



Greenlight Image/Valve Corp.

# Judge Wants Evidence Discovery Creators Saw Game

JANUARY 8, 2019 | READING TIME 5 MIN 25 SECS

***Schedule Set for Tardigrades Developer to File Third Legal Complaint, and to Deal With Motion to Dismiss***

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By  [Carlos Pedraza](#)

NEW YORK — A federal judge ruled January 8, 2019, that the first thing to prove about copyright infringement allegations against the creators of *Star Trek: Discovery* is how they learned about the Tardigrades game.

Attorneys for the plaintiff, game developer Anas Abdin, met with their opponents representing CBS and Netflix for the first time before U.S. District Judge Lorna G. Schofield.

**Main story:** [CBS Asks Judge to Dismiss Copyright Case Against Discovery](#)

**See also:** [The Case For and Against Dismissing the Tardigrades Suit](#)

## Pre-Motion Conference

The judge called for the conference to hear why she should entertain a motion to dismiss the case that is expected to be filed by the defendants.



Federal Judge **Lorna G. Schofield**

## Third Amended Complaint

Following that meeting in her chambers, Schofield approved a request by Abdin's lawyers to submit a third amended legal complaint against CBS and Netflix, giving the plaintiff another chance to address potential weaknesses in his case. That complaint was to be filed within a week, by January 15.

Schofield went on to set filing deadlines — with strict page limits — for the expected dismissal motion and its responses.

## Serving Truth and Justice

On his blog, [Abdin described](#) the meeting as having “very positive outcomes that help find the truth and serve justice.” He said, “The defendants’ request to dismiss the case based on it being a ‘frivolous claim’ was not entertained by the judge.”<sup>1)</sup>

While that term may have been used in the meeting, it had not appeared in any of CBS’ legal documents filed to date, its lawyer instead preferring to describe the suit as “meritless.”

## STEAM-y Discovery

The judge also ordered immediate but limited [discovery](#) to begin in the case centering on the plaintiff’s claim *Discovery’s* creators knew about the Tardigrades game before or during development

of the new Star Trek series.

Fact discovery shall be completed no later than [March 19] on the limited issue of whether defendants accessed or viewed plaintiff's work on the "STEAM" website and any action or activity with respect to that viewing, including voting.<sup>2)</sup>

In his [legal complaint](#) Abdin alleged that because details about his still-unpublished videogame were posted starting in 2014 on the popular game development website, [Steam](#), *Discovery's* producers must have learned about it and copied elements for use in the television series that debuted in September 2017.



Image/Wikipedia



**What is Steam?** Steam is a digital distribution platform developed by Valve Corp. for purchasing and playing video games. Steam offers video streaming and social networking services.

Steam installs and automatically updates its games, providing users with installation and automatic updating of games, as well as offering community features such as friends lists and groups, cloud saving, and in-game voice and chat functionality.<sup>3)</sup>

## 'Greenlit'

In 2015, interest in the Steam community about Abdin's game had grown to the point where members voted for it to be "greenlit" — approved for distribution on the site once completed:

This game has been Greenlit by the Community! The community has shown their interest in this game. Valve [Steam's owner] has reached out to this developer to start moving things toward release on Steam.<sup>4)</sup>

## Establishing Defendants' Access

In a December letter to the judge arguing against the defense's intention to move to dismiss the case, Abdin's lawyer, [John Johnson](#) claimed, "Hundreds of thousands of interested fans viewed the [Tardigrades game's] treatment, thereby establishing a question of fact as to the defendants' access."<sup>5)</sup>



### Tardigrades Timetable

**JANUARY 8** Discovery begins to find evidence  
Discovery's creators knew about the  
Tardigrades game.

**JANUARY 15** Plaintiff's third amended legal  
complaint due.

**FEBRUARY 12** Defense motion to dismiss is  
due. Joint Status Letter is also due.

**MARCH 5** Plaintiff must file to oppose dismissal  
motion.



**MARCH 12** CBS/Netflix can file to answer Abdin's opposition.

**MARCH 19** End of limited discovery.

## No Evidence

However, neither Abdin's legal complaint nor this letter offered evidence substantiating his claimed hundreds of thousands of fans, prompting CBS attorney Hook Wang Hwang to criticize Abdin's "bare and speculative allegations" that any of the defendants had the access to actually copy Abdin's work. To establish access Abdin must "plausibly allege either: (1) a particular chain of events or a link from his work to the creators of the allegedly infringing work, or (2) that plaintiff's work was widely disseminated."<sup>6)</sup>

