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8 **IN THE UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10
11 PARAMOUNT PICTURES
CORPORATION, a Delaware
12 corporation; and CBS STUDIOS
INC., a Delaware corporation,

13 Plaintiffs,

14 v.

15 AXANAR PRODUCTIONS, INC.,
16 a California corporation; ALEC
PETERS, an individual, and
17 DOES 1-20,

18 Defendants.

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

BRIEF OF AMICUS CURIAE

Date: May 9, 2016

Time: 9:00 AM

Judge: Hon. R. Gary Klausner

Courtroom: 850, 8th Floor

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20 Tara Bannow, “Local company creates Klingon dictionary,”
 21 MINNESOTA DAILY (Nov. 17, 2009) 17

22 William Shakespeare, “Much Ado About Nothing: The Restored
 23 Klingon Text” (Nick Nicholas trans., 2003) 6

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William Shakespeare, "The Klingon Hamlet" (Nick Nicholas *et al.* trans., 2000)..... 6

REGULATIONS

37 C.F.R. § 202.1 9, 12

CONSTITUTIONAL PROVISIONS

U.S. Const. Art. I, § 8, cl. 8. 15

1 Thousands of people began studying it, building upon it, and using it
2 to communicate among themselves. As the Klingon proverb says,

3 **᠋ᠠᠨᠠᠨᠠᠨᠠ ᠠᠨᠠᠨᠠᠨᠠ ᠠᠨᠠᠨᠠᠨᠠ ᠠᠨᠠᠨᠠᠨᠠ ᠠᠨᠠᠨᠠᠨᠠ.**⁴

4 The greater whole is a living community of Klingon speakers. In
5 fact, there are groups of people for whom Klingon is their only
6 common language. There are friends who only speak Klingon to
7 each other. In fact, at least one child was initially raised as a native
8 speaker of Klingon. (See Eddie Dean, *Klingon as a Second*
9 *Language*, WASHINGTON CITY PAPER (Aug. 9, 1996), attached as
10 **Exhibit 1.**)⁵ Now that Klingon has become an actual living language,
11 Paramount seeks to reach out and stake its ownership by using
12 copyright law. But, as “Klingons do not surrender”, neither do those
13 who speak Klingon. *Star Trek: The Next Generation*, “The Emissary”
14 (orig. air June 29, 1989) (stardate 42901.3).

15 Plaintiffs claim copyright over the entire Klingon language,
16 not any particular words or portions of dialogue from any episodes of
17 *Star Trek*, but in the entire vocabulary, graphemes, and grammar
18 rules of Klingon. **᠋ᠮᠠᠢ ᠠᠨᠠᠨᠠ ᠠᠨᠠᠨᠠᠨᠠ ᠠᠨᠠᠨᠠᠨᠠ ᠠᠨᠠᠨᠠᠨᠠ.**⁶

20 ⁴ English translation: “we succeed together in a greater whole.”
Latin transliteration: “wa' Dol nlvDaq matay'Dl' maQap.”

21 ⁵ Available at: <<http://www.washingtoncitypaper.com/articles/10873/klingon-as-a-second-language>> (last accessed April 27, 2016).

22 ⁶ English translation: “a fool and his head are soon parted.” Latin
23 transliteration: “tugh qoH nachDaj je chevlu'ta'.”

1 Plaintiff Paramount Pictures Corporation (“Paramount”) has
 2 claimed this copyright interest for many years, but has not actually
 3 asserted it in court before now – most likely because the notion of it is
 4 **᠋᠋᠋᠋᠋᠋**.⁷

5 Various organizations such as the Klingon Language Institute, as
 6 well as individual linguistic scholars, have studied and used the
 7 Klingon language for years. Although various licensing
 8 arrangements were made at times, they could not have truly
 9 imagined that the day would come that Paramount would seek to
 10 claim ownership over their work, and to potentially threaten their
 11 intra-personal communication. It is not that they were **᠋᠋᠋** or
 12 **᠋᠋᠋**⁸ when it comes to intellectual property rights. It would not
 13 take a Vulcan to explain their logic – even the Pakleds would know
 14 that nobody can “own” a language.

15 **2.0 Creation and Development of the Klingon Language**

16 Linguistics professor Marc Okrand initially created the Klingon
 17 language. Paramount hired him to create dialogue for Klingon
 18 characters in the film *Star Trek III: The Search for Spock* (1984). See
 19 Marc Okrand *et al.*, “Wild and Whirling Words: the Invention and Use
 20

21 ⁷ English translation: “it lacks reasons.” Latin transliteration: “meq
 22 Huth.”

23 ⁸ English translation: “pathetic” or “arrogant,” respectively. Latin
 transliteration: “Dogh” or “nguq.”

