>PLAINTIFFS’ REPLY: This is a false “dispute.”</p>
	<p>Peters’ sworn testimony, and the original financial ledger produced in this case, establish the stated fact and Defendants’ cited evidence does not contradict that fact.</p>
	<p>The evidence shows that [REDACTED] [REDACTED] [REDACTED] [REDACTED]</p>

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"Undisputed" Facts	Opposing Party's Responses
	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>is irrelevant and an attempt to mislead the court and the public. Grossman Decl., ¶ 75, Ex. A (Peters tr. at 394:20-396:7; 398:24-399:10; 401:7-403:5), ¶ 76 (Dkt. 79-3). <i>See also</i> Peters Decl., ¶ 19</p> <p>[REDACTED]</p> <p>[REDACTED] (Dkt. 90-10).</p>
<p>94. Mr. Peters [REDACTED]</p> <p>[REDACTED].</p> <p>Grossman Decl., ¶ 74, Ex. A (Peters tr. at 203:25-204:1); Ex. SS (financial summary at AX030981-AX030983).</p>	<p>Disputed. [REDACTED]</p> <p>[REDACTED].</p> <p>Peters Decl., ¶ 2, Ex. 2 (Second Financial Summary, AX035571-AX035736)</p> <p>Peters Decl., ¶ 15</p> <p><i>See also</i> Evidentiary Objections to</p>

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“Undisputed” Facts	Opposing Party’s Responses
	Grossman Decl.
	PLAINTIFFS’ REPLY:
	This is a false “dispute.”
	Peters’ sworn testimony, and the original financial ledger produced in this case, establish the stated fact and Defendants’ cited evidence does not contradict that fact.
	The evidence shows that [REDACTED]
	[REDACTED]
	[REDACTED]
	[REDACTED]
	[REDACTED]
	[REDACTED]
	[REDACTED]
	[REDACTED]
	[REDACTED]
	[REDACTED],
	is irrelevant and an attempt to mislead the court and the public.
	Grossman Decl., ¶ 75, Ex. A
	(Peters tr. at 394:20-396:7; 398:24-

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“Undisputed” Facts	Opposing Party’s Responses
	399:10; 401:7-403:5), ¶ 76 (Dkt. 79-3). <i>See also</i> Peters Decl., ¶ 19 [REDACTED] (Dkt. 90-10).
95. Mr. Peters [REDACTED] [REDACTED] Grossman Decl., ¶ 74, Ex. A (Peters tr. at 217:6-15), Ex. SS (financial summary at AX030986-AX030987).	Disputed. [REDACTED] [REDACTED] Peters Decl., ¶ 2, Ex. 2 (Second Financial Summary, AX035571-AX035736) Peters Decl., ¶ 15 <i>See also</i> Evidentiary Objections to Grossman Decl. PLAINTIFFS’ REPLY: This is a false “dispute.” Peters’ sworn testimony, and the original financial ledger produced in this case, establish the stated fact and Defendants’ cited evidence does not contradict that fact.

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“Undisputed” Facts	Opposing Party’s Responses
	<p>The evidence shows that [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] is irrelevant and an attempt to mislead the court and the public. Grossman Decl., ¶ 75, Ex. A (Peters tr. at 394:20-396:7; 398:24-399:10; 401:7-403:5), ¶ 76 (Dkt. 79-3). See also Peters Decl., ¶ 19 [REDACTED] [REDACTED] (Dkt. 90-10).</p>
<p>96. Mr. Peters [REDACTED] [REDACTED] [REDACTED] [REDACTED]. Grossman Decl., ¶ 74, Ex. A (Peters tr. at 205:14-16), Ex. SS (financial summary at AX030967-AX030987).</p>	<p>Disputed. [REDACTED] [REDACTED]. Peters Decl., ¶ 2, Ex. 2 (Second Financial Summary, AX035571-AX035736)</p>

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“Undisputed” Facts	Opposing Party’s Responses
	<p>Peters Decl., ¶ 15</p> <p><i>See also</i> Evidentiary Objections to Grossman Decl.</p> <p>PLAINTIFFS’ REPLY:</p> <p>This is a false “dispute.”</p> <p>Peters’ sworn testimony, and the original financial ledger produced in this case, establish the stated fact and Defendants’ cited evidence does not contradict that fact.</p> <p>The evidence shows that [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>

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"Undisputed" Facts	Opposing Party's Responses
	<p>is irrelevant and an attempt to mislead the court and the public. Grossman Decl., ¶ 75, Ex. A (Peters tr. at 394:20-396:7; 398:24-399:10; 401:7-403:5), ¶ 76 (Dkt. 79-3). <i>See also</i> Peters Decl., ¶ 19 [REDACTED] (Dkt. 90-10).</p>
<p>97. Defendants [REDACTED] [REDACTED] [REDACTED]. Grossman Decl., ¶ 74, Ex. A (Peters tr. at 205:20-207:9), Ex. SS (financial summary at AX031098-AX031110).</p>	<p>Disputed. [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]. <i>See also</i> Evidentiary Objections to Grossman Decl. PLAINTIFFS' REPLY: This is a false "dispute." The evidence shows that Defendants used donor funds [REDACTED] [REDACTED] Defendants do not cite any evidence to dispute the stated fact.</p>
<p>98. Mr. Peters [REDACTED]</p>	<p>Disputed. [REDACTED]</p>

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“Undisputed” Facts	Opposing Party’s Responses
<p>[REDACTED]</p> <p>Grossman Decl., ¶ 74, Ex. A (Peters tr. at 207:10-12), Ex. SS (financial summary at AX031098).</p>	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>Peters Decl., ¶ 2, Ex. 2 (Second Financial Summary, AX035571-AX035736)</p> <p>Peters Decl., ¶ 15</p> <p><i>See also</i> Evidentiary Objections to Grossman Decl.</p> <p>PLAINTIFFS’ REPLY:</p> <p>This is a false “dispute.”</p> <p>Peters’ sworn testimony, and the original financial ledger produced in this case, establish the stated fact and Defendants’ cited evidence does not contradict that fact.</p> <p>The evidence shows that [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>

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"Undisputed" Facts	Opposing Party's Responses
	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED],</p> <p>is irrelevant and an attempt to mislead the court and the public. Grossman Decl., ¶ 75, Ex. A (Peters tr. at 394:20-396:7; 398:24-399:10; 401:7-403:5), ¶ 76 (Dkt. 79-3). <i>See also</i> Peters Decl., ¶ 19</p> <p>[REDACTED]</p> <p>[REDACTED] (Dkt. 90-10).</p>
<p>99. Mr. Peters [REDACTED]</p> <p>[REDACTED].</p> <p>Grossman Decl., ¶ 74, Ex. A (Peters tr. at 208:2-16), Ex. SS (financial summary at AX031009-AX031010).</p>	<p>Disputed. [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED].</p> <p>Peters Decl., ¶ 2, Ex. 2 (Second Financial Summary, AX035571-AX035736)</p> <p>Peters Decl., ¶ 15</p> <p><i>See also</i> Evidentiary Objections to</p>

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“Undisputed” Facts	Opposing Party’s Responses
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Grossman Decl.

PLAINTIFFS’ REPLY:

This is a false “dispute.”

Peters’ sworn testimony, and the original financial ledger produced in this case, establish the stated fact and Defendants’ cited evidence does not contradict that fact.

The evidence shows [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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is irrelevant and an attempt to mislead the court and the public.

Grossman Decl., ¶ 75, Ex. A
(Peters tr. at 394:20-396:7; 398:24-

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"Undisputed" Facts	Opposing Party's Responses
	399:10; 401:7-403:5), ¶ 76 (Dkt. 79-3). <i>See also</i> Peters Decl., ¶ 19 [REDACTED] (Dkt. 90-10).
<p>100. In raising money for the Axanar Works, Mr. Peters stated, "Axanar is the first fully-professional, independent Star Trek film. While some may call it a 'fan film' as we are not licensed by CBS, Axanar has professionals working in front and behind the camera, with a fully-professional crew--many of whom have worked on Star Trek itself--who ensure Axanar will be the quality of Star Trek that all fans want to see."</p> <p style="padding-left: 40px;">Grossman Decl., ¶ 48, Ex. A (Peters tr. at 92:19-94:1); Ex. CC (Indiegogo site).</p>	<p>Undisputed</p> <p><i>See</i> Evidentiary Objections to Grossman Decl.</p> <p>PLAINTIFFS' REPLY: The fact is undisputed.</p>
<p>101. Defendants [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p style="padding-left: 40px;">Grossman Decl., ¶ 39, Ex. B (Burnett tr. at 55:4-14, 58:10-22,59:11-22).</p>	<p>Undisputed</p> <p><i>See</i> Evidentiary Objections to Grossman Decl.</p> <p>PLAINTIFFS' REPLY: The fact is undisputed.</p>
<p>102. Peters repeatedly referenced the Axanar</p>	<p>Undisputed</p>

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“Undisputed” Facts	Opposing Party’s Responses
<p>Works as a professional production.</p> <p>Grossman Decl., ¶ 52, Ex. A (Peters tr. at 91:11-92:7), Ex. GG (statement made by Alec Peters in an interview), ¶ 48, Ex. A (Peters tr. at 92:19-94:1), Ex. CC (Indiegogo fundraising page), ¶ 54, Ex. A (Peters tr. at 97:14-98:22), Ex. HH (screenshot from Defendants’ Kickstarter fundraising page), ¶ 49, Ex. A (Peters tr. at 99:10-100:15), Ex. DD (Defendants’ Indiegogo fundraising page), ¶ 50, Ex. A (Peters tr. at 108:6-109:12), Ex. EE (Facebook post by Alec Peters), ¶ 51, Ex. A (Peters tr. at 109:16-110:2), Ex. FF (Post on the Axanar Facebook page), ¶ 53 (Peters tr. at 133:16-143:5, 134:10-143:5, 135:11-136:2, 137:13-19-138:13, 138:21-140:2, 140:19-141:3,141:16-142:22), Ex. ZZ (transcript of podcasts), ¶ 1, Ex. A (Peters tr. at 170:22-171:3), Ex. G (printout from Axanarproductions.com), ¶ 56, Ex. A Peters tr. at 124:8-127:15), Ex. JJ (press kit).</p>	<p>See Evidentiary Objections to Grossman Decl.</p> <p>PLAINTIFFS’ REPLY:</p> <p>The fact is undisputed.</p>
<p>103. Peters repeatedly stated that his production was not to be called a “fan film.”</p> <p>Grossman Decl., ¶ 48, Ex. A (Peters tr. at 92:19-94:1), Ex. CC (Indiegogo fundraising page), ¶ 49, Ex. A (Peters tr. at 99:10-101:10),</p>	<p>Disputed. There were many instances in which Defendants did call their works “fan films.” The distinction between “fan films” and “professional” films was made only</p>

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“Undisputed” Facts	Opposing Party’s Responses
<p>Ex. DD (Defendants’ Indiegogo fundraising page), ¶ 50, Ex. A (Peters tr. at 108:6- 109:12), Ex. EE (Facebook post by Alec Peters), ¶ 51, Ex. A (Peters tr. at 109:16-110:2), Ex. FF (Post on the Axanar Facebook page), ¶ 53 (Peters tr. at 133:16-143:5, 134:10-143:5, 137:13-19 -138:13, 138:21-140:2,140:19-141:5, 141:16-142:22), Ex. ZZ (transcript of podcasts), ¶ 55, Ex. A (Peters tr. at 106:6-107:7), Ex. II (tweet) ¶ 57, Ex. A (Peters tr. at 349:18-24), Ex. KK (Peters email to Doug Drexler).</p>	<p>to distinguish the quality of Defendants’ Works.</p> <p>Peters Decl., ¶ 26, Ex. 6 (Press Release)</p> <p>Peters Decl., ¶ 26, Ex. 12 (Emails between Alec Peters and Morgen Schneider, AX030370-AX030372)</p> <p>Peters Decl., ¶ 27, Ex. 13 (Axanar Facebook Post, AX035850)</p> <p>Peters Decl., ¶ 27, Ex. 14 (Axanar Tweet, AX035927)</p> <p>Peters Decl., ¶ 26, Ex. 11 (Star Trek Fan Film Flyer, PL0000106)</p> <p>Peters Decl., ¶ 26, Ex. 9 (Axanar Blog Post, PL0005718-PL0005720)</p> <p>Peters Decl., ¶ 26, Ex. 10 (Axanar Blog Post, PL0005973-PL0005989)</p>

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“Undisputed” Facts	Opposing Party’s Responses
	<p>Peters Decl., ¶ 26, Ex. 8 (Axanar Facebook Post, PL0008222)</p> <p>Peters Decl., ¶ 28, Ex. 16 (Email from Marian Cordry to Holly Amos and John Van Citters, PL0008689)</p> <p>Peters Decl., ¶ 26, Ex. 7 (Axanar Facebook Post, PL0011822)</p> <p>Peters Decl., ¶ 28, Ex. 15 (Emails among Bill Burke, John Van Citters, and Leslie Ryan, PL0012814- PL0012816)</p> <p>Peters Decl., ¶ 26, Ex. 5 (Email from Marian Cordry to John Van Citters, PL0013502- PL0013503)</p> <p>Peters Decl., ¶ 26, Ex. 4 (Peters Facebook Post, PL0013517)</p> <p>Peters Decl., ¶ 13, Ex. 1 (Axanar Annual Report, Revised, 2015,</p>

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“Undisputed” Facts	Opposing Party’s Responses
	<p>PL0013763-PL0013785)</p> <p>Peters Decl., ¶ 26, Ex. 3 (Emails between Alec Peters and Mallory Levitt, PL0013787-PL0013788)</p> <p>Ranahan Decl., ¶ 5, Ex. E (Gossett Tr. at 175:17-18)</p> <p><i>See also</i> Evidentiary Objections to Grossman Decl.</p> <p>PLAINTIFFS’ REPLY:</p> <p>This is a false “dispute.” The fact that Peters may have at some points stated or implied that Axanar was a fan film (particularly after the lawsuit was filed or in emails to CBS) does not mean that he did not advertise repeatedly assert that his production was not to be called a fan film.</p>
<p>104. Peters attempted to meet with Netflix to become a producer of Star Trek productions, attempted to trademark the word “Axanar” and [REDACTED]</p>	<p>Disputed. [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>

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“Undisputed” Facts	Opposing Party’s Responses
<p>[REDACTED].</p> <p>Grossman Decl., ¶ 58, Ex. A (Peters tr. at 442:21-449:9); Ex. LL (Facebook message exchange between Terry McIntosh and Alec Peters); ¶ 59, Ex. E (McIntosh tr. at 20:23-22:15), ¶ 60, Ex. C (Gossett tr. at 126:10-128:14), Ex. MM (April 20, 2015 email exchange between Alec Peters and Christian Gossett); ¶ 65, Ex. A (Peters tr. at 234:11-25); ¶ 66, Ex. B. (Burnett tr. at 151:2-153:12), ¶ 67, Ex. PP (Axanar marketing plan), ¶ 68, Ex. QQ (printout from Axanarproductions.com).</p>	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED].</p> <p>Grossman Decl., ¶ 13, Ex. A (Peters Tr., Vol. II at 447:5 - 448:25)</p> <p>Peters Decl., ¶ 17</p> <p><i>See also</i> Evidentiary Objections to Grossman Decl.</p> <p>PLAINTIFFS’ REPLY:</p> <p>Defendants do not dispute that Peters reached out to Netflix for the purpose of distributing the Axanar Works. Moreover, Peters testified [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]. Grossman Decl., ¶ 58, Ex. A (Peters tr. at 442:21-449:9) (Dkt. 79-3). This is a matter of semantics.</p>

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“Undisputed” Facts	Opposing Party’s Responses
<p>105. Mr. Peters’ collaborator and the director of Axanar, Rob Burnett, stated [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED].</p> <p>Grossman Dec., ¶ 77, Ex. B (Burnett tr. at 217:22-218:7); ¶ 78, Ex. C (Gossett tr. at 19:15-22:20); ¶ 79, Ex. A (Peters tr. at 455:24-456:16), Ex. OO (Facebook communication between Alec Peters and Terry McIntosh); ¶ 81, Ex. B (Burnett tr. at 32:6-33:1), ¶ 82 (Burnett tr. at 31:21-:36:20); Ex. RR (Robert Meyer Burnett online posting).</p>	<p>Undisputed</p> <p><i>See Evidentiary Objections to Grossman Decl.</i></p> <p>PLAINTIFFS’ REPLY:</p> <p>The fact is undisputed.</p>
<p>106. Mr. Peters created the Axanar [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>Grossman Decl., ¶ 79, Ex. A (Peters tr. at 455:24-456:16); ¶ 77, Ex. B (Burnett tr. at 217:22-218:7); ¶ 78, Ex. C (Gossett tr. at 19:15-:22:20).</p>	<p>Disputed. Though Defendants hoped that their Works would lead to other work, Defendants made their Works because they love Star Trek.</p> <p>Peters Decl., ¶ 16</p> <p><i>See also Evidentiary Objections to Grossman Decl.</i></p>

