

Defendants' Answer

LAWSUIT PRIMER Get an overview of the copyright lawsuit, including a timeline of the case, as well as downloadable pleadings made by the plaintiffs, CBS and Paramount, and defendants Alec Peters and Axanar Productions Inc. » [Lawsuit Primer](#)

Following two unsuccessful motions to dismiss the [copyright infringement](#) lawsuit against them, [Axanar Productions](#) and producer [Alec Peters](#) on May 23, 2016, filed a formal **Answer** to the [legal complaint](#) filed against them by CBS and Paramount Pictures.

The Answer included a counterclaim by the defendants, seeking further relief for harm caused to Axanar by the plaintiff's lawsuit.

DRAFT This article is currently being drafted and should be considered incomplete until this notice is removed from the page.

Legal Reprieve?

The Answer was filed just three days after

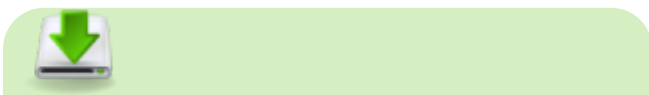


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Star Trek producer J.J. Abrams and *Star Trek Beyond* director Justin Lin announced at a fan event in Los Angeles that they had interceded with the plaintiffs on Axanar's behalf, and the lawsuit was "going away within the next few weeks."



DOWNLOAD Winston & Strawn defense attorney Erin Ranahan's Answer to the legal complaint for copyright infringement against Axanar Productions and Alec Peters ([244K PDF](#)).

The May 20 statement was widely construed by the media as [CBS](#) and [Paramount](#) dropping or withdrawing the suit, although a followup statement by Paramount clarified the two sides were negotiating a settlement, and drafting a set of [guidelines for fan productions](#).

Counterclaim

Had the studios planned on withdrawing their suit, that possibility was foreclosed on May 23 by the Answer's including a counterclaim by the defendants against the studios, asking for additional relief based on harm inflicted on the defendants by the suit.

By asserting their own claims against the plaintiffs, the defendants now "put the plaintiffs into a defensive posture regarding these counterclaims, and the defendant acts in an offensive posture. Thus, for example, the defendant bears the burden of proof on counterclaims."¹⁾

The Suit Must Go On

Under the Federal Rules of Civil Procedure, the plaintiffs must defend against the counterclaims, starting with a 21-day deadline to file their own Answer.²⁾ The defendants' move had the effect of preventing the plaintiffs from simply withdrawing the suit.

A prepared statement on behalf of Axanar Productions stated the defendants had to proceed with filing their Answer, including the counterclaims, irrespective of Abrams' and Lin's May 20 announcement in support of the film:

This filing was necessary because, despite J.J. Abrams' assurance that the lawsuit would be "going away," and confirmation that CBS is in settlement talks and finally working on fan film guidelines, Paramount and CBS have not yet dismissed the lawsuit. Axanar Productions must therefore meet deadlines set by the court and proceed as if the lawsuit will continue until the situation is resolved.³⁾

Ironically, if the defendants had wanted the plaintiffs to simply withdraw the suit, the counterclaim made it impossible for them to do so. That meant the way to resolve the suit was now only through protracted settlement negotiations.

- Benefit
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- Nature of Counterclaim
 - The Story of Alec Peters
 - Abrams'-Lin's Intercession
- Fair Use Protection
- Non-Violation of Plaintiffs' Rights
- Demand for Jury Trial

What Axanar Wants

Meanwhile, Axanar attorney Ranahan told the Axanar-supporter blog, Fan Film Factor, the defense sought only “a single claim for declaratory relief [and that] this claim is not ‘upping the ante’ given that we are not seeking any monetary damages, but simply a declaration of fair use or non-infringement.”⁴⁾

The actual Answer, however, asks for two other things Ranahan did not include in her interview with Fan Film Factor, both of which may involve money:

- Defendants’ Attorneys’ fees and costs.
- Additional relief the court finds “just, proper, and equitable.”⁵⁾

Responses to the Nature of the Lawsuit

For almost half the pleading’s 28 pages, attorney [Erin Ranahan](#) of the [Winston & Strawn](#) law firm representing the defendants, issued straightforward denials of the [claims made](#) in the legal complaint.

Throughout the Answer, Ranahan supports her position with the phrase, “Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations, and on that basis deny them.” The phrase sounds worse than it is. It’s legalese for “prove it, plaintiffs,” which is what happens during [discovery](#) and ultimately at trial.

What Axanar Admits

In the pleading, the defendants admit about the nature of the suit only that they:

- Produced the short film, *Prelude to Axanar*.
- Intended to produce the feature, *Axanar*.
- Created, and continued to develop, a script for *Axanar*.
- Raised more than \$1 million in fan donations to produce *Prelude to Axanar* and *Axanar*.

