

Analysis

Federation Falling?



CBS brings a halt to the crowdfunding effort for the *Star Trek - Horizon* sequel, *Federation Rising*. Does this signal the end of fan films?




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THE AXANAR copyright lawsuit has just claimed its first casualty: Not *Axanar* itself (yet), but the sequel to the recently released — and well-received — *Star Trek - Horizon*. And possibly all other fan films.

The *Horizon* sequel, *Federation Rising*, was due to begin a crowdfunding campaign on Saturday, April 22, but a call from CBS to creator Tommy Kraft has ended that. And it appears to be Axanar's fault.

In a lengthy post to the *Star Trek - Horizon* Facebook page, Kraft wrote:

Executives from CBS reached out to me and advised me that **their legal team strongly suggested that we do not move forward** with plans to create a sequel to *Horizon*. While this is a sign of the current climate that we find ourselves in with *Star Trek* fan films, I want to personally thank CBS for reaching out to me, rather than including us in their ongoing lawsuit against *Axanar*.¹⁾



TOMMY KRAFT on the set of his first fan film, the well-received *Star Trek-Horizon*.

At the heart of that [lawsuit](#), of course, are the Star Trek copyrights owned by [CBS Studios](#) and [Paramount Pictures](#), under dispute while the studios litigate against [Axanar Productions](#) and its owner, [Alec Peters](#).

The typical course of action in Kraft's situation, would have been for CBS to issue a cease-and-desist (or C&D) letter, advising him to stop the offending action or face formal legal action. But Kraft appeared to get surprisingly kinder, gentler treatment. He said:

It was conveyed that the reason CBS was reaching out to me was **due to the legal troubles stemming from the Axanar case**. Again, CBS did not have to reach out personally. The message I received felt more like they were giving me a heads up before we got too involved in another project, rather than a group of angry executives swinging a hammer.²⁾

The rest of Kraft's Facebook post goes on to describe an alternate, original science fiction project he will instead develop for its own crowdfunding effort.

What Does it Mean?

Following Kraft's announcement, fans speculated about what the CBS move meant for other fan productions. Nick Minecci, one of the hosts of the popular weekly Star Trek podcast, [The G&T Show](#), warned:

"I cannot say right now, will only say what is public, but there are other whispers," he said.³⁾ "That is all I can say, but keep watching over the next days."⁴⁾

What it Doesn't Mean

Perhaps the best way to figure out what CBS' move means is to examine what it *doesn't* mean. For example, CBS didn't issue a C&D or threaten further litigation. They instead framed the notice as coming, not from CBS executives themselves, but on the 'strong suggestion' of their legal team at [Loeb & Loeb](#).

Parsing CBS' Suggestion

Breaking down what Kraft said CBS told him may illuminate the implications of this move.

CBS 'reached out to advise'

Corporations usually demand. The kid gloves — especially since the move was prompted by lawyers

— mean something. This is not the way executives (or lawyers, for that matter) act when they want to destroy something. It's the way they act when they're trying to keep matters from getting out of hand. This comports with Kraft's comment that the message "felt more like they were giving me a heads up ... rather than a group of angry executives swinging a hammer."



Loeb & Loeb's lead attorney for the plaintiffs, **Jonathan Zavin**, has defended Star Trek's copyrights before.

'Their legal team strongly suggested'

While there have been murmurings that some executives within CBS want to do away with fan films because now they're consuming valuable resources without returning much to the studios, the impetus for Horizon's shutdown isn't coming from them, it's coming from their lawyers. And not corporate counsel but the legal team fighting Axanar. We know this because ...

CBS was reaching out because of 'the legal troubles stemming from the Axanar case'

CBS and Paramount haven't been relying on their in-house lawyers. They went for powerhouse intellectual property attorneys at Loeb, led by [Jonathan Zavin](#), who has tried cases like this before, including [defending Star Trek's copyrights](#).

What Might it Actually Mean?

A bit more challenging is sussing out what CBS is actually trying to accomplish by "suggesting" to Kraft that he shut down his sequel before he "got too involved in another [Star Trek] project."

An important part of Axanar's narrative in response to the lawsuit has been its insistence that the case:

- Isn't about money.
- Is only about copyright.

To that end, Axanar has, since the onset of the suit, sought to liken itself to other fan films, but emphasizing that it's more original, using fewer Star Trek copyrighted elements than the others. Director Robert Meyer Burnett said:

The problem with [other] Star Trek fan films is they're trying to recreate Star Trek. As good as their productions might be ... you're still watching actors that aren't Kirk, Spock and McCoy. While they painstakingly recreate the bridge or the props and everything, you know you're not watching real Star Trek.⁵⁾

The more unique Axanar seems, the more reasonable a lawsuit against the production might seem. The more alike it is with other fan films, the more they're all threatened by the outcome of the case. This move by CBS seems to move in the direction of the latter — except the timing of CBS' intervention with Kraft's production may be significant.