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"Undisputed" Facts	Opposing Party's Responses
	<p>PLAINTIFFS' REPLY:</p> <p>This fact should be deemed undisputed as Defendants' cited evidence does not refute the stated fact.</p> <p>Further, Plaintiffs' fact states that Peters created the Axanar Works <u>in large part</u> [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
<p>107. Mr. Burnett, the editor of <i>Prelude to Axanar</i>, and director of the full length Axanar Film, also stated [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>Grossman Decl., ¶ 82, Ex. B (Burnett tr. at 31:21-36:20), Ex. RR (Robert Meyer Burnett online posting).</p>	<p>Undisputed</p> <p>See Evidentiary Objections to Grossman Decl.</p> <p>PLAINTIFFS' REPLY:</p> <p>The fact is undisputed.</p>

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"Undisputed" Facts	Opposing Party's Responses
<p>108. Mr. Peters [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED].</p>	<p>Disputed. [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED].</p>
<p>Grossman Decl., ¶ 65, Ex. A (Peters tr. at 234:11-25); ¶ 66, Ex. B (Burnett tr. at 151:2-153:12), Ex. PP (Axanar marketing plan).</p>	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED].</p>
	<p>Peters Decl., ¶ 19</p>
	<p><i>See also</i> Evidentiary Objections to Grossman Decl.</p>
	<p>PLAINTIFFS' REPLY:</p>
	<p>This fact should be deemed undisputed. Defendants' cited evidence does not refute the stated fact.</p>
	<p>Further, [REDACTED]</p>
	<p>[REDACTED]</p>
	<p>[REDACTED]</p>
	<p>[REDACTED]</p>
	<p>[REDACTED]</p>
	<p>[REDACTED]</p>
	<p>[REDACTED]</p>

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"Undisputed" Facts	Opposing Party's Responses
	<p>[REDACTED]</p> <p>Mr. Gossett testified that Mr. Peters "repeatedly" described to him the concept that he was interested in creating alternative ways for fans to view Star Trek, and a document produced by Defendants states: [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED] Grossman Reply Decl., ¶ 4, Ex. C (Gossett tr. at 115:24 - 117:7), Ex. MMM (Axanar document).</p>
<p>109. Defendants [REDACTED]</p> <p>[REDACTED]</p> <p>Grossman Decl., ¶ 64, Ex. B (Burnett tr.at 142:14-148:8); Ex. PP (Axanar marketing plan); Ex. QQ (printout from Axanarproductions.com).</p>	<p>Disputed. [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>Peters Decl., ¶¶ 11-15</p> <p><i>See also</i> Evidentiary Objections to Grossman Decl.</p> <p>PLAINTIFFS' REPLY:</p>

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“Undisputed” Facts	Opposing Party’s Responses
	<p>This is a false “dispute.” Peters’ self-serving testimony in response to Plaintiffs’ Motion for Partial Summary Judgment, which contradicts documents produced by Defendants, is insufficient to create an issue of fact.</p>
<p>110. Peters stated: “But Axanar is not just an independent Star Trek film; it is the beginning of a whole new way that fans can get the content they want, by funding it themselves. Why dump hundreds or thousands of dollars a year on 400 cable channels, when what you really want is a few good sci-fi shows?”</p> <p>Grossman Decl., ¶ 49, Ex. A (Peters tr. at 99:10-100:15), Ex. DD (Axanar Indiegogo fundraising page).</p>	<p>Disputed. This statement is taken out of context. This statement was made to address how fans watch science fiction shows the enjoy, not how to stop fans from watching Plaintiffs’ Works.</p> <p><i>See also</i> Evidentiary Objections to Grossman Decl.</p> <p>PLAINTIFFS’ REPLY:</p> <p>This fact should be deemed undisputed. Defendants have not cited any evidence to refute the stated fact.</p> <p>Further, the document speaks for itself.</p> <p>Mr. Gossett testified that Mr.</p>

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"Undisputed" Facts	Opposing Party's Responses
	<p>Peters "repeatedly" described to him the concept that he was interested in creating alternative ways for fans to view Star Trek, and a document produced by Defendants states: [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED] Grossman Reply Decl., ¶ 4, Ex. C (Gossett tr. at 115:24 - 117:7), Ex. MMM (Axanar document).</p>
<p>111. The continued production and distribution of the Axanar Works would cause irreparable harm to the market for Star Trek Copyrighted Works because Star Trek fans will view the Axanar Works (and donate for the production of future works) instead of paying to view the Star Trek Copyrighted Works.</p> <p>Van Citters Decl., ¶ 63.</p>	<p>Disputed. Neither Plaintiffs nor Defendants know of any fans who have stated that they would decline to watch Plaintiffs' Works because they watched Defendants' Works.</p> <p>Peters Decl., ¶ 31</p> <p>ECF No. 75-16, Oki Decl., Ex. 14 (Paramount Pictures Corporation's Responses to Requests for Admission, Set Two, Response to Request for Admission Nos. 72-73)</p>

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“Undisputed” Facts	Opposing Party’s Responses
	<p>ECF No. 75-17, Oki Decl., Ex. 15 (CBS Studios Inc.’s Responses to Requests for Admission, Set Two, Response to Request for Admission Nos. 72-73)</p> <p>ECF Nos. 75-5, 77-3, Oki Decl., Ex. 3 (Tregillis Report, ¶¶ 58-62)</p> <p>ECF Nos. 75-11, 77-4, Oki Decl., Ex. 9 (Van Citters Tr. at 94:8-95:7, 119:19-124:18)</p> <p>ECF Nos. 75-12, 77-5, Oki Decl., Ex. 10, O’Rourke Tr. at 60:22-61:5; 63:8-16</p> <p><i>See also</i> Evidentiary Objections to Van Citters Decl.</p> <p>PLAINTIFFS’ REPLY:</p> <p>This fact should be deemed undisputed as Defendants do not cite to any evidence to refute the stated fact.</p>

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“Undisputed” Facts	Opposing Party’s Responses
	<p>Further, this is a mischaracterization of Plaintiffs’ interrogatory responses and deposition testimony, which extensively discuss the harm to Plaintiffs from the unchecked creation of unauthorized derivative works.</p> <p>Mr. Gossett testified that Mr. Peters “repeatedly” described to him the concept that he was interested in creating alternative ways for fans to view Star Trek, and a document produced by Defendants states: [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED] Grossman Reply Decl., ¶ 4, Ex. C (Gossett tr. at 115:24 - 117:7), Ex. MMM (Axanar document).</p>
<p>112. Peters was in charge of Axanar Productions’ conduct and was responsible for the infringing conduct of Axanar Productions.</p>	<p>Undisputed</p> <p>See Evidentiary Objections to</p>

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“Undisputed” Facts	Opposing Party’s Responses
<p>Grossman Decl., ¶ 86, Ex. C (Gossett tr. at 38:6-16; 161:14-23; 162:9-163:14); ¶ 84, Ex. A (Peters tr. at 55:21-58:9; 78:9-80:10), ¶ 87, Ex. E (McIntosh tr. at 52:12-20).</p>	<p>Grossman Decl. PLAINTIFFS’ REPLY: The fact is undisputed.</p>
<p>113. Peters is the president of Axanar Productions. Grossman Decl., ¶ 83, Ex. A (Peters tr. at 182:1-2).</p>	<p>Undisputed <i>See Evidentiary Objections to Grossman Decl.</i> PLAINTIFFS’ REPLY: The fact is undisputed.</p>
<p>114. Peters was responsible for many of the creative decisions on the Axanar Works. Grossman Decl., ¶ 85, Ex. B (Burnett tr. at 201:19-202:11); ¶ 86, Ex. C (Gossett tr. at 38:6-16; 161:14-23; 162:9-163:14).</p>	<p>Undisputed <i>See Evidentiary Objections to Grossman Decl.</i> PLAINTIFFS’ REPLY: The fact is undisputed.</p>
<p>115. Peters supervised and controlled Axanar Productions. Grossman Decl., ¶ 83, Ex. A (Peters tr. at 60:6-61:2), ¶ 87, Ex. E (McIntosh tr. at 52:12-20).</p>	<p>Undisputed <i>See Evidentiary Objections to Grossman Decl.</i> PLAINTIFFS’ REPLY: The fact is undisputed.</p>
<p>116. Peters [REDACTED]</p>	<p>Undisputed</p>

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“Undisputed” Facts	Opposing Party’s Responses
<p>[REDACTED]</p> <p>Grossman Decl., ¶ 88, Ex. A (Peters tr. at 9:21-23; 21:18-25).</p>	<p>See Evidentiary Objections to Grossman Decl.</p> <p>PLAINTIFFS’ REPLY: The fact is undisputed.</p>
<p>117. In the years prior to Peters’ creation of the Axanar Works, Peters sent several emails to CBS to report third parties whom Peters believed were using Plaintiffs’ intellectual property without authorization.</p> <p>Grossman Decl., ¶ 89, Ex. TT (Peters emails to CBS).</p>	<p>Undisputed</p> <p>See Evidentiary Objections to Grossman Decl.</p> <p>PLAINTIFFS’ REPLY: The fact is undisputed.</p>

II. STATEMENT OF ADDITIONAL MATERIAL FACTS

Material Fact and Supporting Evidence	Plaintiffs’ Response
<p>51. <i>Prelude to Axanar</i> was inspired by numerous different sources.</p> <p>ECF No. 75-7, Oki Decl., Ex. 5 (Burnett Tr. at 22:15-23:18)</p> <p>ECF No. 75-7, Oki Decl., Ex. 6 (Hunt Tr. at 51:8-16)</p> <p>ECF No. 75-7, Oki Decl., Ex. 13 (Peters Tr., Vol. I at 57:19-58:4)</p> <p>ECF No. 75-20, Peters Decl., Ex. 1 (<i>Prelude to Axanar</i>)</p>	<p>Disputed.</p> <p><i>Prelude</i> speaks for itself and does not include any characters or copyrighted elements from works other than Star Trek. Further, Plaintiffs specifically asked in discovery for Defendants’ source documents used to create the Axanar Works (other than the Star</p>

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Material Fact and Supporting Evidence	Plaintiffs' Response
<p>ECF No. 75-19, Peters Decl., ¶ 9</p>	<p>Trek films and television episodes which the parties agreed did not need to be exchanged) and Defendants did not turn over any of these claimed sources. Grossman Decl., ¶ 99 (Dkt. 88-1).</p> <p>Defendants advertised <i>Prelude</i> as an independent Star Trek film, not as a war movie. Grossman Decl., ¶ 54, Ex. A (Peters tr. at 97:14-98:22), Ex. HH (screenshot from Defendants' Kickstarter fundraising page).</p> <p>Grossman Decl., ¶ 34, Ex. A (Peters tr. at 471:25-474:20), Ex. U (March 7, 2015 email from Alec Peters to Christian Gossett).</p> <p>Grossman Decl., ¶ 29, Ex. C (Gossett tr. at 36:11-37:8), Ex. R (March 24, 2013 email from Sean Tourangeau to Christian Gossett and Alec Peters).</p> <p>Grossman Decl., ¶ 38, Ex. C (Gossett tr. at 92:14-93:13), Ex. Y (April 13, 2014 email exchange</p>

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Material Fact and Supporting Evidence	Plaintiffs' Response
	<p>between Alec Peters, Tobias Richter, and Christian Gossett). Grossman Decl., ¶ 10, Ex. C (Gossett tr. at 30:7-31:13, Ex. F (January 4, 2011 email from Alec Peters to Christian Gossett), Ex. A (Peters tr. at 332:15-334:4). Grossman Decl., ¶ 12, Ex. C (Gossett tr. at 32:7-34:16), Ex. H (November 13, 2013 email exchange between Alec Peters and Christian Gossett), Ex. A (Peters tr. at 359:18-361:11) (Dkt. 79-3).</p>
<p>52. <i>The Vulcan Scene</i> was inspired by numerous different sources.</p> <p>ECF No. 75-7, Oki Decl., Ex. 5 (Burnett Tr. at 22:15-23:18)</p> <p>ECF No. 75-7, Oki Decl., Ex. 6 (Hunt Tr. at 51:8-16)</p> <p>ECF No. 75-7, Oki Decl., Ex. 13 (Peters Tr., Vol. I at 57:19-58:4)</p> <p>ECF No. 75-20, Peters Decl., Ex. 1 (<i>Prelude to Axanar</i>)</p> <p>ECF No. 75-19, Peters Decl., ¶ 9</p>	<p>Disputed.</p> <p>The Vulcan Scene speaks for itself and does not include any characters or copyrighted elements from the cited works. Further, Plaintiffs specifically asked for Defendants' source documents used to create the Axanar Works (other than the Star Trek films and television episodes which the parties agreed did not need to be exchanged) and Defendants did not turn over any of</p>

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Material Fact and Supporting Evidence	Plaintiffs' Response
	these claimed sources. Grossman Decl., ¶ 99 (Dkt. 88-1).
<p>53. The <i>Axanar</i> scripts were inspired by numerous different sources.</p> <p>ECF No. 75-7, Oki Decl., Ex. 5 (Burnett Tr. at 22:15-23:18)</p> <p>ECF No. 75-7, Oki Decl., Ex. 6 (Hunt Tr. at 51:8-16)</p> <p>ECF No. 75-7, Oki Decl., Ex. 13 (Peters Tr., Vol. I at 57:19-58:4)</p> <p>ECF No. 75-20, Peters Decl., Ex. 1 (<i>Prelude to Axanar</i>)</p> <p>ECF No. 75-19, Peters Decl., ¶ 9</p>	<p>Disputed.</p> <p>The <i>Axanar</i> script speaks for itself and does not include any characters or copyrighted elements from the cited works. Further, Plaintiffs specifically asked for Defendants' source documents used to create the <i>Axanar</i> Works (other than the <i>Star Trek</i> films and television episodes which the parties agreed did not need to be exchanged) and Defendants did not turn over any of these claimed sources. Grossman Decl., ¶ 99 (Dkt. 88-1).</p>
<p>54. Plaintiffs conceded that they failed entirely to meet and confer pursuant to Local Rule 7-3 with respect to seeking injunctive relief.</p> <p>Ranahan Decl., ¶ 7, Ex. G (Correspondence with Plaintiffs' Counsel)</p>	<p>Irrelevant and Disputed that Plaintiffs failed to meet and confer (or conceded so).</p> <p>Courts do not require parties to meet and confer on all arguments as long as though is no evidence of</p>

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Material Fact and Supporting Evidence	Plaintiffs' Response
	<p>the moving party's bad faith and no prejudice to the nonmoving party.</p> <p><i>See Del Amo v. Baccash</i>, No. CV 07-663-PSG, 2008 U.S. Dist. LEXIS 110489, at *7 (C.D. Cal. Sep. 16, 2008) (“Thus, based on the pleadings, the parties met and conferred regarding at least two of the arguments in Defendants’ motion. More importantly, though, there is no evidence of bad faith on the part of Defendants. For these reasons, the Court is willing to excuse Defendants’ failure to meet and confer on every substantive issue they raised in their motion.”); <i>Mitsubishi Elec. Corp. v. Sceptre, Inc.</i>, No. 2:14-cv-04994-ODW(AJWx), 2015 U.S. Dist. LEXIS 65502, at *4-5 (C.D. Cal. May 18, 2015) (“Defendant argues that during the January 27, 2015 meet and confer Plaintiffs (1) failed to provide further details besides boilerplate objections regarding the</p>

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Material Fact and Supporting Evidence	Plaintiffs' Response
	<p>basis for the motion, and (2) did not provide specific examples of alleged deficiencies. (Opp'n 3.) In this case, Plaintiffs identified the rules that Defendant had not complied with and their intent to move to strike each instance in which a claim chart was not provided....Notwithstanding, the Court does not find that Defendant was prejudiced in any way by the purported lack of specificity during the meet and confer.”</p>
<p>55. The Court denied Plaintiffs' Ex parte application with respect to the adequacy of Defendants' document collection.</p> <p>ECF No. 68, Order Denying Plaintiffs' Ex Parte Application (“Except as expressly stated herein, [Plaintiffs’ Ex Parte Application] is denied. The Discovery Cut-Off Date is November 2, 2016. See Minute Order, filed May 9, 2016. Notwithstanding the issues Plaintiffs have raised regarding the adequacy of Defendants' document productions...the Court will not require at this late date the effective recommencement of document searches,</p>	<p>The language of the Court’s order is undisputed and irrelevant.</p>

