





Commentary

# Which Kobayashi Maru?


A popular blog post by an Axanar supporter portrays the lawsuit as a no-win scenario for Paramount Pictures (not CBS, the other plaintiff), while **AxaMonitor**'s Carlos Pedraza suggests that it's more likely a test of character for producer Alec Peters.


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**AXANAR SUPPORTER** Reece Watkins published a piece that's gotten some play this week, "Will Paramount's Lawsuit Become the Studio's Own Kobayashi Maru?", referring to the  famous no-win scenario introduced in *Star Trek II: The Wrath of Khan*.



**UPDATE** Krypton Radio, the scifi news site that originally published Reece Watkin's Kobayashi Maru editorial posted an [edited version](#) that included more accurate information about CBS' role as a joint plaintiff in the Axanar [lawsuit](#). The updated post did not address any of the other structural and factual weaknesses addressed in this article.

## All About Paramount (Not CBS)

In [Watkins' telling](#) of the state of the copyright infringement lawsuit Axanar faces from Star Trek owners CBS and Paramount Pictures, CBS plays no role. Only “the beleaguered studio,” Paramount Pictures, faces a “legal quagmire” from what, in it’s beleaguerment, should have been been a “quick-and-out” victory.

The analysis in Watkins’ blog post — featured prominently on Axanar’s website — suffers from some major problems. The biggest? It assumes facts not in evidence. For example:

- The assumption that Paramount has the most at stake in this case. His post largely ignores CBS’ stake. While Paramount holds the movie rights for Star Trek, CBS holds the TV rights and — importantly — the licensing rights that have filled corporate coffers for 50 years.
- That the case threatens to become a legal quagmire. It’s so early in the case that there’s insufficient evidence to conclude the plaintiffs face a quagmire. There’s been no [discovery](#), no ruling on the defense’s [dismissal motion](#), no [pre-trial conference](#), no hearing of any kind yet before U.S. District Court [Judge R. Gary Klausner](#).

**Watkins presents no facts to show how Paramount will be compelled to reward copyright infringers who used Star Trek to fund their commercial ventures.**

## Straw Man Arguments

Next is Watkins’ series of straw man arguments, in which he asserts no better than a Pyrrhic victory for Paramount (again, no CBS) even if it prevails on all counts. Let’s examine each aspect of those arguments.

### Too Much Time

If the case goes to trial, it will most likely take at least two years before a decision.<sup>1)</sup>

This isn’t the first copyright rodeo for CBS, Paramount and their world-class intellectual property law firm [Loeb & Loeb](#). They know how long litigation like this can take, and they would have weighed that into their decision to bring suit against Axanar.

It’s also odd that Watkins portrays the lawsuit timeline as a negative for the plaintiffs, when it’s the defendants who face the reality of dwindling funds to make their film the longer the case drags on. CBS and Paramount can afford to wait that long. Here’s why, starting with (again, facts not in evidence) what must be Paramount’s best possible outcome:

## Pyrrhic Victory

Even if the jury finds in their favor on all counts, the best result would be that the *Axanar* film will never see the light of day, and ... [Axanar Productions](#) could be held liable for damages, legal fees, and court costs. Except, of course, that the small company doesn't HAVE any real assets to hand over, and [Alec Peters](#), the executive producer of *Axanar*, certainly doesn't have it, either. The judgment would be virtually unenforceable, as the company would simply fold, and Alec would be forced into bankruptcy.<sup>2)</sup>

The assumption here is that Paramount (not CBS) is simply trying to crush *Axanar*, an upstart whose quality surely must have posed some kind of existential threat to Paramount (not CBS). A key feature of the *Axanar* narrative is that the sheer potential quality of the unmade film threatened the plaintiffs.

## Real World Victory

Except there exists a world (I like to think, *the real one*) in which the plaintiffs aren't out to get *Axanar*'s money or stomp it into the ground of bankruptcy. Those things might happen, but they're by-products of their real objective — they want a jury to reaffirm the most important parts of their copyrights:

- The exclusive right to control creation of derivative works based on its intellectual property.<sup>3)</sup>
- The legal ability to prevent others from commercially trading off its property.<sup>4)</sup>

Watkins would have you believe:

Paramount would receive nothing for their outlay of time, energy, and legal fees, which will certainly run into the millions of dollars. And remember, this is the BEST POSSIBLE outcome should they pursue this case to the very end.<sup>5)</sup>

For Paramount (don't forget CBS, Reece!), protecting their billion-dollar *Star Trek* property is worth that outlay. *Axanar*'s demise is merely the instrument by which they get a clear legal judgment preventing anyone else from setting up multiple revenue streams and gathering seed money for their commercial ventures on the back of intellectual property they don't own, all under the guise of producing a fan film.