Parsing CBS' Goals

'The message felt more like a heads up before we got too involved in another project'

Kraft was literally a couple days away from beginning the Kickstarter campaign for *Federation Rising*. If CBS' objective was truly to shut down all fan films, why not simply C&D all of them? No. They chose one, the one about to embark on a quarter-million-dollar crowdfunding effort, and they asked — they suggested — he stop.

Everyone infringes

Almost by definition, all fan films infringe. Intellectual property lawyer Mary Ellen Tomazic calls it "tolerated use," in which copyright holders turn a blind eye so long as the project doesn't commercialize their intellectual property. This has been going on for decades, tolerated with few problems.

Until crowdfunding

Suddenly, fan producers had access to what has become millions of dollars for their productions. "Sometimes a good thing can't last," writes Jonathan Bailey in an article, "How Money and Fame Have Changed Fan Fiction," on his website, Plagiarism Today:

The truth is that Axanar may be a turning point in the relationship between rightsholders and fan fiction creators, a relationship that's about to get a lot more complex. ... The battle lines were being redrawn and the reason was because the Internet was, slowly, turning fan fiction and fan art into big business.⁶⁾

Tomazic, writing in her blog, "Intellectual Property Law: Fan Films - Breaking the Unwritten Rules and Defining Profit," states that fan works like Axanar can't avoid money issues:

The case revolves around what "profiting" from a fan film includes — can a filmmaker hire actors, set designers and build out a studio with crowdfunded money to make a "fan" film? Can he pay himself a salary from the funds? Paramount and CBS say no, deciding that this Axanar movie is no fan film but a competing product made from their copyrights and trademarks. The lawsuit is their way of reining in their previous tolerance of unlicensed use of their intellectual property, and protecting their legal rights under federal law.⁷⁾

Rules for the Future

The eventual impact of this case, according to Tomazic, may well limit what true fan productions can do in the future:

The Axanar lawsuit should serve as a cautionary tale for all fan film makers, as it will most likely result in strongly stated and probably strict parameters being set by other rights holders for future tolerated use of their intellectual property. Peters, by going too far in making a film that was no longer a fan film but a low-budget film with paid professionals competing with Star Trek works, crossed that line. He may have made it more difficult for fans to pay homage to their favorite movies with a lovingly crafted but still unauthorized work.⁸⁾

Indeed, Axanar producer Alec Peters had asked CBS and Paramount to more rigidly define what fan productions can and cannot do.⁹⁾ Bailey, however, believes that is not likely to happen:

A fan creation [may] comply with the letter of the law but still be undesirable or even harmful to the original creation. ... Rightsholders, almost universally, want flexibility when it comes to dealing

with fan creations and, with that flexibility, comes uncertainty. We're not likely to see many rightsholders laying down hard rules, save in specific areas, and that is going to create a great deal more fan-creator conflicts in the near future.¹⁰⁾

So what new restrictions may lie within Bailey's "specific areas" that may overlap with Tomazic's new "strict parameters"?

The End of Crowdfunding

"The love of money," the Bible tells us, "is the root of all evil." This may end up as the precept behind what CBS and Paramount impose on fan productions. Crowdfunding presents the studios with difficult problems for them to get over:

1. Relative ease — it's as easy as having a good idea and a well-planned campaign.
2. Lack of accountability — as Axanar and other crowdfunded projects have demonstrated, crowdfunding success [can transmogrify](#) into mission creep, ballooning costs and questionable spending.
3. Others earning profits — it's not just productions themselves (like Axanar's putative movie studio and extensive merchandise sales), but the crowdfunding platforms (e.g., Indiegogo and Kickstarter) who earn a percentage from funds raised by projects using unlicensed intellectual property.

The [crowdfunding platforms](#) have policies in place that supposedly prohibit projects that use intellectual property to which they don't have rights, but both Kickstarter and Indiegogo appear to have ignored their own rules. They both [woed Axanar](#) because it had proven it could raise big money; they turned a blind eye to Axanar's explicit admission that it did not have the backing of the copyright holders in producing its Star Trek film.

In the long term, by focusing on the crowdfunding platforms, the studios can continue to keep their hands-off policy with fan films. By threatening Indiegogo and Kickstarter with legal action if they don't police unlicensed use of their intellectual property on their platforms, the studios choke off the most problematic aspects of fan films, the ones that stem from unrestricted crowdfunding.

This action, if it is indeed the studios' goal, resets fan films to a simpler time, when costs prohibited them from threatening Star Trek's copyrights in any meaningful way that can't be handled with C&Ds. Axanar's fundraising success had put it in a new category: A fan film with lots of cash on hand. No C&D could, by itself, deal with the reality of that money. A lawsuit provided the only instrument to address the hundreds of thousands of dollars Axanar still had on hand while its film continued to be postponed, as well as the way hundreds of thousands more had already been spent as seed funding for the company's commercial ventures.

Where do other fan films go from here? Their territory remains uncharted.

Keywords

[analysis](#), [commentary](#), [fan films](#)

1) 2)

[f Star Trek - Horizon Facebook page](#), post by Tommy Kraft, 4/20/16.

3)

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