1 of Klingon,” in FROM ELVISH TO KLINGON: EXPLORING INVENTED LANGUAGES 111,
2 113 (Michael Adams ed., 2011). The version of Klingon he created
3 for the film was not a functioning language, however, and Okrand
4 had to add more grammatical features and vocabulary before
5 publishing the first Klingon dictionary in 1985.⁹ See Okrand *et al.* at
6 120. Okrand intended this to be a novelty or joke item, but it quickly
7 escaped its inventor’s grasp, and it took on a life, independent from
8 the linguistic lab. More than 250,000 copies of the dictionary sold.
9 (See Gavin Edwards, *Dejpu’bogh Hov rur Qablli!**, WIRED (Aug. 1996),
10 attached as **Exhibit 2**, at 5.)¹⁰ Once in the hands of so many, it was
11 inevitable that the language would free the bounds of its textual
12 chains. Okrand has since published two additional books on the
13 Klingon language. See Marc Okrand, “The Klingon Way: A Warrior’s
14 Guide” (1996); see also Marc Okrand, “Klingon for the Galactic
15 Traveler” (1997).

16
17
18 ⁹ Despite Paramount owning copyright in the dictionary, the Court
19 should note that absent an explicit copyright assignment, any
20 hypothetical copyright in the Klingon language would likely belong
21 to Okrand. 17 U.S.C. § 101’s list of “work[s] made for hire” does not
22 include languages, and a language that functions beyond the
23 scope of a film cannot be considered “as a part of a motion
picture.”

¹⁰ Available at: <<http://www.wired.com/1996/08/es-languages/>>
(last accessed Apr. 27, 2016).

1 Klingon as a functioning language quickly became a matter of
2 interest not only to Star Trek fans, but to linguists as well. The
3 nonprofit Klingon Language Institute (“KLI”) was formed in 1992 for
4 the purpose of studying, promoting, and spreading the Klingon
5 language. (See KLI home page, attached as **Exhibit 3.**)¹¹ The KLI
6 publishes a quarterly academic journal called the HolQeD that
7 discusses “Klingon linguistics, language, and culture.” (See KLI
8 “HolQeD” page, attached as **Exhibit 4.**)¹² It provides instructional
9 classes in Klingon and even offers a “Klingon Language Certification
10 Program.” (See KLI Certification Program page, attached as
11 **Exhibit 5.**)¹³ The certification test is typically administered at the
12 annual qep’a’, the official conference of the KLI, during which
13 members of the institute socialize and present in Klingon. (See KLI
14 “qepmey” page, attached as **Exhibit 6.**)¹⁴ The KLI has overseen
15 Klingon wordplay contests as well, including a category for best
16 insult. (See KLI “Klingon Wordplay Contests” page, attached as
17
18

19 ¹¹ Available at: <<http://www.kli.org/>> (last accessed Apr. 27, 2016).

20 ¹² Available at: <<http://www.kli.org/resources/holqed/>> (last
accessed Apr. 27, 2016).

21 ¹³ Available at: <<http://www.kli.org/activities/klcp/>> (last accessed
Apr. 27, 2016).

22 ¹⁴ Available at: <<http://www.kli.org/activities/qepmey/>> (last
23 accessed Apr. 27, 2016).

1 **Exhibit 7.**)¹⁵ The language is even robust enough to allow for
 2 translations of famous literary works such as the *Epic of Gilgamesh*,¹⁶
 3 and Shakespeare's *Hamlet*¹⁷ and *Much Ado About Nothing*.¹⁸

4 Klingon is no longer just a few lines of dialogue in a movie.
 5 Microsoft's search engine, Bing, allows users to translate text to and
 6 from Klingon. (See Bing translator page, attached as **Exhibit 8.**)¹⁹
 7 The popular television show *The Big Bang Theory* featured Klingon
 8 dialogue at several points, with one episode even featuring a game
 9 of Klingon Boggle. (See "Klingon," the *Big Bang Theory* Wiki,
 10 attached as **Exhibit 9.**)²⁰ Similarly, Klingon was substituted for Hebrew
 11 as a gag in the hit television show "Frasier". See *Frasier*, "Star
 12 Mitzvah" (orig. air Nov. 5, 2002). A Swedish couple spoke their
 13 marriage vows in Klingon during a traditional Klingon wedding
 14 ceremony.²¹ (See Clare Hutchison and Shadia Nasralla, "Star Trek

15 _____
 16 ¹⁵ Available at: <http://www.kli.org/wiki/Klingon_Wordplay_Contests> (last accessed Apr. 27, 2016).

17 ¹⁶ Roger Cheesbro, "Gilgamesh: a Klingon Translation" (2003).

18 ¹⁷ William Shakespeare, "The Klingon Hamlet" (Nick Nicholas *et al.* trans., 2000).