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Material Fact and Supporting Evidence	Plaintiffs' Response
reviews, and productions.”).	
<p>56. Plaintiffs have not named the supplement to <i>Star Trek: The Role Playing Game</i>, titled, “The Four Years War” as an allegedly infringed work.</p> <p>ECF No. 75-3, Oki Decl., Ex. 1 (CBS Studios Inc.’s Amended Responses to Interrogatories, Set One, Response to Interrogatory Nos. 4-9)</p> <p>ECF No. 75-4, Oki Decl., Ex. 2 (Paramount Pictures Corporations Amended Responses to Interrogatories, Set One, Response to Interrogatory Nos. 4-9)</p> <p>ECF No. 26, FAC, Appendix A ¶¶ 2-6</p>	<p>Disputed.</p> <p>Defendants misrepresent the evidence. The cited evidence, Plaintiffs’ Amended Interrogatory Responses, <u>does</u> include <i>Star Trek: The Role Playing Game – The Four Years War</i>.</p> <p>See Dkt. 75-3 (CBS’ interrogatory responses) at 3:8 (item 15), 4:10 (item 14), and 7:16-21. See also Dkt. 75-4 (Paramount’s interrogatory responses) at 3:8 (item 14), 4:11 (item 14), and 7:16-21.</p>
<p>57. The U.S.S. Enterprise makes a cameo appearance in Defendants’ Works.</p> <p>Ranahan Decl., ¶ 4, Ex. D (Burnett Tr. at 24:25-25:10)</p> <p>ECF No. 75-20, Peters Decl., Ex. 1 (<i>Prelude to Axanar</i> at 17:24)</p> <p>ECF Nos. 75-5, 77-8, 77-9, Peters Decl., Ex. 3 (July 1, 2016 <i>Axanar</i> Script, pp. 57, 72, 109, 112, 119, 120)</p> <p>ECF Nos. 72-30, 79, Grossman Decl.,</p>	<p>Undisputed that the U.S.S. Enterprise is featured in the Axanar Works.</p> <p>Disputed as to the characterization of the appearance of the U.S.S. Enterprise as a “cameo.” The Axanar Works speak for themselves.</p>

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Material Fact and Supporting Evidence	Plaintiffs' Response
<p>Ex. AA (Nov. 26, 2015 <i>Axanar</i> Script, pp. 52, 65, 98, 99, 110, 111)</p>	
<p>58. <i>Prelude to Axanar</i> features an original plot never before used in Plaintiffs' Works.</p> <p>ECF No. 48, Counterclaim at 24-25, ¶¶ 30-31</p> <p>ECF No. 75-15, Oki Decl., Ex. 13 (Peters Tr., Vol. I at 85:7-23)</p> <p>ECF No. 75-7, Oki Decl., Ex. 5 (Burnett Tr. at 22:8-23:8; 202:12-203:4)</p> <p>ECF No. 75-20, Peters Decl., Ex. 1 (<i>Prelude to Axanar</i>)</p>	<p>Disputed.</p> <p>The Counterclaim is not evidence.</p> <p><i>Prelude</i> does not feature an original plot. The plot is taken from <i>The Four Years War</i> publication and the episode "Whom Gods Destroy" of <i>The Original Series</i>. Grossman Decl., ¶ 13, Ex. A (Peters tr. at 38:22-41:17); ¶ 14, Ex. C (Gossett tr. at 48:10-50:10), Ex. I (April 26, 2014 email from Christian Gossett to Alec Peters) (Dkt. 79-3). Van Citters Decl., ¶¶ 5-6, 13, 14, 19, 57 (Dkt. 72-60).</p>
<p>59. <i>The Vulcan Scene</i> features an original plot never before used in Plaintiffs' Works.</p> <p>ECF No. 48, Counterclaim at 24-25, ¶¶ 30-31</p> <p>ECF No. 75-15, Oki Decl., Ex. 13 (Peters Tr., Vol. I at 85:7-23)</p> <p>ECF No. 75-7, Oki Decl., Ex. 5 (Burnett</p>	<p>Disputed.</p> <p>The Counterclaim is not evidence.</p> <p>The Vulcan Scene does not feature an original plot. The plot of the <i>Axanar</i> feature, of which the</p>

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Material Fact and Supporting Evidence	Plaintiffs' Response
<p>Tr. at 22:8-23:8; 202:12-203:4)</p> <p>ECF No. 75-20, Peters Decl., Ex. 1 (<i>Prelude to Axanar</i>)</p>	<p>Vulcan Scene is a part, is taken from <i>The Four Years War</i> publication and the episode “Whom Gods Destroy” of <i>The Original Series</i>. Grossman Decl., ¶ 13, Ex. A (Peters tr. at 38:22-41:17); ¶ 14, Ex. C (Gossett tr. at 48:10-50:10), Ex. I (April 26, 2014 email from Christian Gossett to Alec Peters) (Dkt. 79-3). Van Citters Decl., ¶¶ 5-6, 13, 14, 19, 57 (Dkt. 72-60).</p> <p>The Vulcan Scene features a speech by the character Soval about the nature of the human race. This speech is linguistically similar, and thematically identical, to a speech given by the same character in the <i>Star Trek: Enterprise</i> episode, “The Forge.” Grossman Decl., ¶ 93, Ex. 5 (<i>Enterprise</i> Season 4, Episode 7, 2:47-4:35) (Dkt. 79-3).</p>
<p>60. The <i>Axanar</i> scripts feature an original plot never before used in Plaintiffs’ Works.</p>	<p>Disputed.</p>

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Material Fact and Supporting Evidence	Plaintiffs' Response
<p>ECF No. 48, Counterclaim at 24-25, ¶¶ 30-31</p> <p>ECF No. 75-15, Oki Decl., Ex. 13 (Peters Tr., Vol. I at 85:7-23)</p> <p>ECF No. 75-7, Oki Decl., Ex. 5 (Burnett Tr. at 22:8-23:8; 202:12-203:4)</p> <p>ECF No. 75-20, Peters Decl., Ex. 1 (<i>Prelude to Axanar</i>)</p>	<p>The Counterclaim is not evidence.</p> <p>The Axanar scripts do not feature an original plot. The plot and sequence of events is taken from <i>The Four Years War</i> publication and the episode “Whom Gods Destroy” of <i>The Original Series</i>. Grossman Decl., ¶ 13, Ex. A (Peters tr. at 38:22-41:17); ¶ 14, Ex. C (Gossett tr. at 48:10-50:10), Ex. I (April 26, 2014 email from Christian Gossett to Alec Peters) (Dkt. 79-3). Van Citters Decl., ¶¶ 5-6, 13, 14, 19, 57 (Dkt. 72-60)..</p>
<p>61. <i>Prelude to Axanar</i> features 4 original characters.</p> <p>ECF No. 75-19, Peters Decl., ¶ 8</p> <p>ECF No. 75-20, Peters Decl., Ex. 1 (<i>Prelude to Axanar</i>)</p>	<p>Disputed.</p> <p>These characters were not “developed entirely by Defendants.” The referenced characters are Vulcans, Klingons and Starfleet Officers. They are depicted with costumes, makeup, hair and even logos and insignias that are copied from Plaintiffs’ characters. Van Citters Decl., ¶¶ 5,</p>

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Material Fact and Supporting Evidence	Plaintiffs' Response
	25-32 (Dkt. 72-60).
<p>62. <i>The Vulcan Scene</i> features 1 original character.</p> <p>ECF No. 75-19, Peters Decl., ¶ 10</p> <p>ECF No. 75-21, Peters Decl., Ex. 2 (<i>Vulcan Scene</i>)</p>	<p>Disputed.</p> <p>Defendants' Vulcan characters are not "original." Vulcans are a fictional species created by Plaintiffs and portrayed in the Star Trek Copyrighted Works. The Vulcans in Defendants' Vulcan Scene are depicted wearing Vulcan robes, on the planet Vulcan, with Vulcan architecture in the background. Van Citters Decl. ¶¶ 43-53 (Dkt. 72-60). Grossman Decl., ¶ 42, Ex. AA (Axanar Script) (Dkt. 79-3).</p>
<p>63. The <i>Axanar</i> scripts feature 50 original characters.</p> <p>ECF No. 75-19, Peters Decl., ¶ 15</p>	<p>Disputed.</p> <p>The <i>Axanar</i> scripts do not contain 50 "original" characters. The referenced characters are Klingons, Vulcans, and Starfleet officers and personnel. Van Citters Decl., ¶ 59 (Dkt. 72-60). Grossman Decl., ¶ 42, Ex. AA (<i>Axanar Script</i>) (Dkt. 79-3).</p>

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Material Fact and Supporting Evidence	Plaintiffs' Response
<p>64. <i>Prelude to Axanar</i> features an original “mockumentary” style never before used by Plaintiffs.</p> <p>ECF No. 48, Counterclaim at 24-25, ¶¶ 30-31</p> <p>ECF No. 75-15, Oki Decl., Ex. 13 (Peters Tr., Vol. I at 85:7-23)</p> <p>ECF No. 75-7, Oki Decl., Ex. 5 (Burnett Tr. at 22:8-23:8; 202:12-203:4)</p> <p>ECF No. 75-20, Peters Decl., Ex. 1 (<i>Prelude to Axanar</i>)</p>	<p>Disputed and irrelevant.</p> <p>The style of <i>Prelude</i> is directly taken from the Star Trek Copyrighted Works, and involves a science fiction action adventure pitting the Federation, and its spaceships, against the Klingon Empire, and its battlecruisers. Van Citters Decl., ¶¶ 18 -20, 35-36, 55 - 62 (Dkt. 72-60).</p> <p><i>Prelude</i> speaks for itself and does not use a “mockumentary” style. <i>Prelude</i> does not satirize or parody any Star Trek television show or movie. Grossman Decl., ¶ 13, Ex. A (Peters tr. at 35:9-16) (Dkt. 79-3). Instead, <i>Prelude</i> uses a documentary style to tell a fictional narrative story taken from <i>The Four Years War</i> publication and the episode “<i>Whom Gods Destroy</i>” of <i>The Original Series</i>. Grossman Decl., ¶ 13, Ex. A (Peters tr. at 38:22-41:17); ¶ 14, Ex. C (Gossett</p>

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Material Fact and Supporting Evidence	Plaintiffs' Response
	<p>tr. at 48:10-50:10), Ex. I (April 26, 2014 email from Christian Gossett to Alec Peters) (Dkt. 79-3). Van Citters Decl., ¶¶ 5-6, 13, 14, 19, 57 (Dkt. 72-60).</p> <p>Furthermore, the narrative structure of Prelude has previously been used in Star Trek. In the <i>Star Trek: Deep Space Nine</i> episode “Trials and Tribble-ations,” the primary narrative is exposed through an interview of the main protagonist, interspersed with scenes of the events described. Grossman Decl., ¶ 93, Ex. 3 (<i>Star Trek: Deep Space Nine</i>, Season 5, Episode 6) (Dkt. 79-3).</p>
<p>65. <i>The Vulcan Scene</i> features an original “mockumentary” style never before used by Plaintiffs.</p> <p>ECF No. 48, Counterclaim at 24-25, ¶¶ 30-31</p> <p>ECF No. 75-15, Oki Decl., Ex. 13 (Peters Tr., Vol. I at 85:7-23)</p> <p>ECF No. 75-7, Oki Decl., Ex. 5 (Burnett</p>	<p>Disputed.</p> <p>The cited evidence does not support the stated fact. The Vulcan Scene is not a mockumentary style. Van Citters Decl., ¶ 43, Exhibit 20 (Vulcan Scene)(Dtk 72-60).</p>

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Material Fact and Supporting Evidence	Plaintiffs' Response
<p>Tr. at 22:8-23:8; 202:12-203:4) ECF No. 75-21, Peters Decl., Ex. 2, <i>Vulcan Scene</i></p>	<p>The Counterclaim is not evidence.</p>
<p>66. The <i>Axanar</i> scripts feature an original “mockumentary” style never before used by Plaintiffs. ECF No. 48, Counterclaim at 24-25, ¶¶ 30-31 ECF No. 75-15, Oki Decl., Ex. 13 (Peters Tr., Vol. I at 85:7-23) ECF No. 75-7, Oki Decl., Ex. 5 (Burnett Tr. at 22:8-23:8; 202:12-203:4) ECF No. 75-20, Peters Decl., Ex. 1 (<i>Prelude to Axanar</i>)</p>	<p>Disputed. The cited evidence does not support the stated fact. The <i>Axanar</i> Script is not a mockumentary style. Grossman Decl., ¶ 42, Ex. AA (<i>Axanar</i> Script) (Dkt 79-3). The Counterclaim is not evidence.</p>
<p>67. <i>Prelude</i> portrays Garth of Izar in a new way not seen in any of Plaintiffs’ Works—specifically, as a war veteran with psychological issues resulting from his traumatic experiences during the Four Years War between the United Federation of Planets and the Klingon Empire. ECF No. 75-15, Oki Decl., Ex. 13 (Peters Tr., Vol. I at 87:13-88:1) ECF No. 75-7, Oki Decl., Ex. 5 (Burnett Tr. at 192:2-15) ECF No. 75-19, Peters Decl., ¶¶ 6-7</p>	<p>Disputed. <i>Prelude</i> speaks for itself. It does not portray Garth of Izar “as a war veteran with psychological issues resulting” from traumatic experiences fighting the Klingons. Instead, <i>Prelude</i> portrays Garth as a brilliant military strategist and hero. Further, Defendants have not cited to any pre-lawsuit evidence</p>

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Material Fact and Supporting Evidence	Plaintiffs' Response
<p>ECF No. 75-20, Peters Decl., Ex. 1 <i>(Prelude to Axanar)</i></p>	<p>supporting this characterization or description of their work.</p> <p><i>See</i> Van Citters Decl., ¶15, Ex. 19 <i>(Prelude to Axanar)</i>(Dkt 72-60).</p>
<p>68. [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>ECF No. 75-15, Oki Decl., Ex. 13 <i>(Peters Tr., Vol. I at 87:13-88:1)</i></p> <p>ECF No. 75-7, Oki Decl., Ex. 5 (Burnett Tr. at 192:2-15)</p> <p>ECF No. 75-19, Peters Decl., ¶¶ 6-7</p> <p>ECF No. 75-20, Peters Decl., Ex. 1 <i>(Prelude to Axanar)</i></p>	<p>Disputed.</p> <p>The Axanar Script speaks for itself. It does not portray Garth of Izar [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>Instead, the Axanar Script portrays Garth as a brilliant military strategist and hero. Grossman Decl., ¶ 42, Ex. AA (Axanar Script) (Dkt 79-3). Further, Defendants have not cited to any pre-lawsuit evidence supporting this characterization or description of their work.</p>
<p>69. Mr. Peters modeled his performance of Garth of Izar after the veterans depicted in “Band of Brothers,” the HBO war documentary mini-series.</p>	<p>Disputed and irrelevant.</p> <p><i>Prelude</i> speaks for itself. Mr. Peters was not portraying anyone</p>

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<p>ECF No. 75-19, Peters Decl., ¶ 7</p>	<p>from an HBO series, he portrayed Plaintiffs' character, Garth of Izar.</p> <p>See Van Citters Decl., ¶15, Ex. 19 (<i>Prelude to Axanar</i>)(Dkt 72-60).</p>
<p>70. Many scripts have been created since the unfinished August 2015 script, all using varying degrees of the Star Trek Universe.</p> <p>ECF No. 75-19, Peters Decl., ¶ 13</p> <p>ECF Nos. 75-22, 77-8, 77-9, Peters Decl., Ex. 3 (July 1, 2016 <i>Axanar</i> Script)</p>	<p>Disputed and irrelevant.</p> <p>It is irrelevant whether Defendants altered their script after the lawsuit was filed. Further, Defendants testified [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED].</p> <p>Grossman Decl., ¶ 41, Ex. A (Peters tr. at 77:5-9), ¶ 42, Ex. AA (script).</p>
<p>71. [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED].</p> <p>Hunt decl., ¶ 2</p>	<p>Disputed and irrelevant.</p> <p>The <i>Axanar</i> Script speaks for itself. Defendants' changes to the script after this lawsuit was filed are irrelevant. Grossman Decl., ¶ 42, Ex. AA (<i>Axanar</i> Script) (Dkt 79-3).</p>
<p>72. Defendants are not currently committed to using any of the existing scripts in the Potential Fan Film, and have not decided what</p>	<p>Disputed.</p> <p>Defendants' post-lawsuit revisions</p>

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Material Fact and Supporting Evidence	Plaintiffs’ Response
<p>format, length and substance the Potential Fan Film will take, though are considering whether to make more mockumentary style works.</p> <p>ECF No. 75-15, Oki Decl., Ex. 13 (Peters Tr., Vol. I at 74:10-23)</p> <p>ECF No. 75-19, Peters Decl., ¶¶ 13-14</p> <p>ECF No. 75-8, Oki Decl., Ex. 6 (Hunt Tr. at 49:18-50:5)</p> <p>ECF No. 75-7, Oki Decl., Ex. 5 (Burnett Tr. at 88:7-18, 97:11-98:7)</p>	<p>and “considerations” are irrelevant.</p>
<p>73. Defendants’ Works are both social commentary and satire, in that they focus on and intend to expose the true horrors and consequences of war in ways the Plaintiffs’ Works did not.</p> <p>ECF No. 75-15, Oki Decl., Ex. 13 (Peters Tr., Vol. I at 87:13-88:1)</p> <p>ECF No. 75-7, Oki Decl., Ex. 5 (Burnett Tr. at 192:2-15)</p> <p>ECF No. 75-19, Peters Decl., ¶ 7</p>	<p>Disputed.</p> <p>The Axanar Works speak for themselves. They say nothing about the “horrors and consequences of war.”</p> <p>Defendants never claimed that the Axanar Works were a social commentary or satire prior to this lawsuit – and they are not.</p>
<p>74. A mockumentary is defined by Wikipedia as a “parody.”</p> <p>(“Mockumentary” <i>Wikipedia</i> Page)</p> <p>Ranahan Decl. ¶ 8. Ex. H.</p>	<p>Disputed.</p> <p>The cited evidence is inadmissible hearsay.</p>