This is all, of course, in a world in which *Axanar* is not at its center. But let's travel back to that world of fantasy to consider Watkins' next assertion (again, with facts not in evidence):

## Paramount's Dirty Little Secrets

There's a lot more at stake for Paramount, however. *Axanar*'s legal team are top-notch intellectual-property attorneys, and they are not about to let Paramount off the hook without a fight—and one that may reveal far more than Paramount is willing to expose.

So the next step in his straw man argument is plant this idea in your head — that Paramount (poor Paramount gets all Watkins' dirt thrown at it) has something to hide. Mind you, he has introduced absolutely no evidence of this. Instead, he next holds out some conjecture that sounds like evidence but isn't really much more than a question. A fair question, to be sure, but not to be confused with actual evidence:

Due to the vagaries of many company mergers and splits since the original show first aired in 1966, Paramount only holds the theatrical/film rights to Star Trek. CBS holds all the rest, most importantly to the original television material.

It is fair for Axanar's attorneys to ask for documentation of the two studios' Star Trek copyright. But it's a dot-your-I's, cross-your-T's kind of thing. There in fact could be a world where CBS and Paramount failed to do so, and it would, to be sure, "be a colossal embarrassment for Paramount," as Watkins states.

But there's no evidence any of us actually live in that world. Get some evidence, Axanar, and then you can legitimately pose the threat that "Paramount has no legal standing to sue and could be removed from the case by the court."<sup>6)</sup>

Watkins certainly doesn't offer any evidence, and Axanar's law firm, [Winston & Strawn](#), haven't either. All they've done is ask a question that, at best, is the legal equivalent of a Hail Mary pass. You don't build a strategy based on that kind of desperation.

Nevertheless, Watkins grasps away at this straw, that somehow the likelihood that Axanar's lawyers would ask for this documentation poses some kind of real problem for Paramount (not CBS).

If Paramount does not find a way out of this lawsuit quickly, Axanar's defense team will absolutely force them to turn over that stone and see what scurries out, which could be disastrous for the studio.

## Threat of Discovery

In legal land, this process is known as [discovery](#), and it's laughable to believe the plaintiffs and their very capable intellectual property attorneys thought they'd be able to get away with not proving they hold the copyrights for the property they're suing someone else for infringing.

But it's important for Watkins to make his readers believe there must be something to hide because disastrousness, that Paramount (not CBS) needs to "find a way out of this lawsuit quickly." And the evidence for that assertion is where? Not in Watkins' blog post.

## More to Fear

In fact, which side has more to fear from extensive discovery? Perhaps it's the one whose own [annual report](#) raises questions about how money was spent, or the one whose director and much of its production staff abandoned the production after *Prelude to Axanar* was completed? Or the one with a big yellow DONATE button on its home page that links to a page where it says it's a nonprofit organization, when it is in fact a registered for-profit California corporation — possibly violating the state's Nonprofit Integrity Act?

Or the one with a sophisticated merchandise production and fulfillment operation that has advertised and sold a full line of apparel, five blends of coffee, posters and artwork, patches, starship models, books, DVDs and Blu-rays? Or the one that has yet to deliver perks to donors while the same merchandise is being sold on eBay at exorbitant prices?

Or the one in the midst of a major transfer of assets to a secret, private [investor group](#) to which Alec

Peters refuses to say whether he belongs? Or the one that has clearly brought in revenue over and above the \$1.3 million raised via crowdfunding but refuses to account for it?

Do I assert whether anything inappropriate or illegal is behind any of these questions? No, I do not. I simply have no evidence other than what I have been able to produce on AxaMonitor. But they are legitimate questions, and they deserve answers, either to the public or to the friendly lawyers from Loeb.



**MARKET POWER** Do the 12,000 Axanar fans wield enough power to make a dent in *Star Trek Beyond*'s box office, or will the 2016 blockbuster rise or fall on its own merits?

### 'Axanar' vs. 'Star Trek Beyond'

But we're not done yet. Axanar threatens Paramount (not CBS) in still more ways, Watkins says:

That's not all Paramount has to worry about. ... There is still a huge amount of money at risk for the film studio, namely in the form of the upcoming "Star Trek Beyond" film. With a budget well into nine figures, the slightest whiff of bad publicity could easily reduce the opening weekend box office for their summer blockbuster by more than they could hope to be awarded in damages, even if Axanar Productions did have millions to pay out.

**Star Trek Beyond will rise or fall on its own merits, not the imaginary market power of a fringe group of fans.**

### Bad Publicity

So in Watkins' world, where Axanar lies at the center of all things Star Trek, the lawsuit must necessarily be bad publicity that can only threaten *Star Trek Beyond*'s opening weekend box office.