19 ¹⁸ William Shakespeare, "Much Ado About Nothing: The Restored Klingon Text" (Nick Nicholas trans., 2003).

20 ¹⁹ Available at: <<http://www.bing.com/Translator>> (last accessed Apr. 27, 2016).

21 ²⁰ Available at: <<http://bigbangtheory.wikia.com/wiki/Klingon>> (last accessed Apr. 27, 2016).

22 ²¹ Contracts written in Klingon would be valid. *Dalton v. Robert Jahn Corp.*, 209 Ore. App. 120, 133 n.10, 146 P.3d 399, 406 n. 10 (Or. Ct.
 23

1 fans tie the knot at ‘Klingon wedding,’” REUTERS (Oct. 19, 2012),
 2 attached as **Exhibit 10.**)²² Even foreign governments have seen fit to
 3 provide official statements in Klingon. (See David Deans, “Welsh
 4 ministers were asked for information about UFO sightings . . . and
 5 they replied in KLINGON,” WALESONLINE (July 9, 2015), attached as
 6 **Exhibit 11.**)²³ Klingon has spread throughout the world,²⁴ and its
 7 students have surpassed its creator in linguistic fluency. (See **Exhibit 2**
 8 at 6) (stating that “[t]he few people who can jabber in Klingon
 9 effortlessly have all surpassed Marc Okrand, who isn’t fluent in his
 10 own invention”).

11 **3.0 Copyright Law Does Not Protect Spoken Languages**

12 Nobody can use  ²⁵ to limit others' rights to
 13 freely use a language. Plaintiffs allege in their list of “Infringing
 14

15 App. 2006) (finding that even if contractual provision were
 16 “practically ‘written in Klingon,’” it would be enforceable when
 17 interpreters were available to explain its terms to parties).

18 ²² Available at: <<http://www.reuters.com/article/us-startrek-britain-klingonwedding-idUSBRE89I19C20121019>> (last accessed Apr. 27,
 2016).

19 ²³ Available at: <<http://www.walesonline.co.uk/news/wales-news/welsh-ministers-were-asked-information-9624682>> (last accessed Apr.
 20 27, 2016).

21 ²⁴ Transmission of a message in Klingon could even support a
 22 criminal conviction. See *State v. Hosier*, 157 Wn.2d 1, 12, 133 P.3d
 936, 941 (Wash. 2006).

23 ²⁵ Literally “mind property law,” as Klingon lacks a word for
 “intellectual.” Latin transliteration: “yab bang chut.”

1 Element[s] from *Prelude to Axanar*” that Defendants’ use of
 2 “Klingonese or Klingon, the native language of Qo’noS,” is infringing.
 3 (ECF 26 at 31.) Given that this portion of the FAC does not specify
 4 any particular words or dialogue that are allegedly infringing, one
 5 must interpret this as an assertion that the Klingon language in its
 6 entirety is copyrighted by Plaintiffs. And by opening this door,
 7 Plaintiffs will learn **ᑦᐱᐱ ᐱᑦᑦ ᑲᑦᑦ ᐱᑦᑦᐱᑦᑲᑦᑲᑦ ᑲᑦᑲ ᐱᑦᑲᑦ ᐱᑦᑲᑦ**
 8 **ᐱᑦᑲᑦ.**²⁶

9 Plaintiffs argue that “[l]anguage is part of dialogue,” which
 10 may properly be considered in a substantial similarity analysis.
 11 (ECF 31 at 10.) This is not a case about Defendants using specific,
 12 previously used Star Trek dialogue, such as “Tea, Earl Grey, Hot”, but
 13 rather about precluding Defendants from creating original dialogue
 14 that happens to be in the Klingon language. Plaintiffs provide no
 15 authority supporting their assertion that Klingon (or any language)
 16 can be copyrighted. “[T]here is no Klingon word for ‘deference’”,
 17 and Plaintiffs are entitled to none. *Norwood v. Vance*, 591 F.3d 1062,
 18 1074 n. 4 (9th Cir. 2010) (Thomas, J. dissenting).

19 The Copyright Act does not extend protection in a work to “any
 20 idea, procedure, process, system, method of operation, concept,
 21 _____

22 ²⁶ This Klingon proverb translates to “Sometimes the only thing more
 23 dangerous than a question is an answer.” Latin transliteration: “rut
 neH 'oH vIta'Qo' Qob law' yu' jang.”