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Material Fact and Supporting Evidence	Plaintiffs' Response
	<p>The Wikipedia page attached to Ms. Ranahan's declaration states that "a mockumentary...is a type of film or television show in which fictional events are presented in documentary style to create a parody."</p> <p>The implication that <i>Prelude</i> is a "parody" is false, is contradicted by the work itself, and [REDACTED].</p> <p>Grossman Reply Decl., ¶ 3, Ex. A. (Peters tr. at 34:13-35:16).</p>
<p>75. <i>Prelude</i> was distributed for free online. ECF No. 48, Counterclaim, ¶ 16 ECF No. 75-15, Oki Decl., Ex. 13 (Peters Tr., Vol. I at 57:1-11, 85:7-23) ECF No. 75-7, Oki Decl., Ex. 5 (Burnett Tr. at 22:8-23:8; 202:12-203:4) ECF No. 75-19, Peters Decl., ¶ 7</p>	<p>Undisputed.</p>
<p>76. <i>The Vulcan Scene</i> was distributed for free online. ECF No. 75-19, Peters Decl., ¶ 9 ECF No. 75-7, Oki Decl., Ex. 5 (Burnett Tr. at 174:3-10)</p>	<p>Undisputed.</p>

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Material Fact and Supporting Evidence	Plaintiffs' Response
<p>ECF No. 75-8, Oki Decl., Ex. 6 (Hunt Tr. at 56:12-25)</p>	
<p>77. Plaintiffs attempt to present evidence on substantial similarity through a fact witness, John Van Citters.</p> <p>Plaintiffs' Expert Witness Disclosure, Nov. 2, 2016</p>	<p>Disputed.</p> <p>Mr. Van Citters' declaration relates to the various elements from the Axanar Works that were taken from Plaintiffs' Star Trek Copyrighted Works.</p> <p>Further, Mr. Van Citters was designated as a non-retained expert, pursuant to Federal Rule of Civil Procedure 26(a)(2)(C) as he is a party employee with specialized knowledge but Defendants declined to notice or take his deposition.</p>
<p>78. John Van Citters was never designated to testify about substantial similarity until after the close of discovery.</p> <p>Plaintiffs' Rule 26 Initial Disclosures, May 2, 2016</p> <p>Plaintiffs' Expert Witness Disclosure, Nov. 2, 2016</p>	<p>Disputed.</p> <p>Mr. Van Citters was designated as a non-retained expert, pursuant to Federal Rule of Civil Procedure 26(a)(2)(C) on the subject of the various elements taken from Plaintiffs' works, but Defendants declined to take his deposition on</p>

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Material Fact and Supporting Evidence	Plaintiffs' Response
<p>79. Plaintiffs' counsel objected to questions about the Complaint during John Van Citters's fact deposition.</p> <p>Ranahan Decl., ¶ 3, Ex. C (Van Citters Tr. at 17:24-19:4, 21:21-24:13, 53:11-54:5, 73:2-74:16; 78:14-80:12)</p>	<p>that subject.</p> <p>Disputed.</p> <p>The testimony cited does not support Defendants' claim. Mr. Van Citters testified as a person most knowledgeable on numerous subjects, and the only instructions not to answer related to Mr. Van Citters' communications with counsel regarding the drafting of the Complaint – but he was explicitly permitted to address questions regarding elements taken from Plaintiffs' works. See, Ranahan Decl, ¶ 3, Ex. C ,78:14-80:12 (“You're free to obviously ask him about the substance of the chart...”). (While Ms. Ranahan cites to this testimony, she left out page 79. Page 79 is attached to the Reply Declaration of David Grossman as Exhibit CCC).</p> <p>Mr. Van Citters was later designated as a non-retained</p>

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Material Fact and Supporting Evidence	Plaintiffs' Response
	expert, pursuant to Federal Rule of Civil Procedure 26(a)(2)(C) on the subject of the various elements taken from Plaintiffs' works, but Defendants declined to take his deposition on that subject.
<p>80. After John Von Citters's deposition was completed and discovery closed, Plaintiffs attempted to designate Mr. Van Citters as an expert, though the so-called "expert" designation contained no report at all or any of the other requirements of an expert report under Rule 26, and was served after the expert disclosure deadline.</p> <p>Plaintiffs' Rule 26 Initial Disclosures, May 2, 2016</p> <p>Plaintiffs' Expert Witness Disclosure, Nov. 2, 2016</p> <p>(Defendants' Evidentiary Objections to the Declaration of John Van Citters in Support of Plaintiffs' Motion for Partial Summary Judgment)</p>	<p>Disputed.</p> <p>Mr. Van Citters was designated as a non-retained expert, pursuant to Federal Rule of Civil Procedure 26(a)(2)(C) on the subject of the various elements taken from Plaintiffs' works. Mr. Van Citters is not required to provide an expert report.</p>
<p>81. By Plaintiffs' own admission, the only references to a character named Garth of Izar in the entire Star Trek oeuvre is one lone appearance in the Original Series, the subject</p>	<p>Undisputed that Plaintiffs are asserting that Garth of Izar appeared in the episode "<i>Whom Gods Destroy</i>" in <i>The Original</i></p>

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Material Fact and Supporting Evidence	Plaintiffs' Response
<p>of a minor licensed novel, and a reference in one of a large number of supplements to a role-playing game from the 1980s, which is not at issue in this action.</p> <p>ECF No. 72, Plaintiffs' Motion for Partial Summary Judgment, pp. 8-9</p>	<p><i>Series</i>, in the novel entitled “Garth of Izar,” and in <i>The Four Years War</i> Supplement.</p> <p>Disputed that these are the only appearances of Garth of Izar in all Star Trek works that exist.</p> <p>Disputed that <i>The Four Years War</i> Supplement is not at issue in this action. <i>See</i> Dkt. 75-3 (CBS' interrogatory responses) at 3:8-9 (items 15 and 16), 4:10-11 (items 14 and 15), and 7:16-21. <i>See also</i> Dkt. 75-4 (Paramount's interrogatory responses) at 3:8-9 (items 14 and 15), 4:11-12 (items 14 and 15), and 7:16-21.</p> <p>Disputed as to Defendants' characterization of a “minor” licensed novel. The novel <i>Garth of Izar</i> speaks for itself.</p>
<p>82. Plaintiffs have sought federal copyright protection for characters central to the Star Trek universe.</p> <p>ECF No. 26, FAC, Appendix A ¶¶ 2-6</p>	<p>Undisputed that Plaintiffs own the copyrights to several Star Trek television series, movies, and books, which contain several</p>

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Material Fact and Supporting Evidence	Plaintiffs' Response
	<p>characters.</p> <p>Grossman Decl., ¶ 90, Ex. UU (copyright registrations for the Star Trek Television Series), ¶ 91, Ex. VV (copyright registrations for the Star Trek Motion Pictures), ¶ 94, Ex. WW (copyright registration for Garth of Izar novel); ¶ 95, Ex. XX (copyright registration for Strangers from the Sky); ¶ 96, Ex. YY (copyright registration for Infinity's Prism)(Dkt. 79-3). Van Citters Decl. ¶¶ 3- 14, Ex. BBB (copyright registration for The Four Years War), 64-65 (Dkt. 72-60).</p> <p>Plaintiffs are not required to have copyright registrations in characters in order to own the copyrights to those characters. <i>Anderson v. Stallone</i>, 1989 U.S. Dist. LEXIS 11109, Copy. L. Rep. (CCH) P22665 (C.D. Cal. Apr. 25, 1989).</p>

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Material Fact and Supporting Evidence	Plaintiffs' Response
	<p>Further, as the Ninth Circuit recently held, characters depicted in an audiovisual work, with distinct, recognizable traits, are protectable. These characters include Klingons, Vulcans, Garth of Izar, Ambassador Soval, Klingon Commander Chang, and further include recognizable, distinct inanimate objects as well, including the U.S.S. Enterprise, Klingon battlecruisers, and Vulcan ships. <i>See DC Comics v. Towle</i>, 802 F.3d 1012, 1021 (9th Cir. 2015).</p>
<p>83. Plaintiffs have sought copyright protection for Captain Kirk. ECF No. 26, FAC, Appendix A ¶¶ 2-6</p>	<p>Undisputed that Plaintiffs own the copyrights to several Star Trek television series, movies, and books, which contain Captain Kirk.</p> <p>Grossman Decl., ¶ 90, Ex. UU (copyright registrations for the Star Trek Television Series), ¶ 91, Ex. VV (copyright registrations for the Star Trek Motion Pictures), ¶ 94, Ex. WW (copyright registration for</p>

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Material Fact and Supporting Evidence	Plaintiffs' Response
	<p>Garth of Izar novel); ¶ 95, Ex. XX (copyright registration for Strangers from the Sky); ¶ 96, Ex. YY (copyright registration for Infinity's Prism) (Dkt. 79-3). Van Citters Decl. ¶¶ 3- 14, Ex. BBB (copyright registration for The Four Years War), 64-65 (Dkt. 72-60).</p> <p>Plaintiffs are not required to have copyright registrations in characters in order to own the copyrights to those characters. <i>Anderson v. Stallone</i>, 1989 U.S. Dist. LEXIS 11109, Copy. L. Rep. (CCH) P22665 (C.D. Cal. Apr. 25, 1989); <i>see also DC Comics v. Towle</i>, 802 F.3d 1012, 1021 (9th Cir. 2015).</p>
<p>84. Plaintiffs have sought copyright protection for Spock.</p> <p style="padding-left: 40px;">ECF No. 26, FAC, Appendix A ¶¶ 2-6</p>	<p>Undisputed that Plaintiffs own the copyrights to several Star Trek television series, movies, and books, which contain Spock.</p> <p>Grossman Decl., ¶ 90, Ex. UU (copyright registrations for the Star</p>

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Material Fact and Supporting Evidence	Plaintiffs' Response
	<p>Trek Television Series), ¶ 91, Ex. VV (copyright registrations for the Star Trek Motion Pictures), ¶ 94, Ex. WW (copyright registration for Garth of Izar novel); ¶ 95, Ex. XX (copyright registration for Strangers from the Sky); ¶ 96, Ex. YY (copyright registration for Infinity's Prism) (Dkt. 79-3). Van Citters Decl. ¶¶ 3- 14, Ex. BBB (copyright registration for The Four Years War), 64-65 (Dkt. 72-60).</p> <p>Plaintiffs are not required to have copyright registrations in characters in order to own the copyrights to those characters. <i>Anderson v. Stallone</i>, 1989 U.S. Dist. LEXIS 11109, Copy. L. Rep. (CCH) P22665 (C.D. Cal. Apr. 25, 1989); <i>see also DC Comics v. Towle</i>, 802 F.3d 1012, 1021 (9th Cir. 2015).</p>
<p>85. Plaintiffs have not sought federal copyright protection for the character Garth of Izar.</p>	<p>Disputed. Plaintiffs own the copyrights to several Star Trek television series, movies, and</p>

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Material Fact and Supporting Evidence	Plaintiffs' Response
	<p>books, and own the characters in those works, including Garth of Izar.</p> <p>Grossman Decl., ¶ 90, Ex. UU (copyright registrations for the Star Trek Television Series), ¶ 91, Ex. VV (copyright registrations for the Star Trek Motion Pictures), ¶ 94, Ex. WW (copyright registration for Garth of Izar novel); ¶ 95, Ex. XX (copyright registration for Strangers from the Sky); ¶ 96, Ex. YY (copyright registration for Infinity's Prism) (Dkt. 79-3). Van Citters Decl. ¶¶ 3- 14, Ex. BBB (copyright registration for The Four Years War), 64-65 (Dkt. 72-60).</p> <p>Plaintiffs are not required to have copyright registrations in characters in order to own the copyrights to those characters. <i>Anderson v. Stallone</i>, 1989 U.S. Dist. LEXIS 11109, Copy. L. Rep. (CCH) P22665 (C.D. Cal. Apr. 25,</p>

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Material Fact and Supporting Evidence	Plaintiffs' Response
	1989); <i>see also DC Comics v. Towle</i> , 802 F.3d 1012, 1021 (9th Cir. 2015).
<p>86. Plaintiffs have not sought federal copyright protection for the character Ambassador Soval.</p>	<p>Disputed. Plaintiffs own the copyrights to several Star Trek television series, movies, and books, some of which include Soval.</p> <p>Grossman Decl., ¶ 90, Ex. UU (copyright registrations for the Star Trek Television Series), ¶ 91, Ex. VV (copyright registrations for the Star Trek Motion Pictures), ¶ 94, Ex. WW (copyright registration for Garth of Izar novel); ¶ 95, Ex. XX (copyright registration for Strangers from the Sky); ¶ 96, Ex. YY (copyright registration for Infinity's Prism) (Dkt. 79-3). Van Citters Decl. ¶¶ 3- 14, Ex. BBB (copyright registration for The Four Years War), 64-65 (Dkt. 72-60).</p> <p>Plaintiffs are not required to have copyright registrations in</p>

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Material Fact and Supporting Evidence	Plaintiffs' Response
	<p>characters in order to own the copyrights to those characters. <i>Anderson v. Stallone</i>, 1989 U.S. Dist. LEXIS 11109, Copy. L. Rep. (CCH) P22665 (C.D. Cal. Apr. 25, 1989); <i>see also DC Comics v. Towle</i>, 802 F.3d 1012, 1021 (9th Cir. 2015).</p>
<p>87. The director of the latest Star Trek movie, Justin Lin, has been a Star Trek fan since childhood. ECF Nos. 75-13, 77-6, Oki Decl., Ex. 11 (Lin Tr. at 12:3-15)</p>	<p>Undisputed and irrelevant.</p>
<p>88. The director of the latest Star Trek movie, Justin Lin, had never heard of Garth of Izar. ECF Nos. 75-14, 77-7, Oki Decl., Ex. 12 (Abrams Tr. at 14:22-15:3) ECF Nos. 75-13, 77-6, Oki Decl., Ex. 11 (Lin Tr. at 16:10-22)</p>	<p>Undisputed and irrelevant.</p>
<p>89. J.J. Abrams, the producer and/or director of recent Star Trek films, in his deposition stated that he would consider Spock a character that is central to Star Trek. ECF Nos. 75-14, 77-7, Oki Decl., Ex. 12 (Abrams Tr. at 14:22-15:3)</p>	<p>Disputed. The cited testimony does not relate to Spock. Moreover, any testimony as to Mr. Abrams' opinion as to the central</p>

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Material Fact and Supporting Evidence	Plaintiffs' Response
	characters of <i>The Original Series</i> is irrelevant.
<p>90. J.J. Abrams, the producer and/or director of recent Star Trek films, in his deposition stated that he would consider Bones a character that is central to Star Trek.</p> <p>ECF Nos. 75-14, 77-7, Oki Decl., Ex. 12 (Abrams Tr. at 14:22-15:3)</p>	<p>Disputed.</p> <p>The cited testimony does not relate to Bones.</p> <p>Moreover, any testimony as to Mr. Abrams' opinion as to the central characters of <i>The Original Series</i> is irrelevant.</p>
<p>91. J.J. Abrams, the producer and/or director of recent Star Trek films, in his deposition stated that he would consider Uhura a character that is central to Star Trek.</p> <p>ECF Nos. 75-14, 77-7, Oki Decl., Ex. 12 (Abrams Tr. at 14:22-15:3)</p>	<p>Disputed.</p> <p>The cited testimony does not relate to Uhura.</p> <p>Moreover, any testimony as to Mr. Abrams' opinion as to the central characters of <i>The Original Series</i> is irrelevant.</p>
<p>92. J.J. Abrams, the producer and/or director of recent Star Trek films, in his deposition stated that he would consider Zulu a character that is central to Star Trek.</p> <p>ECF Nos. 75-14, 77-7, Oki Decl., Ex. 12 (Abrams Tr. at 14:22-15:3)</p>	<p>Disputed.</p> <p>There is no character named "Zulu" – Defendants appear to intend to refer to George Takei's character, "Sulu," but the cited</p>

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Material Fact and Supporting Evidence	Plaintiffs' Response
	<p>testimony does not relate to Sulu.</p> <p>Moreover, any testimony as to Mr. Abrams' opinion as to the central characters of <i>The Original Series</i> is irrelevant.</p>
<p>93. J.J. Abrams, the producer and/or director of recent Star Trek films, in his deposition stated that he would consider Chekov a character that is central to Star Trek.</p> <p>ECF Nos. 75-14, 77-7, Oki Decl., Ex. 12 (Abrams Tr. at 14:22-15:3)</p>	<p>Disputed.</p> <p>The cited testimony does not relate to Chekov.</p> <p>Moreover, any testimony as to Mr. Abrams' opinion as to the central characters of <i>The Original Series</i> is irrelevant.</p>
<p>94. J.J. Abrams, the producer and/or director of recent Star Trek films, in his deposition stated that he would consider Scotty a character that is central to Star Trek.</p> <p>ECF Nos. 75-14, 77-7, Oki Decl., Ex. 12 (Abrams Tr. at 14:22-15:3)</p>	<p>Disputed.</p> <p>The cited testimony does not relate to Scotty.</p> <p>Moreover, any testimony as to Mr. Abrams' opinion as to the central characters of <i>The Original Series</i> is irrelevant.</p>
<p>95. J.J. Abrams, the producer and/or director of recent Star Trek films, in his deposition</p>	<p>Undisputed and irrelevant.</p>