## Challenging Anas Abdin

It was that lack of evidence that Schofield appeared to question in ordering discovery, essentially challenging the plaintiff to demonstrate with evidence that Discovery's creators had accessed, viewed or voted on the Tardigrades game prospectus on Steam.

## A Mighty Big 'If'

In their January 2 status letter to the judge, Abdin's attorneys had claimed "the defendants are a part of the Steam community since 2010 [and] ... received requests to accept plaintiff's game into the STEAM community, which mandated review and voting for the game to be included on Steam. The review and voting occurred [in 2015]. ... **If revealed during discovery, proof of direct access will be firmly established.**"

Of course, "the defendants" (CBS and Netflix) comprise tens of thousands of employees all over the globe. Abdin is going to have to find CBS employees who are also Steam members who also worked on developing DSC, and who also voted on the Tardigrades game in 2015.

Abdin's lawyer also seemed to insinuate that all Steam community members were mandated to review and vote on every single one of the 4,000 games up for review. Steam members have no such obligation.

## Greenlight, Red Light

In fact, Steam discontinued the Greenlight program in 2017 because it was overwhelmed by so many game proposals:

Though borne of good intentions, Greenlight was criticized by developers as an uncertain and opaque process, and for letting through games at such a high volume that **it was hard for any to stand out.**<sup>7)</sup>

## Limited Discovery

The wording of the judge's order made clear that Abdin's lawyers were going to have to find evidence in such places as computer logs, emails or other sorts of documents.

For his part, Abdin sought to characterize the judge's order for discovery and the new amended complaint as positive steps that would allow him to strengthen his case:

The judge also gave us 'discovery' which means that we can request and the defendants are compelled to provide information to support our case. The discovery order was only one-sided which means that the defendants cannot request information from us.<sup>8)</sup>

The judge granted discovery because if Abdin can't demonstrate Discovery's creators knew about his game it makes no sense to continue with the case and would only strengthen the defendants' expected motion to dismiss.

She also strictly limited how discovery could be conducted. Specified as off limits, for example, were depositions of anyone with regard to the case. Abdin's attorneys got 10 weeks to search for evidence to convince Schofield.


## Motion to Dismiss

Contrary to [Abdin's own account](#) of the meeting Schofield set a timetable for her to indeed entertain the defendants' expected motion to dismiss the case. That schedule was to run concurrently with the limited discovery approved by the judge.

Following submission of the third amended legal complaint on January 15, the defense was scheduled to file for dismissal by February 12, while Abdin's reply opposing the motion was set for March 5. The judge imposed a 25-page limit for both pleadings.

If CBS and Netflix want to reply to the plaintiff's opposition, Schofield said they may do so within a week, by March 12; that reply was limited to 10 pages. Meanwhile, discovery on the access question was set for completion a week later. Presumably, the judge's decision on dismissal would come shortly after that.

## Joint Status Letter

In the meantime, the judge also asked for another joint status letter from both sides on February 12, the same day the defense motion to dismiss was to be filed. 



### COMMENTS

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## Keywords

Tardigrades lawsuit, copyright, Star Trek Discovery, CBS, Netflix

1) 8)

"Discovery ordered for Star Trek Discovery", Anastronaut blog, 1/9/19.

2)

Civil Case Management Plan and Scheduling Order, Docket 47, p. 3, 1/8/19.

3)

Wikipedia:  [Steam\\_\(software\)](#), retrieved 1/8/19.

4)

Steam Greenlight, 8/25/15.

5)

Abdin v. CBS Broadcasting Inc. et al., Docket 39, p. 1, 12/05/18.

6)

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7)

"Steam Greenlight closes with mass approval of games," Polygon.com, 6/14/17.

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