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PARAMOUNT PICTURES
11 CORPORATION and CBS STUDIOS
INC.
12

13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA
15

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

20 v.

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

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

**PLAINTIFFS' MOTION IN
LIMINE NO. 6 TO EXCLUDE
TESTIMONY AND DOCUMENTS
REGARDING STAR TREK FAN
FILMS**

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

1 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE** that, on January 31, 2017, at 9:00 a.m., or as soon
3 thereafter as counsel may be heard in the Courtroom of the Honorable R. Gary
4 Klausner, United States District Judge, Central District of California, located at 255
5 E. Temple Street, Los Angeles, California 90012, plaintiffs Paramount Pictures
6 Corporation and CBS Studios Inc. (“Plaintiffs”) will and hereby do move to exclude
7 evidence or argument at trial relating to Star Trek fan films (other than the Axanar
8 works which now, after the litigation commenced, claim to be fan films), including
9 whether Plaintiffs have filed suit against other creators of fan films. Any such
10 evidence is entirely irrelevant to the case at hand and should be excluded because
11 there is no special exemption in copyright law for fan films, any actions that
12 Plaintiffs have or have not taken against other alleged infringers are irrelevant, and
13 an analysis of each of these fan films would result in the conducting of a miniature
14 trial regarding each fan film, or dozens of trials within a trial. In addition, such
15 evidence would confuse the jury.

16 Plaintiffs discussed the reasons for the filing of this Motion with Defendants’
17 counsel. This Motion is based on this Notice, the accompanying Memorandum of
18 Points and Authorities, the Declaration of Jennifer Jason, all records in this action
19 and on such further argument, evidence and authority as may be offered at the time
20 of hearing.

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Dated: December 16, 2016

LOEB & LOEB LLP
JONATHAN ZAVIN
DAVID GROSSMAN
JENNIFER JASON

By: /s/ Jennifer Jason
Jennifer Jason
Attorneys for Plaintiffs
PARAMOUNT PICTURES
CORPORATION and CBS STUDIOS
INC.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Paramount Pictures Corporation (“Paramount”) and CBS Studios Inc. (“CBS”) (collectively, “Plaintiffs”) anticipate that Defendants Axanar Productions, Inc. and Alec Peters (collectively, “Defendants”) will attempt to introduce evidence or argument at trial relating to Star Trek fan films, and how Plaintiffs purportedly have not filed suit against other creators of fan films.

Any such evidence is entirely irrelevant to the case at hand and should be excluded. The concept of “fan films” bears no relevance in copyright law. Likewise, whether Plaintiffs have taken action against other infringers of their works is legally irrelevant, and such evidence would confuse the jury and would lead to the necessity of conducting dozens of miniature trials regarding fan films that are fundamentally irrelevant to this case.

II. DISCUSSION

A. Testimony and Documents Regarding Fan Films Should be Excluded.

Plaintiffs anticipate that Defendants intend to introduce evidence of Star Trek fan films, and intend to argue that Plaintiffs did not file suit against other purportedly infringing fan films, or that the lack of such legal action is an acknowledgement that these other fan films caused no harm to Plaintiffs. Jason Decl. ¶ 3, Exs. A, B, C. As a matter of law, the claimed evidence is irrelevant and prejudicial to the jury.

1. Star Trek Fan Films Are Legally Irrelevant.

Star Trek fan films that are not at issue in this case are legally irrelevant for several reasons. First, no court has ever held that “fan fiction” (whether or not that label is accurate, which in this case it is not) has any special protection under the Copyright Act, or that calling something fan fiction impacts the copyright infringement analysis.