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Material Fact and Supporting Evidence	Plaintiffs' Response
<p>stated that he would not consider Garth of Izar a central character.</p> <p>ECF Nos. 75-14, 77-7, Oki Decl., Ex. 12 (Abrams Tr. at 14:22-15:3)</p>	<p>Any testimony as to Mr. Abrams' opinion as to the central characters of <i>The Original Series</i> is irrelevant.</p>
<p>96. In his deposition testimony, 30(b)(6) designee for CBS, [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED].</p> <p>Ranahan Decl., ¶ 3, Ex. C (Van Citters Tr. at 124:24-125:16)</p>	<p>Disputed.</p> <p>The evidence cited does not support the "fact." Mr. Van Citters testified that [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED] Ranahan Decl., ¶ 3, Ex. C (Van Citters tr. at 124:24-125:20) (Dkt. 90-1).</p>
<p>97. In his deposition testimony, 30(b)(6) designee for Paramount, [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED].</p> <p>Ranahan Decl., ¶ 6, Ex. F (O'Rourke Tr. at 106:14-21)</p>	<p>Disputed.</p> <p>The evidence cited does not support the "fact." Mr. O'Rourke testified that [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>

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Material Fact and Supporting Evidence	Plaintiffs' Response
<p>98. The only concrete references to a character named Ambassador Soval in the entire Star Trek oeuvre is a 2001 pilot episode of the television series Enterprise and a few other brief appearances.</p> <p>ECF No. 72, Plaintiffs' Motion for Partial Summary Judgment, pp. 8-9</p>	<p>[REDACTED]</p> <p>Disputed.</p> <p>Defendants do not provide any evidence for their purported fact.</p> <p>The character Soval appears in the numerous <i>Enterprise</i> episodes: "Broken Bow" (S1 E1) "Shadows of P'Jem" (S1 E15) "Shockwave, Part II" (S2 E1) "Cease Fire" (S2 E15) "The Expanse" (S2 E26) "Twilight" (S3 E8) "Home" (S4 E3) "The Forge" (S4 E7) "Awakening" (S4 E8) "Kir'Shara" (S4 E9) "Terra Prime" (S4 E21). See Grossman Decl., ¶ 92, Ex. 5 (<i>Enterprise</i> DVDs)(Dkt. 79-3).</p>
<p>99. Defendants did not profit from the creation of <i>Prelude to Axanar</i>.</p> <p>ECF No. 75-15, Oki Decl., Ex. 13 (Peters Tr., Vol. I at 224:21-225:4)</p>	<p>Disputed.</p> <p>Peters [REDACTED] [REDACTED] [REDACTED]</p>

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Material Fact and Supporting Evidence	Plaintiffs' Response
	<p>[REDACTED]</p> <p>[REDACTED]. Grossman Decl., ¶ 74, Ex. A (Peters tr. at 189:2-23; 122:21-25; 65:7-18; 193:22-194:18; 209:15-212:22; 195:21-198:1; 213:5-10; 201:6-204:7; 204:11-16; 205:3-16; 203:25-204:1; 217:6-15; 205:14-16; 205:20-207:9; 207:10-12; 208:2-16) (Dkt. 79-3).</p> <p>Defendants raised [REDACTED].</p> <p>[REDACTED].</p> <p>Grossman Decl., ¶ 73, Ex. A (Peters tr. at 70:24-71:4) (Dkt. 79-3).</p> <p>Further, to complete the Axanar film, Defendants intend [REDACTED].</p> <p>[REDACTED]. Grossman Decl., ¶ 73, Ex. A (Peters tr. at 192:3-193:21) (Dkt. 88-1).</p> <p>Defendants' business plan states [REDACTED].</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>

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Material Fact and Supporting Evidence	Plaintiffs' Response
	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED] Grossman Decl., ¶ 67, Ex. PP (Axanar marketing plan) (Dkt. 79-3).</p> <p>Peters created the Axanar Works in large part in order to [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED] Grossman Decl., ¶ 79, Ex. A (Peters tr. at 455:24-456:16); ¶ 77, Ex. B (Burnett tr. at 217:22-218:7); ¶ 78, Ex. C (Gossett tr. at 19:15-22:20) (Dkt. 79-3).</p> <p>Peters intended to [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED].</p> <p>Grossman Decl., ¶ 65, Ex. A (Peters tr. at 234:11-25); ¶ 66, Ex. B (Burnett tr. at 151:2-153:12), ¶ 67, Ex. PP (Axanar marketing plan) (Dkt. 79-3).</p>

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Material Fact and Supporting Evidence	Plaintiffs' Response
<p>100. Defendants did not profit from the creation of <i>The Vulcan Scene</i>.</p> <p>ECF No. 75-15, Oki Decl., Ex. 13 (Peters Tr., Vol. I at 224:21-225:4)</p>	<p>Disputed.</p> <p>Peters [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]. Grossman Decl., ¶ 74, Ex. A (Peters tr. at 189:2-23; 122:21-25; 65:7-18; 193:22-194:18; 209:15-212:22; 195:21-198:1; 213:5-10; 201:6-204:7; 204:11-16; 205:3-16; 203:25-204:1; 217:6-15; 205:14-16; 205:20-207:9; 207:10-12; 208:2-16) (Dkt. 79-3).</p> <p>Defendants' business plan states [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]. Grossman Decl., ¶ 67, Ex. PP (Axanar marketing plan) (Dkt. 79-3).</p>

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Material Fact and Supporting Evidence	Plaintiffs' Response
	<p>Peters created the Axanar Works in [REDACTED] [REDACTED] [REDACTED] [REDACTED] Grossman Decl., ¶ 79, Ex. A (Peters tr. at 455:24-456:16); ¶ 77, Ex. B (Burnett tr. at 217:22-218:7); ¶ 78, Ex. C (Gossett tr. at 19:15-22:20) (Dkt. 79-3).</p> <p>Peters intended [REDACTED] [REDACTED] [REDACTED] [REDACTED].</p> <p>Grossman Decl., ¶ 65, Ex. A (Peters tr. at 234:11-25); ¶ 66, Ex. B (Burnett tr. at 151:2-153:12), ¶ 67, Ex. PP (Axanar marketing plan) (Dkt. 79-3).</p>
<p>101. Defendants did not profit from the creation of the <i>Axanar</i> scripts.</p> <p>ECF No. 75-15, Oki Decl., Ex. 13 (Peters Tr., Vol. I at 224:21-225:4)</p>	<p>Disputed.</p> <p>Peters [REDACTED] [REDACTED] [REDACTED]</p>

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Material Fact and Supporting Evidence	Plaintiffs' Response
	<p>[REDACTED]</p> <p>[REDACTED]. Grossman Decl., ¶ 74, Ex. A (Peters tr. at 189:2-23; 122:21-25; 65:7-18; 193:22-194:18; 209:15-212:22; 195:21-198:1; 213:5-10; 201:6-204:7; 204:11-16; 205:3-16; 203:25-204:1; 217:6-15; 205:14-16; 205:20-207:9; 207:10-12; 208:2-16) (Dkt. 79-3).</p> <p>Peters attempted to trademark the word “Axanar” and [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]. Grossman Decl., ¶ 58, Ex. A (Peters tr. at 442:21-449:9); Ex. LL (Facebook message exchange between Terry McIntosh and Alec Peters); ¶ 59, Ex. E (McIntosh tr. at 20:23-22:15), ¶ 60, Ex. C (Gossett tr. at 126:10-128:14), Ex. MM (April 20, 2015 email exchange between Alec Peters and Christian Gossett); ¶ 65, Ex. A (Peters tr. at 234:11-25); ¶ 66, Ex.</p>

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Material Fact and Supporting Evidence	Plaintiffs' Response
	<p>B. (Burnett tr. at 151:2-153:12), ¶ 67, Ex. PP (Axanar marketing plan), ¶ 68, Ex. QQ (printout from Axanarproductions.com)(Dkt. 79-3).</p> <p>Defendants' business plan states</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED] Grossman</p> <p>Decl., ¶ 67, Ex. PP (Axanar marketing plan) (Dkt. 79-3).</p> <p>Peters created the Axanar [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED] Grossman</p> <p>Decl., ¶ 79, Ex. A (Peters tr. at 455:24-456:16); ¶ 77, Ex. B (Burnett tr. at 217:22-218:7); ¶ 78, Ex. C (Gossett tr. at 19:15-22:20)(Dkt. 79-3).</p>

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Material Fact and Supporting Evidence	Plaintiffs' Response
	<p>Peters intended [REDACTED] [REDACTED] [REDACTED] [REDACTED].</p> <p>Grossman Decl., ¶ 65, Ex. A (Peters tr. at 234:11-25); ¶ 66, Ex. B (Burnett tr. at 151:2-153:12), ¶ 67, Ex. PP (Axanar marketing plan) (Dkt. 79-3).</p>
<p>102. There is no evidence that the free YouTube.com presentations of <i>Prelude</i> compete with, substitute for, or have any impact whatsoever on Plaintiffs' multimillion dollar international entertainment enterprise.</p> <p>ECF Nos. 75-11, 77-4, Oki Decl., Ex. 9 (Van Citters Tr. at 119:19-124:18)</p> <p>ECF Nos. 75-12, 77-5, Oki Decl., Ex. 10 (O'Rourke Tr. at 60:22-61:5; 63:8-16)</p>	<p>Disputed.</p> <p>Peters stated: "But Axanar is not just an independent Star Trek film; it is the beginning of a whole new way that fans can get the content they want, by funding it themselves. Why dump hundreds or thousands of dollars a year on 400 cable channels, when what you really want is a few good sci-fi shows?" Grossman Decl., ¶ 49, Ex. A (Peters tr. at 99:10-100:15), Ex. DD (Axanar Indiegogo fundraising page) (Dkt. 79-3).</p>

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Material Fact and Supporting Evidence	Plaintiffs' Response
	<p>Plaintiffs' Star Trek Copyrighted Works are distributed via cable. Van Citters Decl., ¶ 11 (Dkt. 88-70).</p> <p>Mr. Gossett testified that Mr. Peters "repeatedly" described to him the concept that he was interested in creating alternative ways for fans to view Star Trek, and a document produced by Defendants states: [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED] Grossman Reply Decl., ¶ 4, Ex. C (Gossett tr. at 115:24 - 117:7), Ex. MMM (Axanar document).</p> <p>Peters attempted to meet with Netflix to become a producer of Star Trek productions, attempted to trademark the word "Axanar" and [REDACTED]</p> <p>[REDACTED]</p>

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Material Fact and Supporting Evidence	Plaintiffs' Response
	<p data-bbox="993 247 1529 1312"> [REDACTED]. Grossman Decl., ¶ 58, Ex. A (Peters tr. at 442:21-449:9); Ex. LL (Facebook message exchange between Terry McIntosh and Alec Peters); ¶ 59, Ex. E (McIntosh tr. at 20:23-22:15), ¶ 60, Ex. C (Gossett tr. at 126:10-128:14), Ex. MM (April 20, 2015 email exchange between Alec Peters and Christian Gossett); ¶ 65, Ex. A (Peters tr. at 234:11-25); ¶ 66, Ex. B. (Burnett tr. at 151:2-153:12), ¶ 67, Ex. PP (Axanar marketing plan), ¶ 68, Ex. QQ (printout from Axanarproductions.com)(Dkt. 79-3). </p> <p data-bbox="993 1396 1529 1879"> Defendants' business plan states [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] Grossman Decl., ¶ 67, Ex. PP (Axanar </p>

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Material Fact and Supporting Evidence	Plaintiffs' Response
	<p>marketing plan) (Dkt. 79-3). Mr. Peters [REDACTED] [REDACTED] [REDACTED] [REDACTED]. Grossman Decl., ¶ 65, Ex. A (Peters tr. at 234:11-25); ¶ 66, Ex. B (Burnett tr. at 151:2-153:12), ¶ 67, Ex. PP (Axanar marketing plan) (Dkt. 79-3).</p>
<p>103. There is no evidence that the unfinished Potential Fan Film script, or any of the prior drafts of the script, competes with, acts as a substitute for, or has any impact whatsoever on Plaintiffs' Star Trek franchise.</p> <p>ECF Nos. 75-5, 77-3, Oki Decl., Ex. 3 (Tregillis Report at ¶¶ 10-12)</p> <p>ECF Nos. 75-14, 77-7, Oki Decl., Ex. 12 (Abrams Tr. at 42:7-11)</p> <p>ECF Nos. 75-11, 77-4, Oki Decl., Ex. 9 (Van Citters Tr. at 119:19-124:18)</p> <p>ECF Nos. 75-12, 77-5, Oki Decl., Ex. 10 (O'Rourke Tr. at 60:22-61:5; 63:8-16)</p>	<p>Disputed.</p> <p>The report of Christian Tregillis lacks foundation and is hearsay.</p> <p>The testimony cited does not support the purported "fact."</p> <p>Peters stated: "But Axanar is not just an independent Star Trek film; it is the beginning of a whole new way that fans can get the content they want, by funding it themselves. Why dump hundreds or thousands of dollars a year on 400 cable channels, when what you</p>

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Material Fact and Supporting Evidence	Plaintiffs' Response
	<p>really want is a few good sci-fi shows?" Grossman Decl., ¶ 49, Ex. A (Peters tr. at 99:10-100:15), Ex. DD (Axanar Indiegogo fundraising page) (Dkt. 79-3).</p> <p>Plaintiffs' Star Trek Copyrighted Works are distributed via cable. Van Citters Decl., ¶ 11 (Dkt. 88-70).</p> <p>Mr. Gossett testified that Mr. Peters "repeatedly" described to him the concept that he was interested in creating alternative ways for fans to view Star Trek, and a document produced by Defendants states: [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED] Grossman Reply Decl., ¶ 4, Ex. C (Gossett tr. at 115:24 - 117:7), Ex. MMM (Axanar document).</p>

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Material Fact and Supporting Evidence	Plaintiffs' Response
	<p>Peters attempted to meet with Netflix to become a producer of Star Trek productions, attempted to trademark the word "Axanar" and [REDACTED]</p> <p>[REDACTED]. Grossman Decl., ¶ 58, Ex. A (Peters tr. at 442:21-449:9); Ex. LL (Facebook message exchange between Terry McIntosh and Alec Peters); ¶ 59, Ex. E (McIntosh tr. at 20:23-22:15), ¶ 60, Ex. C (Gossett tr. at 126:10-128:14), Ex. MM (April 20, 2015 email exchange between Alec Peters and Christian Gossett); ¶ 65, Ex. A (Peters tr. at 234:11-25); ¶ 66, Ex. B. (Burnett tr. at 151:2-153:12), ¶ 67, Ex. PP (Axanar marketing plan), ¶ 68, Ex. QQ (printout from Axanarproductions.com) (Dkt. 79-3).</p> <p>Defendants' business plan states [REDACTED]</p>

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Material Fact and Supporting Evidence	Plaintiffs' Response
	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED] Grossman Decl., ¶ 67, Ex. PP (Axanar marketing plan) (Dkt. 79-3). Peters [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED].</p> <p>Grossman Decl., ¶ 65, Ex. A (Peters tr. at 234:11-25); ¶ 66, Ex. B (Burnett tr. at 151:2-153:12), ¶ 67, Ex. PP (Axanar marketing plan)(Dkt. 79-3).</p>
<p>104. There is no evidence that the unfinished Potential Fan Film script, or any of the prior drafts of the script, competes with, acts as a substitute for, or has any impact whatsoever on Plaintiffs' Star Trek franchise.</p> <p>ECF Nos. 75-5, 77-3, Oki Decl., Ex. 3 (Tregillis Report at ¶¶ 10-12)</p> <p>ECF Nos. 75-14, 77-7, Oki Decl., Ex. 12 (Abrams Tr. at 42:7-11)</p> <p>ECF Nos. 75-11, 77-4, Oki Decl., Ex. 9</p>	<p>Disputed.</p> <p>The report of Christian Tregillis lacks foundation and is hearsay.</p> <p>The testimony cited does not support the purported "fact."</p> <p>Peters stated: "But Axanar is not just an independent Star Trek film;</p>

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Material Fact and Supporting Evidence	Plaintiffs' Response
<p>(Van Citters Tr. at 119:19-124:18) ECF Nos. 75-12, 77-5, Oki Decl., Ex. 10 (O'Rourke Tr. at 60:22-61:5; 63:8-16)</p>	<p>it is the beginning of a whole new way that fans can get the content they want, by funding it themselves. Why dump hundreds or thousands of dollars a year on 400 cable channels, when what you really want is a few good sci-fi shows?" Grossman Decl., ¶ 49, Ex. A (Peters tr. at 99:10-100:15), Ex. DD (Axanar Indiegogo fundraising page)(Dkt. 79-3).</p> <p>Plaintiffs' Star Trek Copyrighted Works are distributed via cable. Van Citters Decl., ¶ 11 (Dkt. 88-70).</p> <p>Mr. Gossett testified that Mr. Peters "repeatedly" described to him the concept that he was interested in creating alternative ways for fans to view Star Trek, and a document produced by Defendants states: [REDACTED]</p>