What Axanar Denies

In the pleading, the defendants denied that:

- *Prelude* and *Axanar* (together referred to by the plaintiffs as the “Axanar Works”) infringe, are substantially similar to, or are derivative of Star Trek.
- The Axanar Works are intended to be professional quality productions.
- The defendants, by their own admission, unabashedly took Paramount’s and CBS’s intellectual property to make a “true Star Trek movie.”
- The \$1 million in fan donations included paying for building out a studio.

In denying these claims, the defense argued they were legal conclusions to which no response is required, other than to deny the allegations.

Jurisdiction and Venue

Apart from the defense's straightforward denial of these claims, one stood out. While acknowledging only that defendants Alec Peters and Axanar Productions were California residents. The Answer denied the plaintiffs' claims that they "conduct continuous, systematic, and routine business within this state and this District."⁶⁾

The Parties to the Suit

Apart from the defense's straightforward denial of these claims, one stood out. Of the plaintiffs' description that "Axanar Productions is a corporation organized under the laws of the State of California ... a motion picture, television, and/or video production company,"⁷⁾ the Answer only admitted to the company being "a California corporation that produces fan films."⁸⁾

The Doe Defendants

The Answer issued a blanket denial of claims related to the unnamed '[Doe](#)' defendants (up to 20 yet to be identified by plaintiffs), particularly noting defendants' belief plaintiffs "suffered any injury as a result of any of the [Does'] actions described in the [lawsuit]."⁹⁾

Plaintiffs' Copyrighted Star Trek Works

The Answer issued a blanket denial of the plaintiffs' assertion of ownership of the copyrights to Star Trek by CBS and Paramount Pictures, leaving it to them to prove that through discovery and at trial.

Prelude to Axanar

The pleading states the following about the the plaintiffs' claims regarding the short film, *Prelude to Axanar*. While the defendants generally deny the claims made by plaintiffs in their legal complaint, the Answer does offer a number of specific admissions and denials.

What Defendants Admit

In the Answer, the defendants admit that:

- Received donations via [Kickstarter](#) to produce the short film.
- Peters was involved in writing *Prelude to Axanar*, though any involvement by as-yet-unnamed defendants, as cited in the complaint, must be proved by the plaintiffs.
- Axanar Productions produced *Prelude to Axanar*.
- *Prelude to Axanar* was posted on Youtube in 2014.
- *Prelude* was inspired by Star Trek, and tells an as-yet-untold story about Garth of Izar.
- A statement describing the Star Trek elements featured in *Prelude* was part of that film's

Kickstarter campaign.¹⁰⁾

What Defendants Deny

In the Answer, the defendants deny that:

- *Prelude to Axanar* is an infringing work.
- *Prelude* is or was intended to be a derivative work, or that it infringes Plaintiffs' works.
- The full title of *Prelude to Axanar* is *Star Trek: Prelude to Axanar*.

Axanar

The pleading states the following about the the plaintiffs' claims regarding the planned feature film, *Axanar*. While the defendants generally deny the claims made by plaintiffs in their legal complaint, the Answer does offer a number of specific admissions and denials.

What the Defendants Admit

In the Answer, the defendants admit they:

- Received donations via Kickstarter and Indiegogo to fund *Axanar's* production.
- Have created multiple versions of the *Axanar* script.
- Released the "[Vulcan Scene](#)" in 2015.
- Peters was involved in writing *Axanar*, though any involvement by as-yet-unnamed defendants, as cited in the complaint, must be proved by the plaintiffs.
- Began production on *Axanar* but halted after the lawsuit was filed.

What the Defendants Deny

In the Answer, the defendants deny:

- That all the versions of *Axanar's* script are "fixed works" for copyright purposes.
- They filmed any other scene from *Axanar* apart from the "Vulcan Scene."
- Production activities by unnamed 'Doe' defendants as factual without proof from the plaintiffs.
- What Star Trek elements they intend to incorporate into *Axanar* since the lawsuit has "stalled and impacted the planned production."¹¹⁾
- They have completed one-third of the visual effects *Axanar*. As recently as April 2, 2016, however, the production's website stated 25 percent of the feature's visual effects had been completed.¹²⁾ In a Facebook post, director Burnett claimed the visual effects production was on track to be 50 percent complete by the time principal photography was planned to begin in late January or February 2016, before the lawsuit cut short that timeline by one to two months.¹³⁾
- That Peters "admitted" violating plaintiffs' copyrights in a [1701News interview](#) published on February 1, 2016.