The blog post makes hay about this lawsuit taking place during Star Trek's 50th anniversary, and indeed as Watkins asserts, "a lawsuit is hardly the best choice for a marketing tactic." He goes on to claim:

Even though *Star Trek Beyond* has nothing to do with Axanar, and vice versa, unless the lawsuit is settled, every time the film is mentioned, the lawsuit will be as well.

So back to the world in which most of us live, where Axanar is not the be-all of Star Trek, I did a Google News search. It returned 17 *Star Trek Beyond* news stories on the first page of results. How

many also included a reference to *Axanar*? Exactly zero.

## Media Narrative

In this world, the real world, most people don't give a hoot about a fan film accused of wholesale copyright infringement, especially once they learn about the commercial ventures associated with the production. While a good number of the initial media stories back in December played off the David vs. Goliath narrative *Axanar* was promoting, as the case has progressed the stories have focused more on photo-friendly copyright disputes, like whether you can copyright a fictitious language like Klingon, or whether pointy-eared Vulcans are essentially the same as vampires and elves in other genres.

Most of the audience Paramount hopes to attract to *Star Trek Beyond* have no interest in a story about nerds arguing about whether you can get sued for saying *Qapla'*.

The purported silliness of that controversy is just as likely an interpretation of *Beyond* director Justin Lin's now-famous yet ambiguous tweet ("This is ridiculous! I support the fans! *Trek* belongs to all of us!") which Watkins would have you believe can only be construed as unequivocal support for *Axanar*. In his lack of specificity, Lin has been strangely silent since.

## 'The Fans'

Finally, Watkins claims *Axanar* represents the interests of "the fans" — as if *Star Trek* fans are a monolithic group who think and behave the same way. This is a notion easily disabused by lobbing this hand grenade into a gathering of Trekkies: "Who's the best starship captain?"

The reality is that the number of *Axanar* fans hovers at between 10,000 and 12,000, based on donors and the number of people who signed the CBS (not Paramount) petition supporting *Axanar* at [change.org](http://change.org). That petition has remained stalled at under 12,000 for months now.

Assuming every single one boycotts *Beyond*, that won't make even a dent in the audience numbers. *Star Trek Beyond* will rise or fall on its own merits, not the imaginary market power of a fringe group of fans, many of whom never liked the rebooted *Trek* anyway.

## 'Axanar' the Savior

Nevertheless, having set up this fact-free series of arguments, Watkins delivers his knockout punch:

To sum up, Paramount is either looking at winning a worthless judgment, or losing millions of dollars, and fifty years of goodwill of the fans, all by pursuing a lawsuit that they may not even have been legally entitled to bring in the first place. ... They can win absolutely nothing by continuing to press this case.

But don't worry, Paramount (not CBS)! *Axanar* can save you, with Captain Garth at the helm of the *Ares*, leading a fleet of starships from the other side of the asteroid belt:

There is a way out for them — by dropping the case now and letting *Axanar* proceed with their

blessing, they can go from bully to savior with the stroke of a pen. By working with Axanar, the story goes from “Studio Bullies Fan Film” to “Paramount blazes new media trail with landmark deal.” That can only help the box office for Star Trek Beyond, and when a CBS approved Axanar hits the retail channel, Paramount could stand to make millions of dollars-the only way it can possibly make any money at all off the whole fiasco. That’s the studio’s only hope to solve its own Kobayashi Maru — stop the test now, before they sink their own ship.

Never mind Watkins presents no real facts to support the media narrative he is certain will force Paramount (not CBS ... well, maybe CBS a little bit) to reward copyright infringers who used the studios’ intellectual property to fund their own professional, commercial ventures. Only by accepting *Axanar* can Paramount (not CBS) pass its Kobayashi Maru.

Except maybe Axanar is more like Orion raiders taking refuge in the Badlands. And Watkins should remember that the Kobayashi Maru is not a test you pass through victory. It is a test of character. And the character being tested here is of a producer who got fans to part with their money by describing his project as a “fully professional independent Star Trek production,” and who believed CBS still got the final say over the use of its intellectual property. Until he didn’t on December 29, 2015.

The character being tested is the one that when suddenly faced with a lawsuit about his singular misuse of intellectual property he does not own began calling his production just a fan film like all the others, and kicked out anyone who dared to question the party line in its Facebook groups, often maligning their character, swearing at them and calling them names.

That’s the Kobayashi Maru test Alec Peters and Axanar face in the real world. 

**Keywords**

[news](#), [commentary](#)

<sup>1)</sup> <sup>2)</sup> <sup>5)</sup> <sup>6)</sup>  
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[Axanar blog](#), "Will Paramount’s Lawsuit Become the Studio’s Own Kobayashi Maru?," Reece Watkins, 4/5/16.

<sup>3)</sup> <sup>4)</sup>  
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