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Material Fact and Supporting Evidence	Plaintiffs' Response
	<p>[REDACTED]</p> <p>[REDACTED] Grossman Reply Decl., ¶ 4, Ex. C (Gossett tr. at 115:24 - 117:7), Ex. MMM (Axanar document).</p> <p>Peters attempted to meet with Netflix to become a producer of Star Trek productions, attempted to trademark the word “Axanar” and [REDACTED]</p> <p>[REDACTED]. Grossman Decl., ¶ 58, Ex. A (Peters tr. at 442:21-449:9); Ex. LL (Facebook message exchange between Terry McIntosh and Alec Peters); ¶ 59, Ex. E (McIntosh tr. at 20:23-22:15), ¶ 60, Ex. C (Gossett tr. at 126:10-128:14), Ex. MM (April 20, 2015 email exchange between Alec Peters and Christian Gossett); ¶ 65, Ex. A (Peters tr. at 234:11-25); ¶ 66, Ex. B. (Burnett tr. at 151:2-153:12), ¶ 67, Ex. PP (Axanar marketing plan), ¶ 68, Ex.</p>

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Material Fact and Supporting Evidence	Plaintiffs' Response
	<p>QQ (printout from Axanarproductions.com)(Dkt. 79-3).</p> <p>Defendants' business plan states [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] Grossman Decl., ¶ 67, Ex. PP (Axanar marketing plan)(Dkt. 79-3).</p> <p>Peters [REDACTED] [REDACTED] [REDACTED] [REDACTED].</p> <p>Grossman Decl., ¶ 65, Ex. A (Peters tr. at 234:11-25); ¶ 66, Ex. B (Burnett tr. at 151:2-153:12), ¶ 67, Ex. PP (Axanar marketing plan)(Dkt. 79-3).</p>
<p>105. Defendants have not earned any income or profit from any use of their studio.</p> <p>Peters Decl., ¶¶ 11-15</p>	<p>Disputed.</p> <p>Peters [REDACTED]</p>

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Material Fact and Supporting Evidence	Plaintiffs' Response
	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]. Grossman Decl., ¶ 74, Ex. A (Peters tr. at 189:2-23; 122:21-25; 65:7-18; 193:22-194:18; 209:15-212:22; 195:21-198:1; 213:5-10; 201:6-204:7; 204:11-16; 205:3-16; 203:25-204:1; 217:6-15; 205:14-16; 205:20-207:9; 207:10-12; 208:2-16) (Dkt. 79-3).</p> <p>Defendants' business plan states</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED] Grossman Decl., ¶ 67, Ex. PP (Axanar marketing plan) (Dkt. 79-3).</p> <p>Peters [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>

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Material Fact and Supporting Evidence	Plaintiffs' Response
	<p>[REDACTED]</p> <p>Grossman Decl., ¶ 65, Ex. A (Peters tr. at 234:11-25); ¶ 66, Ex. B (Burnett tr. at 151:2-153:12), ¶ 67, Ex. PP (Axanar marketing plan) (Dkt. 79-3).</p>
<p>106. Defendants' Works are not intended to be commercialized, and Defendants have no ambitions of competing against Plaintiffs' Works in movie theaters, on television, over premium streaming services, or to otherwise sell their Works for profit.</p> <p style="padding-left: 40px;">ECF No. 75-15, Oki Decl., Ex. 13 (Peters Tr., Vol. I at 225:5-6)</p> <p style="padding-left: 40px;">ECF Nos. 75-6, Oki Decl., Ex. 4 (Jenkins Report) at 4</p>	<p>Disputed.</p> <p>Peters stated: "But Axanar is not just an independent Star Trek film; it is the beginning of a whole new way that fans can get the content they want, by funding it themselves. Why dump hundreds or thousands of dollars a year on 400 cable channels, when what you really want is a few good sci-fi shows?" Grossman Decl., ¶ 49, Ex. A (Peters tr. at 99:10-100:15), Ex. DD (Axanar Indiegogo fundraising page) (Dkt. 79-3).</p> <p>Plaintiffs' Star Trek Copyrighted Works are distributed via cable. Van Citters Decl., ¶ 11(Dkt. 88-70).</p>

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Material Fact and Supporting Evidence	Plaintiffs' Response
	<p>Peters attempted to meet with Netflix to become a producer of Star Trek productions, attempted to trademark the word "Axanar" [REDACTED] [REDACTED] [REDACTED]. Grossman Decl., ¶ 58, Ex. A (Peters tr. at 442:21-449:9); Ex. LL (Facebook message exchange between Terry McIntosh and Alec Peters); ¶ 59, Ex. E (McIntosh tr. at 20:23-22:15), ¶ 60, Ex. C (Gossett tr. at 126:10-128:14), Ex. MM (April 20, 2015 email exchange between Alec Peters and Christian Gossett); ¶ 65, Ex. A (Peters tr. at 234:11-25); ¶ 66, Ex. B. (Burnett tr. at 151:2-153:12), ¶ 67, Ex. PP (Axanar marketing plan), ¶ 68, Ex. QQ (printout from Axanarproductions.com)(Dkt. 79-3).</p> <p>Defendants' business plan states</p>

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Material Fact and Supporting Evidence	Plaintiffs' Response
	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED] Grossman Decl., ¶ 67, Ex. PP (Axanar marketing plan)(Dkt. 79-3).</p> <p>Peters [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED] Grossman Decl., ¶ 79, Ex. A (Peters tr. at 455:24-456:16); ¶ 77, Ex. B (Burnett tr. at 217:22-218:7); ¶ 78, Ex. C (Gossett tr. at 19:15-22:20)(Dkt. 79-3).</p> <p>Peters [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED].</p> <p>Grossman Decl., ¶ 65, Ex. A (Peters tr. at 234:11-25); ¶ 66, Ex.</p>

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Material Fact and Supporting Evidence	Plaintiffs' Response
	<p>B (Burnett tr. at 151:2-153:12), ¶ 67, Ex. PP (Axanar marketing plan)(Dkt. 79-3).</p> <p>Defendants [REDACTED] [REDACTED] [REDACTED]. Grossman Decl., ¶ 64, Ex. B (Burnett tr. at 142:14-148:8); ¶ 67, Ex. PP (Axanar marketing plan); Ex. QQ (printout from Axanarproductions.com) (Dkt. 79-3).</p>
<p>107. Defendants' Works are low budget, intended to be distributed for free online, appeal to a relatively small audience of "Trekkies," and have made no profit.</p> <p>ECF No. 75-15, Oki Decl., Ex. 13 (Peters Tr., Vol. I at 224:21-225:4)</p>	<p>Disputed.</p> <p>Defendants [REDACTED] [REDACTED]. Grossman Decl., ¶ 73, Ex. A (Peters tr. at 70:24-71:4)(Dkt. 79-3).</p> <p>Further, to complete the Axanar film, Defendants [REDACTED] [REDACTED]. Grossman Decl., ¶ 73, Ex. A (Peters tr. at 192:3-193:21)(Dkt. 88-1). This is not low budget, and is comparable to the</p>

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Material Fact and Supporting Evidence	Plaintiffs' Response
	<p>cost of an hour long Star Trek television program produced by CBS. Van Citters Decl., ¶ 66 (Dkt. 88-70).</p> <p>Peters [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]. Grossman Decl., ¶ 74, Ex. A (Peters tr. at 189:2-23; 122:21-25; 65:7-18; 193:22-194:18; 209:15-212:22; 195:21-198:1; 213:5-10; 201:6-204:7; 204:11-16; 205:3-16; 203:25-204:1; 217:6-15; 205:14-16; 205:20-207:9; 207:10-12; 208:2-16) (Dkt. 79-3).</p> <p>Defendants' business plan states [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] Grossman</p>

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Material Fact and Supporting Evidence	Plaintiffs' Response
	<p>Decl., ¶ 67, Ex. PP (Axanar marketing plan)(Dkt. 79-3).</p> <p>Peters [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED].</p> <p>Grossman Decl., ¶ 65, Ex. A (Peters tr. at 234:11-25); ¶ 66, Ex. B (Burnett tr. at 151:2-153:12), ¶ 67, Ex. PP (Axanar marketing plan)(Dkt. 79-3).</p>
<p>108. Gene Roddenberry encouraged the creation of fan fiction.</p> <p>ECF No. 48, Counterclaim at 15-17, ¶ 7</p> <p>ECF No. 49, Answer to Counterclaim at 1-2, ¶ 7</p>	<p>Disputed and irrelevant.</p> <p>The Counterclaim is not evidence.</p>
<p>109. Mr. Roddenberry was honored that fans were passionate enough about Star Trek that they were inspired to create their own fan works to celebrate it.</p> <p>ECF No. 48, Counterclaim at 15-17, ¶ 7</p> <p>ECF No. 49, Answer to Counterclaim at 1-2, ¶ 7</p>	<p>Disputed and irrelevant.</p> <p>The Counterclaim is not evidence.</p>
<p>110. In the 1976 book Star Trek: The New Voyages, Mr. Roddenberry stated in the</p>	<p>Undisputed and irrelevant.</p>

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Material Fact and Supporting Evidence	Plaintiffs' Response
<p>Foreword that he “realized that there is no more profound way in which people could express what Star Trek has meant to them than by creating their own very personal Star Trek [fan fiction].”</p> <p>ECF No. 48, Counterclaim at 15-17, ¶ 7</p> <p>ECF No. 49, Answer to Counterclaim at 1-2, ¶ 7</p>	
<p>111. Since Mr. Roddenberry’s statement, a substantial number of films have been created by fans without any complaint by Plaintiffs, some using characters from Plaintiffs’ Works and exact replicas of Star Trek movie sets.</p> <p>ECF No. 75-26, Lane Decl., Ex. 1 (Executive Summary at 26)</p> <p>ECF No. 75-6, Oki Decl., Ex. 4 (Jenkins Report at 3)</p>	<p>Disputed. Irrelevant.</p> <p>The cited evidence does not support the stated fact as the statements of Mr. Lane and Mr. Jenkins are unsworn hearsay.</p> <p>Further, Plaintiffs timely subpoenaed Mr. Jenkins for deposition, <u>prior</u> to the filing of Defendants’ Motion for Summary Judgment. Defendants’ counsel refused to make Mr. Jenkins available for deposition on the grounds that the “fact discovery” deadline had passed (prior to the service of any expert reports) and stated that she was not making any</p>

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Material Fact and Supporting Evidence	Plaintiffs' Response
	<p>of Defendants' experts available for deposition. Thereafter, Defendants submitted the Jenkins report as an exhibit to Ms. Oki's declaration, and yet still refused to make him available for deposition on the subpoenaed date, or at any time prior to the deadline to file the Opposition to Defendants' Motion for Summary Judgment. Grossman Decl., ¶ 100, Ex. JJJ (email exchange with counsel for Defendants) (Dkt. 88-1). His testimony, if not excluded as hearsay and lacking in foundation under <i>Daubert</i>, should be excluded for failure to make him available pursuant to a timely-served subpoena.</p>
<p>112. For over 50 years, Plaintiffs have tolerated, and even encouraged a community of fandom and fan fiction surrounding Star Trek. ECF No. 75-6, Oki Decl., Ex. 4 (Jenkins Report at 3) ECF Nos. 75-13, 77-6, Oki Decl., Ex. 11 (Lin Tr. at 40:18-41:18)</p>	<p>Disputed. This is inaccurate and irrelevant and the statements of Mr. Jenkins and Mr. Tregillis lack foundation and constitute hearsay.</p>

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Material Fact and Supporting Evidence	Plaintiffs' Response
<p>ECF Nos. 75-5, 77-3, Oki Decl., Ex. 3 (Tregillis Report at ¶¶ 24, 63)</p> <p>ECF Nos. 75-11, 77-4, Oki Decl., Ex. 9 (Van Citters Tr. at 62:1-25, 137:5-21)</p> <p>ECF No. 75-10, Oki Decl., Ex. 8 (Kalodner Tr. at 33:22-42:17)</p> <p>ECF No. 75-9, Oki Decl., Ex. 7 (Burke Tr. at 40:5-45:7)</p> <p>ECF No. 75-18, Oki Decl, Ex. 16 (StarTrek.com Article)</p>	<p>Plaintiffs have filed suit in the past against infringers of their Star Trek works. <i>See, e.g. Paramount Pictures Corp. v. Carol Publ'g Group</i>, 11 F. Supp. 2d 329 (S.D.N.Y. 1998).</p> <p>Moreover, whether or not Plaintiffs have filed suit before is irrelevant. <i>See id.</i> at 337 (Court rejected defenses of abandonment and estoppel asserted by a defendant who created a work that infringed on the Star Trek copyrights, holding: “Defendants instead allege that Paramount’s failure to commence litigation against other potentially infringing books estops them from bringing this action. Extending the doctrine of estoppel so that a defendant may rely on a plaintiff’s conduct toward another party is both unsupported by law and pernicious as a matter of policy.”).</p>

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Material Fact and Supporting Evidence	Plaintiffs' Response
	<p>Further, Plaintiffs timely subpoenaed Mr. Tregillis and Mr. Jenkins for depositions, prior to the filing of Defendants' Motion for Summary Judgment. Defendants' counsel refused to make these designated experts available for deposition, on the grounds that the "fact discovery" deadline had passed (prior to the service of any expert reports) and stated that she was not making any of Defendants' experts available for deposition. Thereafter, Defendants submitted these reports as exhibits to Ms. Oki's declaration, and yet still refused to make them available for deposition on the subpoenaed date, or at any time prior to the deadline to file Plaintiffs' Opposition to Defendants' Motion for Summary Judgment. Grossman Decl., ¶ 100, Ex. JJJ (email exchange with counsel for Defendants) (Dkt. 88-1).</p>

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Material Fact and Supporting Evidence	Plaintiffs' Response
	<p>The testimony of Tregillis and Jenkins, if not excluded as hearsay, should be excluded for failure to make them available pursuant to a timely-served subpoena.</p>
<p>113. Mr. Peters understood from his volunteer relationship with Plaintiff CBS and his extensive communications seeking guidance on his projects, that as long as Defendants' Works stayed "non-commercial"—which he believed they had because he was not charging anyone to view them—Plaintiffs would tolerate Defendants' Works like the rest of the fan fiction celebrating their love for Star Trek.</p> <p style="text-align: center;">ECF No. 75-19, Peters Decl, ¶ 11</p>	<p>Disputed.</p> <p>Peters' self-serving hearsay regarding his subjective "understanding" is irrelevant.</p> <p>Whether or not Plaintiffs have filed suit against other creators of fan fiction before is irrelevant. <i>See, e.g. Paramount Pictures Corp. v. Carol Publ'g Group</i>, 11 F. Supp. 2d 329 (S.D.N.Y. 1998).</p> <p>Moreover, Plaintiffs have filed suit in the past against infringers of their Star Trek works. <i>See id.</i></p> <p>The Axanar Works are commercial. Grossman Decl., ¶ 73, Ex. A (Peters tr. at 70:24-71:4)(Dkt. 79-3).</p>

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Material Fact and Supporting Evidence	Plaintiffs' Response
	<p>Peters attempted to trademark the word "Axanar" [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED].</p> <p>Grossman Decl., ¶ 58, Ex. A (Peters tr. at 442:21-449:9); Ex. LL (Facebook message exchange between Terry McIntosh and Alec Peters); ¶ 59, Ex. E (McIntosh tr. at 20:23-22:15), ¶ 60, Ex. C (Gossett tr. at 126:10-128:14), Ex. MM (April 20, 2015 email exchange between Alec Peters and Christian Gossett); ¶ 65, Ex. A (Peters tr. at 234:11-25); ¶ 66, Ex. B. (Burnett tr. at 151:2-153:12), ¶ 67, Ex. PP (Axanar marketing plan), ¶ 68, Ex. QQ (printout from Axanarproductions.com) (Dkt. 79-3).</p> <p>Defendants' business plan states</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>

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Material Fact and Supporting Evidence	Plaintiffs' Response
	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED] Grossman Decl., ¶ 67, Ex. PP (Axanar marketing plan) (Dkt. 79-3). Peters [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED].</p> <p>Grossman Decl., ¶ 65, Ex. A (Peters tr. at 234:11-25); ¶ 66, Ex. B (Burnett tr. at 151:2-153:12), ¶ 67, Ex. PP (Axanar marketing plan)(Dkt. 79-3).</p> <p>Defendants [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]. Grossman Decl., ¶ 64, Ex. B (Burnett tr. at 142:14-148:8); ¶ 67, Ex. PP (Axanar marketing plan); Ex. QQ (printout from Axanarproductions.com) (Dkt. 79-3).</p>
<p>114. Plaintiffs have enjoyed promotional value as a result of the works of fan fiction.</p> <p>ECF No. 75-6, Oki Decl., Ex. 4 (Jenkins</p>	<p>Disputed.</p> <p>The unsworn statements by Henry</p>