Substantial Similarity

[Substantial similarity](#) is a legal analysis made in copyright infringement cases to determine whether the works at issue copy, or are derived, from earlier copyrighted works. In addition to the defense's straightforward denial of these claims, the defendants referred to the pleadings surrounding their motion to dismiss to repeat arguments about "allegedly copyrighted Star Trek elements" in *Prelude to Axanar* that [Judge R. Gary Klausner](#) had found unavailing in denying the motion on May 9, 2016.

Copyright Infringement

Side-by-Side Comparisons

The legal complaint spends 28 pages detailing alleged copyright infringements by running side-by-side comparisons of copyrighted Star Trek elements copied in *Axanar*, including specific characters, alien species and their specific appearances, uniforms and costumes, command insignia and medals, planets and other settings, space docks, Federation, Vulcan and Klingon starships, logos, governmental details, stardates, futuristic technology, fictional languages and philosophies and architecture.¹⁴⁾

In the Answer, the defense offers straightforward denials to the 28 pages of examples

Contributory Copyright Infringement

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Vicarious Copyright Infringement

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Direct Financial Benefit

"The allegations in paragraph 62 constitute legal conclusions to which no required. To the extent a response is required, Defendants deny the allegations."

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Declaratory Judgment

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Affirmative Defenses

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1. (Fair Use)
2. (Waiver)
3. (Unclean Hands)
4. (First Amendment)
5. (Estoppel)
6. (Failure to Mitigate Damages)
7. (Acknowledgment, Ratification, Consent and Acquiescence)
8. (Failure to Register)
9. (Invalidity of Unenforceability of Copyright)
10. (Authorized Use)
11. (Forfeiture or Abandonment)
12. (Misuse of Copyright)
13. (Constitutionally Excessive Damages)
14. (Lack of Standing)

Additional Defenses

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Nature of Counterclaim

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The Story of Alec Peters

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Abrams'-Lin's Intercession

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Fair Use Protection

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Non-Violation of Plaintiffs' Rights

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Demand for Jury Trial

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Keywords

[lawsuit](#), [players](#), [plaintiffs](#), [defendants](#), [stub](#)

1) ["Counterclaims," Legal Information Institute, Cornell University Law School](#), retrieved 5/24/16.

2) ["Rule 12. Defenses and Objections: When and How Presented; Motion for Judgment on the Pleadings; Consolidating Motions; Waiving Defenses; Pretrial Hearing," Legal Information Institute, Cornell School of Law](#), retrieved 5/24/16.

3) [f Mike Bawden post, CBS/Paramount vs. Axanar Facebook group](#), 5/24/16.

4) [Jonathan Lane, "Why Axanar just filed a Response and Counterclaim to the CBS/Paramount Lawsuit," Fan Film Factor blog](#), 5/24/16.

5) [Answer of Defendants ... to Plaintiffs' First Amended Complaint; Counterclaim for Declaratory Relief; Demand for Jury Trial](#), p. 26, "Prayer for Relief," 2 & 3, 5/23/16.

6) [First Amended Complaint](#), p. 2 ¶4, 3/11/16.

7) [First Amended Complaint](#), p. 2 ¶8, 3/11/16.

8) [Answer of Defendants ... to Plaintiffs' First Amended Complaint; Counterclaim for Declaratory Relief; Demand for Jury Trial](#), p. 2 ¶8, 5/23/16.

9) [Answer of Defendants ... to Plaintiffs' First Amended Complaint; Counterclaim for Declaratory Relief; Demand for Jury Trial](#), p. 2 ¶11, 5/23/16.

10) The statement from Kickstarter, as cited in the legal complaint read: *Prelude to Axanar* is a short film that will give viewers a historical look at the events leading up to the Battle of Axanar, the central event of the film *Axanar*, to be filmed later this year. Shot like a History Channel special, *Prelude to Axanar* will be **Star Trek like you have never seen it before**, showing the central characters of *Axanar* giving both a historical and personal account of the war. How did Starfleet build its fleet? How did they hold off a Klingon fleet that had been conquering star systems for centuries? What role did the various founding planets play in Starfleet? Why were the Constitution class ships so important to Starfleet? How did Garth of Izar come to be regarded as the greatest Starfleet Captain of his time? [emphasis added by plaintiffs in First Amended complaint, p. 7 ¶29]

11) [Answer of Defendants ... to Plaintiffs' First Amended Complaint; Counterclaim for Declaratory Relief; Demand for Jury Trial](#), p. 7 ¶41, 5/23/16.

12) ["Our Shiny New FAQ," Axanar production website](#), 4/6/16.

13) [f Robert Meyer Burnett post, CBS/Paramount vs. Axanar Facebook group](#), 3/22/16.

14) [Paramount et al., v. Axanar et al., amended complaint](#), pp. 10-38.

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