1 Second while Defendants have claimed that Plaintiffs have not sued other
2 “fan film” creators, this too is legally irrelevant. This precise issue, with respect to
3 the Star Trek copyrighted works and Plaintiff Paramount, was directly addressed in
4 an earlier copyright infringement lawsuit. *See Paramount Pictures Corp. v Carol*
5 *Publ’g Grp.*, 11 F. Supp. 2d 329, 336 (S.D.N.Y. 1998) (“Defendants also argue that
6 Plaintiff’s lack of legal action against other allegedly infringing [sic] indicates that
7 *The Joy of Trek* will not damage a potential market. This argument is without merit.
8 It is possible that Paramount believed that the other books did not infringe on the
9 Star Trek Properties. It is also possible that Paramount simply has had a change in
10 corporate policy, determining that the market is now ripe for this type of derivative
11 product. Regardless, the lack of earlier litigation against other similar works is
12 simply irrelevant. A self-avowed substitute for other Paramount licensed products
13 adversely impacts the market for derivative works.”). *See also Capitol Records, Inc.*
14 *v. Naxos of Am., Inc.*, 372 F.3d 471, 484 (2d Cir. 2004) (“[F]ailure to pursue third-
15 party infringers has regularly been rejected as a defense to copyright infringement or
16 as an indication of abandonment.”) (citing *Paramount Pictures Corp.*, 11 F. Supp.2d
17 at 337). Plaintiffs’ decisions as to which infringing parties to sue has no bearing on
18 the determination of whether Defendants engaged in copyright infringement.

19 Third, the analysis of Star Trek fan films would be an extreme and
20 unnecessary burden on the jury’s time and the resources of the Court. It would
21 likely to take days to introduce the Star Trek fan films and to establish what, if any,
22 elements of Star Trek each film infringes, the quality of the films, the degree of
23 professionalism with respect to each film, the production budget for each film, and
24 the profit made by the creators of each film. The court in *Paramount Pictures Corp.*
25 *v. Carol Publishing Group* explained:

26 Allowing such a defense would compel courts to examine all the other
27 allegedly infringing works on which defendant’s reliance was based in
28 order to ascertain whether these works were in fact infringing, thereby
 creating a number of smaller infringement hearings within a single
 copyright action. Moreover, there is no legal duty to instigate legal

1 proceedings. Perhaps it is the case, as Defendants intimated, that
2 Paramount has chosen to eschew litigation with larger publishing
3 houses, and instead bring suit against a relatively small firm. It matters
not. Provided it does not violate any other provision of law, Paramount
is free to instigate legal action against whomever it wishes.

4 11 F. Supp. 2d at 337. There is simply no probative value, though significant cost, in
5 conducting dozens of miniature trials regarding fan films that are fundamentally
6 irrelevant to this case.

7 **2. Defendants’ Fan Film Defense is Prejudicial.**

8 References to fan films have no probative value because they are not relevant.
9 Even if they did, any probative value is substantially outweighed by the danger of
10 unfair prejudice to Plaintiffs and the risk of confusing the jury. Fed. R. Evid. 403;
11 *Unigard Sec. Ins. Co. v. Lakewood Eng’g & Mfg. Corp.*, 982 F.2d 363, 368 (9th Cir.
12 1992) (noting broad discretion to exclude unfairly prejudicial evidence).

13 Allowing Defendants to introduce references to other supposed “fan films”
14 could lead the jury to be confused that whether a work is a “fan film” is relevant to
15 whether it is infringing. Furthermore, without the aforesaid mini-trials that would
16 examine each of these fan films, the jury could be confused into thinking that the
17 Axanar works were the same as these amateur, low quality, low budget fan films.
18 To the contrary, prior to the commencement of this litigation, Defendants proudly
19 proclaimed that the Axanar films were not fan films, but rather the first professional
20 independent Star Trek films, with a budget of more than \$1 million. Additionally,
21 references to fan films may lead the jury to believe that somehow Plaintiffs’ actions
22 towards other fan films have a bearing on the case, when, as a matter of law, they do
23 not.

24 **III. CONCLUSION**

25 For the foregoing reasons, Plaintiffs request that testimony and documents
26 regarding Star Trek fan films be excluded from trial.

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