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Material Fact and Supporting Evidence	Plaintiffs' Response
<p>Report at 3)</p> <p>ECF Nos. 75-13, 77-6, Oki Decl., Ex. 11 (Lin Tr. at 40:18-41:18)</p> <p>ECF Nos. 75-5, 77-3, Oki Decl., Ex. 3 (Tregillis Report, ¶¶ 24, 63)</p> <p>ECF Nos. 75-11, 77-4, Oki Decl., Ex. 9 (Van Citters Tr. at 62:1-25, 137:5-21)</p> <p>ECF No. 75-10, Oki Decl., Ex. 8 (Kalodner Tr. at 33:22-42:17)</p> <p>ECF No. 75-9, Oki Decl., Ex. 7 (Burke Tr. at 40:5-45:7)</p> <p>ECF No. 75-18, Oki Decl, Ex. 16 (StarTrek.com Article)</p>	<p>Jenkins, and Christian Tregillis are hearsay, as is Exhibit 1 to the Watkins declaration. There are no declaration from Mr. Tregillis or Mr. Jenkins.</p> <p>The cited testimony from John Van Citters, Elizabeth Kalodner, Bill Burke, and Justin Lin does not provide that Plaintiffs have enjoyed promotional value as a result of the works of fan fiction.</p> <p>Exhibit 16 is simply an article about the licensed tour of a replica of the set from <i>The Original Series</i>.</p> <p>Further, Plaintiffs timely subpoenaed Mr. Jenkins and Mr. Tregillis for deposition, prior to the filing of Defendants' Motion for Summary Judgment. Defendants' counsel refused to make Mr. Jenkins and Mr. Tregillis available for deposition on the grounds that the "fact discovery" deadline had</p>

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Material Fact and Supporting Evidence	Plaintiffs' Response
	<p>passed (prior to the service of any expert reports) and stated that she was not making any of Defendants' experts available for deposition. Thereafter, Defendants submitted the Jenkins report and the Tregillis report as exhibits to Ms. Oki's declaration, and yet still refused to make them available for deposition on the subpoenaed date, or at any time prior to the deadline to file the Opposition to Defendants' Motion for Summary Judgment. Grossman Decl., ¶ 100, Ex. JJJ (email exchange with counsel for Defendants) (Dkt. 88-1). Their testimony, if not excluded as hearsay and lacking in foundation, should be excluded for failure to make them available pursuant to a timely-served subpoena.</p>
<p>115. Defendants continued to promote and consume all of Plaintiffs' official works, and Defendants' Works and other fan films increased the buzz and purchase of official merchandise.</p>	<p>Disputed.</p> <p>The unsworn statements by Henry Jenkins, and Christian Tregillis are hearsay, as is Exhibit 1 to the</p>

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Material Fact and Supporting Evidence	Plaintiffs' Response
<p>ECF No. 75-6, Oki Decl., Ex. 4 (Jenkins Report at 3)</p> <p>ECF Nos. 75-13, 77-6, Oki Decl., Ex. 11 (Lin Tr. at 40:18-41:18)</p> <p>ECF Nos. 75-5, 77-3, Oki Decl., Ex. 3 (Tregillis Report at ¶¶ 24, 63)</p> <p>ECF Nos. 75-11, 77-4, Oki Decl., Ex. 9 (Van Citters Tr. at 62:1-25, 137:5-21)</p> <p>ECF No. 75-10, Oki Decl., Ex. 8 (Kalodner Tr. at 33:22-42:17)</p> <p>ECF No. 75-9, Oki Decl., Ex. 7 (Burke Tr. at 40:5-45:7)</p> <p>ECF No. 75-18, Oki Decl, Ex. 16 (StarTrek.com Article)</p> <p>ECF No. 75-29, Watkins Decl., Ex. 1 (Facebook Post)</p> <p>ECF Nos. 75-14, 77-7, Oki Decl., Ex. 12 (Abrams Tr., Ex. 310 (Tweets))</p>	<p>Watkins declaration. There are no declaration from Mr. Tregillis or Mr. Jenkins.</p> <p>The cited testimony from John Van Citters, Elizabeth Kalodner, Bill Burke, and Justin Lin does not provide that Defendants' Works and other fan films increased the buzz and purchase of official merchandise, nor does it support the claim that Defendants continued to promote and consume all of Plaintiffs' official works.</p> <p>Exhibit 16 is simply an article about the licensed tour of a replica of the set from <i>The Original Series</i>.</p> <p>Exhibit 310 is not attached to the Oki declaration. Further, Plaintiffs timely subpoenaed Mr. Jenkins and Mr. Tregillis for deposition, prior to the filing of Defendants' Motion for Summary Judgment.</p> <p>Defendants' counsel refused to</p>

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Material Fact and Supporting Evidence	Plaintiffs' Response
	<p>make Mr. Jenkins and Mr. Tregillis available for deposition on the grounds that the “fact discovery” deadline had passed (prior to the service of any expert reports) and stated that she was not making any of Defendants’ experts available for deposition. Thereafter, Defendants submitted the Jenkins report and the Tregillis report as exhibits to Ms. Oki’s declaration, and yet still refused to make them available for deposition on the subpoenaed date, or at any time prior to the deadline to file the Opposition to Defendants’ Motion for Summary Judgment. Grossman Decl., ¶ 100, Ex. JJJ (email exchange with counsel for Defendants) (Dkt. 88-1). Their testimony, if not excluded as hearsay, should be excluded for failure to make them available pursuant to a timely-served subpoena.</p>

116. Plaintiffs’ have not asked Defendants to	Undisputed that Plaintiffs did not
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Material Fact and Supporting Evidence	Plaintiffs' Response
<p>remove either <i>Prelude</i> or the <i>Vulcan Scene</i> from its website.</p> <p>ECF Nos. 75-12, 77-5, Oki Decl., Ex. 10 (O'Rourke Tr. at 99:15-100:2)</p> <p>ECF Nos. 75-11, 77-4, Oki Decl., Ex. 9 (Van Citters Tr. at 160:13-15)</p>	<p>serve a takedown notice. Instead, Plaintiffs filed this lawsuit, and requested the court to enjoin the distribution of the Axanar Works.</p>
<p>117. [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>ECF Nos. 75-11, 77-4, Oki Decl., Ex. 9 (Van Citters Tr. at 52:14-18, 54:9-23, 119:19-124:18)</p> <p>ECF Nos. 75-12, 77-5, Oki Decl., Ex. 10 (O'Rourke Tr. at 60:22-61:5; 63:8-16)</p>	<p>Disputed.</p> <p>Plaintiffs did concern themselves with <i>Prelude</i>, and considered it an infringing work. Grossman Decl., ¶ 97, Ex. CCC (Van Citters and O'Rourke testimony)(Dkt. 79-3).</p>
<p>118. Defendants went to great lengths to make sure their works fell within the tolerated realm of fan fiction as Defendants understood it at the time.</p> <p>Peters Decl., ¶ 20</p>	<p>Disputed.</p> <p>The cited evidence is hearsay, lacks foundation and does not support the purported "fact."</p>
<p>119. There has been no agreed to definition of what a "fan film" is in this case.</p> <p>Ranahan Decl., ¶ 2, Ex. A (CBS Studios Inc.'s Responses to Requests for Production, Set One, Response to Request Nos. 14, 17, 18, 24, 25)</p> <p>Ranahan Decl., ¶ 2, Ex. A (Paramount</p>	<p>Undisputed that Plaintiffs objected to Defendants using "fan films" as a term in their Requests for Production without defining the term.</p> <p>The Joint Stipulation and</p>

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Material Fact and Supporting Evidence	Plaintiffs' Response
<p>Pictures Corporations Responses to Requests for Production, Set One, Response to Request Nos. 14, 17, 18, 24, 25)</p> <p>Joint Stipulation Regarding Defendants' Motion to Compel Discovery from Plaintiffs, Response to Request Nos. 14, 17, 18, 24, 25</p> <p>Defendants' Supplemental Memorandum in Support of Defendants' Motion to Compel Discovery, p. 4</p>	<p>Defendants' Supplemental Memorandum are not evidence.</p> <p>The Joint Stipulation and Defendants' Supplemental Memorandum simply reflect that Plaintiffs objected to Defendants using "fan films" as a term in their Requests for Production without defining the term.</p>
<p>120. Plaintiffs did not attempt to communicate the meaning of a "fan film" to fans until after this lawsuit was initiated.</p> <p>ECF Nos. 75-14, 77-7, Oki Decl., Ex. 12 (Abrams Tr. at 34:13-21, Ex. 312 (Fan Film Guidelines))</p>	<p>Disputed and irrelevant.</p> <p>Exhibit 12 to the Oki Declaration does not contain Abrams tr. at 34:13-21 and Abrams' testimony is not an admission of either of Plaintiffs.</p> <p>Exhibit 312 was not submitted to the Court by Defendants and is not in evidence.</p>
<p>121. Plaintiffs released fan film guidelines after this lawsuit was initiated.</p> <p>ECF Nos. 75-14, 77-7, Oki Decl., Ex. 12 (Abrams Tr. at 34:13-21, Ex. 312 (Fan Film Guidelines))</p>	<p>Undisputed.</p>
<p>122. Plaintiffs attempted to define the term</p>	<p>Disputed.</p>

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Material Fact and Supporting Evidence	Plaintiffs' Response
<p>“fan film” as an amateur pursuit without a professional look in the fan film guidelines released after this lawsuit was initiated.</p> <p>ECF Nos. 75-14, 77-7, Oki Decl., Ex. 12 (Abrams Tr. at 34:13-21, Ex. 312 (Fan Film Guidelines))</p>	<p>Exhibit 12 to the Oki Declaration does not contain Abrams tr. at 34:13-21 and Abrams’ statements are not an admission by either Plaintiff.</p> <p>Exhibit 312 was not submitted to the Court by Defendants and is not in evidence.</p>
<p>123. Plaintiffs complain extensively about the use of the phrase “Star Trek,” though that use is not at issue in this case, as it is not a trademark action.</p> <p>ECF No. 26, FAC</p>	<p>Undisputed that Plaintiffs have filed suit for copyright infringement and not trademark infringement. The First Amended Complaint speaks for itself.</p>
<p>124. The Court has previously characterized Plaintiffs’ references to allegedly infringing elements as attempted demonstrations of similarity rather than individual claims to copyright protection.</p> <p>ECF No. 43, Order on Defendant’s Motion to Dismiss, p. 4, ¶ 4</p>	<p>Undisputed that the Court stated in its Order denying Defendants’ Motion to Dismiss:</p> <p>“Plaintiffs define the Star Trek Copyrighted Works as including both the motion pictures and television series, providing the copyright registration numbers for the first episode of each television series and for each motion picture. To demonstrate substantial</p>

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Material Fact and Supporting Evidence	Plaintiffs' Response
	<p>similarity, Plaintiffs describe individual infringing elements in the Complaint. (FAC ¶¶ 46-47, ECF No. 26.) However, Plaintiffs do not claim that these individual infringing elements are subject to copyright protection – these elements are included in the Complaint to demonstrate the similarities between the Star Trek Copyrighted Works and the Axanar Works. Rather, Plaintiffs' copyright infringement claims are solely based on the Star Trek Copyrighted Works as defined in the Complaint.”</p>
<p>125. The simple costumes Plaintiffs have identified in Defendants' Works (e.g., “gold shirt” and “cowl neck”) are not independently protectable.</p> <p style="padding-left: 40px;">ECF No. 26, FAC ¶ 46 at 17-19</p> <p style="padding-left: 40px;">ECF No. 33, Defendants' Reply in Support of Motion to Dismiss, p. 3</p>	<p>Disputed.</p> <p>This is not a fact, but constitutes legal argument.</p> <p>Further, the FAC is not evidence. Defendants' Reply in Support of Motion to Dismiss is not evidence.</p>
<p>126. Plaintiffs assert that “Defendants have copied and adopted dialogue” from the Star</p>	<p>Disputed.</p>

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Material Fact and Supporting Evidence	Plaintiffs' Response
<p>Trek Works but have not identified any specific dialogue that Defendants allegedly copied.</p> <p>ECF No. 31, Plaintiffs' Opposition to Defendants' Motion to Dismiss, pp. 14-15</p> <p>ECF No. 33, Defendants' Reply in Support of Motion to Dismiss, p. 3</p>	<p>Plaintiffs' Opposition to Defendants' Motion to Dismiss is not evidence. Defendants' Reply in Support of Motion to Dismiss is not evidence.</p> <p>Plaintiffs have cited numerous examples of dialogue used by Defendants, copied from Plaintiffs' works, including phasers, photon torpedoes, dilithium crystals, warp drive, transporters, beaming up, the Federation, the Teachings of Surak, etc. Van Citters Decl., ¶ 15, Ex. 19, (<i>Prelude to Axanar</i>), ¶ 43, Ex. 20 (Vulcan Scene at 1:42) (Dkt. 72-60). Grossman Decl., ¶ 42, Ex. AA (Axanar Script) (Dkt. 79-3). Van Citters Decl., ¶¶ 40-42, 52, 58 (Dkt. 72-60).</p>
<p>127. Dialogue like "beaming up" is only protected by copyright if it is connected to other protectable elements like characters.</p> <p>ECF No. 31, Plaintiffs' Opposition to Defendants' Motion to Dismiss, p. 14</p> <p>ECF No. 33, Defendants' Reply in Support of Motion to Dismiss, p. 4</p>	<p>Disputed and argumentative.</p> <p>This is not a purported "fact" but is improper legal argument.</p> <p>Plaintiffs' Opposition to Defendants' Motion to Dismiss is not evidence. Defendants' Reply in</p>

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Material Fact and Supporting Evidence	Plaintiffs' Response
	Support of Motion to Dismiss is not evidence.
<p>128. Elements from the public domain are not copyrightable.</p> <p>ECF No. 33, Defendants' Reply in Support of Motion to Dismiss, p. 4</p>	<p>Disputed, irrelevant and argumentative.</p> <p>This is not a purported "fact" but is improper legal argument.</p> <p>Defendants' Reply in Support of Motion to Dismiss is not evidence.</p>
<p>129. Elements from nature are not copyrightable.</p> <p>ECF No. 33, Defendants' Reply in Support of Motion to Dismiss, p. 4</p>	<p>Disputed, irrelevant and argumentative.</p> <p>This is not a purported "fact" but is improper legal argument</p> <p>Defendants' Reply in Support of Motion to Dismiss is not evidence.</p>
<p>130. Transporters and warp drive, which existed in science fiction long before the creation of Star Trek, are not uniquely implemented in the Plaintiffs' Works.</p> <p>ECF No. 33, Defendants' Reply in Support of Motion to Dismiss, p. 4</p>	<p>Disputed.</p> <p>There is no evidence to support the stated fact, and the evidence, instead, shows that these elements were copied from Plaintiffs' works. Van Citters Decl., ¶¶ 40, 58 (Dkt. 72-60).</p>

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Material Fact and Supporting Evidence	Plaintiffs' Response
	Defendants' Reply in Support of Motion to Dismiss is not evidence.
<p>131. The Federation logo in Star Trek is adapted from the United Nations flag.</p> <p>ECF No. 26, FAC ¶ 46, p. 27</p> <p>ECF No. 29, Defendants' Motion to Dismiss, p. 8</p> <p>ECF No. 30, Defendants' Request for Judicial Notice, Ex. K (Flag of the United Federation of Planets, as compared to the Flag of the United Nations)</p> <p>ECF No. 33, Defendants' Reply in Support of Motion to Dismiss, p. 4</p>	Undisputed (and irrelevant) that the Federation logo is similar to the United Nations logo.
<p>132. The triangular medals on Star Trek uniforms have been used by military, religious, and other organizations throughout history.</p> <p>ECF No. 26, FAC ¶ 46, p. 18</p> <p>ECF No. 29, Defendants' Motion to Dismiss, p. 8</p> <p>ECF No. 30, Defendants' Request for Judicial Notice, Ex. G (William T.R. Marvin, <i>The Medals of the Masonic Fraternity: Described and Illustrated</i>)</p> <p>ECF No. 33, Defendants' Reply in Support of Motion to Dismiss, p. 4</p>	<p>Disputed.</p> <p>The cited evidence does not support the stated fact.</p> <p>The FAC is not evidence.</p> <p>Defendants' Motion to Dismiss is not evidence, nor is their Request for Judicial Notice. Defendants' Reply in Support of Motion to Dismiss is not evidence.</p>

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Material Fact and Supporting Evidence	Plaintiffs' Response
	<p>The Court did not take judicial notice of any of the items requested in Defendants' Request for Judicial Notice in Support of their Motion to Dismiss. <i>See</i> Dkt. 43, fn 1 ("Defendants' Request for Judicial Notice relates to this point. (Def.s' Request for Judicial Notice, ECF No. 30.) Because the Court finds it unnecessary to determine whether each individual element is entitled to copyright protection individually, the Court finds it unnecessary to take judicial notice of the requested facts at this time.").</p>
<p>133. Nausicaa is the name of a planet in Star Trek and is also a character in Homer's <i>Odyssey</i>. ECF No. 26, FAC ¶ 46, p. 20 ECF No. 29, Defendants' Motion to Dismiss, p. 8 ECF No. 30, Defendants' Request for Judicial Notice, Ex. H (Homer, <i>The Odyssey of Homer</i>)</p>	<p>Disputed and irrelevant.</p> <p>The FAC is not evidence. Defendants' Motion to Dismiss is not evidence, nor is their Request for Judicial Notice.</p> <p>The Court did not take judicial notice of any of the items requested in Defendants' Request for Judicial</p>

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Material Fact and Supporting Evidence	Plaintiffs' Response
	<p>Notice in Support of their Motion to Dismiss. <i>See</i> Dkt. 43, fn 1 (“Defendants’ Request for Judicial Notice relates to this point. (Def.s’ Request for Judicial Notice, ECF No. 30.) Because the Court finds it unnecessary to determine whether each individual element is entitled to copyright protection individually, the Court finds it unnecessary to take judicial notice of the requested facts at this time.”).</p>
<p>134. Rigel is the name of a planet in Star Trek and is also the name of a first-magnitude star in the constellation Orion.</p> <p>ECF No. 26, FAC ¶ 46, p. 20</p> <p>ECF No. 29, Defendants’ Motion to Dismiss, p. 8</p> <p>ECF No. 30, Defendants’ Request for Judicial Notice, Ex. I (“Rigel,” <i>Merriam Webster Dictionary</i>)</p>	<p>Disputed and irrelevant.</p> <p>The FAC is not evidence.</p> <p>Defendants’ Motion to Dismiss is not evidence, nor is their Request for Judicial Notice.</p> <p>The Court did not take judicial notice of any of the items requested in Defendants’ Request for Judicial Notice in Support of their Motion to Dismiss. <i>See</i> Dkt. 43, fn 1 (“Defendants’ Request for Judicial</p>

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Material Fact and Supporting Evidence	Plaintiffs' Response
	<p>Notice relates to this point. (Def.s' Request for Judicial Notice, ECF No. 30.) Because the Court finds it unnecessary to determine whether each individual element is entitled to copyright protection individually, the Court finds it unnecessary to take judicial notice of the requested facts at this time.").</p>
<p>135. Terra is the name of a planet in Star Trek and is also the Latin word for "Land." ECF No. 26, FAC ¶ 46, p. 20 ECF No. 29, Defendants' Motion to Dismiss, p. 8 ECF No. 30, Defendants' Request for Judicial Notice, Ex. J ("Terra," <i>Merriam Webster Dictionary</i>)</p>	<p>Disputed and irrelevant.</p> <p>The FAC is not evidence. Defendants' Motion to Dismiss is not evidence, nor is their Request for Judicial Notice.</p> <p>The Court did not take judicial notice of any of the items requested in Defendants' Request for Judicial Notice in Support of their Motion to Dismiss. <i>See</i> Dkt. 43, fn 1 ("Defendants' Request for Judicial Notice relates to this point. (Def.s' Request for Judicial Notice, ECF No. 30.) Because the Court finds it</p>

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Material Fact and Supporting Evidence	Plaintiffs' Response
	unnecessary to determine whether each individual element is entitled to copyright protection individually, the Court finds it unnecessary to take judicial notice of the requested facts at this time.”).
<p>136. Transporters have existed in science fiction since 1877.</p> <p>ECF No. 26, FAC ¶ 46, p. 31</p> <p>ECF No. 29, Defendants’ Motion to Dismiss, p. 8</p> <p>ECF No. 30, Defendants’ Request for Judicial Notice, Ex. L (“Teleportation,” <i>Merriam Webster Dictionary</i>)</p>	<p>Disputed.</p> <p>The cited evidence does not support the stated fact and either consists of prior pleadings filed in this case or hearsay.</p> <p>The First Amended Complaint is not evidence. Defendants’ Motion to Dismiss is not evidence, nor is their Request for Judicial Notice.</p> <p>The Court did not take judicial notice of any of the items requested in Defendants’ Request for Judicial Notice in Support of their Motion to Dismiss. <i>See</i> Dkt. 43, fn 1</p>
<p>137. Warp drive has existed in science fiction since as early as 1945.</p>	<p>Disputed.</p>

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Material Fact and Supporting Evidence	Plaintiffs' Response
<p>ECF No. 26, FAC ¶ 46, p. 31</p> <p>ECF No. 29, Defendants' Motion to Dismiss, p. 8</p> <p>ECF No. 30, Defendants' Request for Judicial Notice, Ex. M (Sten Odenwald, "<i>Who Invented Faster Than Light Travel?</i>")</p>	<p>The cited evidence does not support the stated fact and either consists of prior pleadings filed in this case or hearsay.</p> <p>The First Amended Complaint is not evidence. Defendants' Motion to Dismiss is not evidence, nor is their Request for Judicial Notice.</p> <p>The Court did not take judicial notice of any of the items requested in Defendants' Request for Judicial Notice in Support of their Motion to Dismiss. <i>See</i> Dkt. 43, fn 1.</p>
<p>138. Federation is the general word to describe "a country formed by separate states that have given certain powers to a central government while keeping control over local matters" commonly used in science fiction and is inspired by the United Nations.</p> <p>ECF No. 26, FAC ¶ 46, p. 32</p> <p>ECF No. 29, Defendants' Motion to Dismiss, pp. 8-9</p> <p>ECF No. 30, Defendants' Request for Judicial Notice, Ex. N ("<i>Federation,</i>" <i>Merriam</i></p>	<p>Disputed and irrelevant.</p> <p>The cited evidence does not support the stated fact and either consists of prior pleadings filed in this case or hearsay.</p>

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Material Fact and Supporting Evidence	Plaintiffs' Response
<p><i>Webster Dictionary</i>)</p> <p>139. Phasers are known as Heat-Ray weapons, which have existed in science fiction since H.G. Wells' <i>War of the Worlds</i> in 1898.</p> <p>ECF No. 26, FAC ¶ 46, p. 32</p> <p>ECF No. 29, Defendants' Motion to Dismiss, p. 9</p> <p>ECF No. 30, Defendants' Request for Judicial Notice, Ex. O ("H.G. Wells, <i>War of the Worlds</i>)</p>	<p>Disputed and irrelevant.</p> <p>The cited evidence does not support the stated fact and either consists of prior pleadings filed in this case or hearsay.</p>
<p>140. "Bridge" is a naval term for a ship's command center whose first usage predates the 12th century.</p> <p>ECF No. 26, FAC at ¶ 66(b)</p> <p>ECF No. 29, Defendants' Motion to Dismiss, pp. 8-9</p> <p>ECF No. 30, Defendants' Request for Judicial Notice, Ex. P ("Bridge," <i>Merriam Webster Dictionary</i>)</p>	<p>Disputed and irrelevant.</p> <p>The cited evidence does not support the stated fact and either consists of prior pleadings filed in this case or hearsay.</p>
<p>141. Species with "pointy ears" have appeared in many fictional fantasy works depicting imaginary humanoid species predating Star Trek, including vampires, elves, fairies, and werewolves.</p> <p>ECF No. 29, Defendants' Motion to Dismiss, p. 8</p>	<p>Disputed and irrelevant.</p> <p>The cited evidence does not support the stated fact and either consists of prior pleadings filed in this case or hearsay.</p>

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Material Fact and Supporting Evidence	Plaintiffs' Response
<p>ECF No. 30, Defendants' Request for Judicial Notice, Ex. D (Nosferatu)</p> <p>ECF No. 30, Defendants' Request for Judicial Notice, Ex. E ("Elf," <i>Merriam Webster Dictionary</i>)</p>	<p>Defendants did not copy Vulcans from vampires or elves – they admitted to copying, intentionally, Plaintiffs' fictional Vulcan characters.</p>
<p>142. In Roman mythology, Vulcan is the god of fire and metalworking. The first known use of "Vulcan" was in 1513.</p> <p>ECF No. 29, Defendants' Motion to Dismiss, p. 8</p> <p>ECF No. 30, Defendants' Request for Judicial Notice, Ex. F ("Vulcan," <i>Merriam Webster Dictionary</i>)</p>	<p>Disputed and irrelevant.</p> <p>The cited evidence does not support the stated fact and either consists of prior pleadings filed in this case or hearsay.</p> <p>Defendants did not copy Vulcans from Roman mythology – they admitted to copying, intentionally, Plaintiffs' fictional Vulcan characters.</p>
<p>143. "Pointy ears" are not original to Vulcans.</p> <p>ECF No. 33, Defendants' Reply in Support of Motion to Dismiss, p. 4</p>	<p>Disputed and irrelevant.</p> <p>Defendants' Reply in Support of their Motion to Dismiss is not evidence.</p>
<p>144. The Klingon language, like all languages, is a "system" used to generate expressions of various creative ideas.</p> <p>ECF No. 33, Defendants' Reply in</p>	<p>Disputed.</p> <p>Defendants' Reply in Support of their Motion to Dismiss is not</p>

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Material Fact and Supporting Evidence	Plaintiffs' Response
Support of Motion to Dismiss, p. 5	evidence.
<p>145. A particular expression of language may be copyrightable, but the language itself is not.</p> <p>ECF No. 33, Defendants' Reply in Support of Motion to Dismiss, p. 5</p>	<p>Disputed and argumentative. This is a legal conclusion and not a purported fact.</p> <p>Defendants' Reply in Support of their Motion to Dismiss is not evidence.</p>
<p>146. Fans of Star Trek regularly use Klingon to express their own creative ideas.</p> <p>ECF No. 33, Defendants' Reply in Support of Motion to Dismiss, p. 5</p>	<p>Disputed and irrelevant. The cited evidence does not support the stated fact.</p> <p>Defendants' Reply in Support of their Motion to Dismiss is not evidence.</p>
<p>147. Plaintiffs claim that Defendants have infringed Plaintiffs' works by using starships, spacedocks, beaming up, transporters, warp drive, phasers, stardates, Starfleet, triangular medals on uniforms, and a federation of planets.</p> <p>ECF No. 26, FAC ¶ 46 at 19, 22, 25-26, 32</p>	<p>Undisputed.</p>
<p>148. Starships, spacedocks, beaming up, transporters, warp drive, phasers, stardates, Starfleet, triangular medals on uniforms, and federations of planets are staples of the science fiction genre.</p>	<p>Disputed. The cited evidence does not support the stated fact.</p> <p>Defendants' Reply in Support of their Motion to Dismiss is not</p>

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Material Fact and Supporting Evidence	Plaintiffs' Response
<p>ECF No. 33, Defendants' Reply in Support of Motion to Dismiss, p. 6</p>	<p>evidence.</p>
<p>149. Copyright protection is available for characters that are especially distinctive. ECF No. 31, Plaintiffs' Opposition to Defendants' Motion to Dismiss, p. 19</p>	<p>Disputed and argumentative. This is not a complete statement of the law, and is not a "fact;" it is a purported legal conclusion.</p>
<p>150. Director Christian Gosset was inspired by <i>Saving Private Ryan</i> when he envisioned the Klingon Wars as portrayed by <i>Prelude to Axanar</i>. ECF Nos. 72-17, 79, Grossman Decl., Ex. N (<i>Prelude to Axanar</i> Promotional Material)</p>	<p>Disputed and irrelevant. The evidence cited is hearsay and does not support the proffered fact.</p>
<p>151. <i>Prelude to Axanar</i> is a History Channel-style special. ECF Nos. 72-17, 79, Grossman Decl., Ex. N (<i>Prelude to Axanar</i> Promotional Material)</p>	<p>Disputed. <i>Prelude</i> speaks for itself. Peters Decl., Ex. 1, <i>Prelude to Axanar</i> (Dkt. 75-19) and Van Citters Decl., ¶ 15, Ex. 19, <i>Prelude to Axanar</i> (Dkt. 72-60).</p>
<p>152. <i>Prelude to Axanar</i> was promoted as showing Star Trek in a way that had never been seen before. ECF No. 26, FAC p. 7, ¶ 29 ECF Nos. 72-17, 79, Grossman Decl., Ex. N (<i>Prelude to Axanar</i> Promotional</p>	<p>Disputed. Defendants set out to create an authentic, professional Star Trek work. Defendants did not dispute UMF</p>

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Material Fact and Supporting Evidence	Plaintiffs' Response
<p>Material) ECF Nos. 72-37, Grossman Decl., Ex. HH (Kickstarter Fundraising Page)</p>	<p>73, which states “Defendants expressly set out to create an authentic and “independent Star Trek film” that stated true to Star Trek canon down to ‘excruciating details.’” Grossman Decl., ¶ 54, Ex. A (Peters tr. at 97:14-98:22), Ex. HH (screenshot from Defendants’ Kickstarter fundraising page); ¶ 34, Ex. A (Peters tr. at 471:25-474:20), Ex. U (March 7, 2015 email from Alec Peters to Christian Gossett); ¶ 29, Ex. C (Gossett tr. at 36:11-37:8), Ex. R (March 24, 2013 email from Sean Tourangeau to Christian Gossett and Alec Peters); ¶ 38, Ex. C (Gossett tr. at 92:14-93:13), Ex. Y (April 13, 2014 email exchange between Alec Peters, Tobias Richter, and Christian Gossett); ¶ 10, Ex. C (Gossett tr. at 30:7-31:13, Ex. F (January 4, 2011 email from Alec Peters to Christian Gossett), Ex. A (Peters tr. at 332:15–334:4); ¶ 12, Ex. C (Gossett tr. at</p>

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Material Fact and Supporting Evidence	Plaintiffs' Response
	32:7-34:16), Ex. H (November 13, 2013 email exchange between Alec Peters and Christian Gossett), Ex. A (Peters tr. at 359:18-361:11) (Dkt. 79-3).
<p>153. The Four Years War was never depicted in any Star Trek television episode.</p> <p>ECF Nos. 72-17, 79, Grossman Decl., Ex. N (<i>Prelude to Axanar</i> Promotional Material)</p>	<p>Undisputed that the war itself was not depicted in any Star Trek television episode, but the events of the Four Years War, and Garth of Izar's military exploits at the Battle of Axanar, were described in the episode <i>Whom Gods Destroy</i>. Van Citters Decl., ¶ 6 (Dkt. 72-60).</p>
<p>154. The Four Years War was never depicted in any Star Trek feature film.</p> <p>ECF Nos. 72-17, 79, Grossman Decl., Ex. N (<i>Prelude to Axanar</i> Promotional Material)</p>	<p>Undisputed.</p>
<p>155. Alec Peters was convinced to write a screenplay for obscure Star Trek character Garth of Izar by fan film legend James Cawley after Cawley invited Peters to portray Garth of Izar in 2010.</p> <p>ECF Nos. 72-17, 79, Grossman Decl.,</p>	<p>Disputed.</p> <p>Defendants rely on hearsay and there is no sworn testimony, nor admissible evidence, on that point.</p>

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Material Fact and Supporting Evidence	Plaintiffs' Response
<p>Ex. N (<i>Prelude to Axanar</i> Promotional Material)</p>	<p><i>Prelude</i> speaks for itself. Peters Decl., Ex. 1, <i>Prelude to Axanar</i> (Dkt. 75-19) and Van Citters Decl., ¶ 15, Ex. 19, <i>Prelude to Axanar</i> (Dkt. 72-60).</p> <p>Garth of Izar is not an “obscure” character and was featured in the “<i>Whom Gods Destroy</i>” episode of <i>The Original Series</i>, was the subject of a novel, and was also featured in <i>The Four Years War</i> supplement. Van Citters Decl., ¶¶ 6, 13, 14, Ex. AAA (<i>The Four Years War</i> supplement) (Dkt. 72-60). Grossman Decl., ¶ 92, Ex. 1 (<i>The Original Series</i> DVDs)(Dkt. 79-3).</p>
<p>156. The M*A*S*H episode that inspired Alec Peters in his creation of <i>Prelude to Axanar</i>, titled, “The Interview,” was shot like newsreel footage that gave an intimate look at the characters feelings on the war.</p> <p>ECF Nos. 72-17, 79, Grossman Decl., Ex. N (<i>Prelude to Axanar</i> Promotional Material)</p>	<p>Disputed.</p> <p>Defendants rely on hearsay and there is no sworn testimony, nor admissible evidence, on that point.</p> <p><i>Prelude</i> speaks for itself. Peters Decl., Ex. 1, <i>Prelude to Axanar</i></p>

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Material Fact and Supporting Evidence	Plaintiffs' Response
	(Dkt. 75-19) and Van Citters Decl., ¶ 15, Ex. 19, <i>Prelude to Axanar</i> (Dkt. 72-60).
<p>157. The interweaving of interviews with veterans of World War II in <i>Band of Brothers</i> inspired Alec Peters in his creation of <i>Prelude to Axanar</i>.</p> <p>ECF Nos. 72-17, 79, Grossman Decl., Ex. N (<i>Prelude to Axanar</i> Promotional Material)</p>	<p>Disputed.</p> <p>The cited evidence is hearsay and there is no sworn testimony, nor admissible evidence, to support the stated fact.</p>
<p>158. <i>Prelude to Axanar</i> is dedicated to the vision of Gene Roddenberry.</p> <p>ECF Nos. 72-17, 79, Grossman Decl., Ex. N (<i>Prelude to Axanar</i> Promotional Material)</p>	<p>Undisputed that the evidence cited says that <i>Prelude</i> is dedicated to “Gene Roddenberry’s vision and the universe he created.”</p>

Dated: December 5, 2016

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