1 principle, or discovery, regardless of the form in which it is described,
2 explained, illustrated, or embodied in such a work.” 17 U.S.C.
3 § 102(b). This is a statutory recognition of the long-existing “idea-
4 expression dichotomy.” *Golan v. Holder*, 132 S. Ct. 873, 890 (2012).
5 Furthermore, the doctrine of merger provides that if an idea “can
6 only be expressed in a limited number of ways,” those means of
7 expression “cannot be protected, lest one author own the idea
8 itself.” *Zalewski v. Cicero Builder Dev., Inc.*, 754 F.3d 95, 102-03 (2d
9 Cir. 2014); see *CDN Inc. v. Kapes*, 197 F.3d 1256, 1261 (9th Cir. 1999)
10 (stating that “[i]n order to protect the free exchange of ideas, courts
11 have long held that when expression is essential to conveying the
12 idea, expression will also be unprotected”). Copyright law protects
13 the means of expressing ideas or concepts, but it does not give the
14 copyright holder the right to exclude others from making use of the
15 ideas or concepts themselves. Neither is one permitted to register
16 copyright in a word. See 37 C.F.R. § 202.1(a).

17 Despite these fundamental principles of copyright law, Plaintiffs
18 assert copyright in the entirety of the Klingon language. What is a
19 language other than a procedure, process, or system for
20 communication? What is a language's vocabulary but a collection
21 of words? The vocabulary and grammar rules of a language
22
23

1 provide instructions for a speaker to articulate thoughts and ideas.²⁷
2 One cannot disregard grammatical rules and still be intelligible, and
3 creating one's own vocabulary only worked well for the Bard.
4 Vocabulary and grammar are no more protectable than the
5 bookkeeping system in *Baker v. Selden*, 101 U.S. 99, 101 (1879).
6 Plaintiffs are free to register copyright any particular expression that
7 they create using the language, such as the Klingon Dictionary or
8 the dialogue of a particular Star Trek episode, but they cannot claim
9 ownership of the building blocks of the language. Compare *Grosso*
10 *v. Miramax Film Corp.*, 383 F.3d 965, 967 (9th Cir. 2004) ("the only
11 similarities in dialogue between the two works come from the use of
12 common, unprotectable poker jargon"); *Keane v. Fox TV Stations,*
13 *Inc.*, 297 F.Supp.2d 921, 935 (S.D. Tex. 2004) ("Words and short
14 phrases, names, titles, slogans, facts, information in the public
15 domain, and field-specific jargon are also not amenable to
16 copyright.") Just as poker jargon is unprotectable, so is Klingon. To
17 grant such protection would be to attempt to leash that which

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21 ²⁷ A constructed language is not merely a compilation of otherwise
22 meaningless words. *Contrast Reiss v. National Quotation Bureau,*
23 *Inc.*, 276 F. 717 (S.D.N.Y. 1921) (L. Hand, J.) (applying the 1909 Act to
a code book of 6,325 coined, but meaningless, five-letter words).

1 language, like Klingon, are the functional equivalent of computer
 2 language instructions. While individual Klingon words may be
 3 expressive, one cannot speak Klingon without using these words.³⁰
 4 The idea of speaking Klingon thus merges with the expression of
 5 particular words, making Klingon as a language not entitled to
 6 copyright protection. How can one communicate the idea of
 7 “honor” in Klingon without using the words “**ᗺᗺ**”, “**ᗺᗺ**”, or
 8 “**ᗺᗺ**”?³¹

9 To the extent Plaintiffs are claiming copyright in the written
 10 Klingon language, such is also improper. The specific characters
 11 used in a language are analogous to typeface designs. Such
 12 designs are considered industrial designs and thus not entitled to
 13 copyright protection. See *ELTRA Corp. v. Ringer*, 579 F.2d 294, 298
 14 (4th Cir. 1978); see also *Adobe Sys. v. Southern Software, Inc.*, 1998
 15 U.S. Dist. LEXIS 1941, *11 (N.D. Cal. Jan. 30, 1998) (stating that
 16 “[t]ypeface designs are not copyrightable”). See also 37 C.F.R.
 17 202.1(d) (precluding copyright registration in typeface).

18 _____
 19 ³⁰ Thus, this case should not be confused with the recent litigation
 20 over the Java computer language. As observed by the Federal
 21 Circuit, that case “was not a situation where Oracle was selecting
 22 among preordained names and phrases to create its packages.”
Oracle Am., Inc. v. Google Inc., 750 F.3d 1339, 1361 (Fed. Cir. 2014)
 cert den’d 135 S. Ct. 2887 (U.S. 2015). Here, speakers of Klingon are
 limited to preordained words and syntax.

23 ³¹ Latin transliteration: “bath”, “quv”, and “pop”, respectively.

1 No court has squarely addressed the issue of whether a
2 constructed spoken language is entitled to copyright protection.
3 The only known prior litigation of constructed languages was in
4 *Loglan Inst., Inc. v. Logical Language Group, Inc.*, 962 F.2d 1038 (Fed.
5 Cir. 1992), which was an appeal of a trademark cancellation. That
6 case centered on a constructed language called Loglan that its
7 creator, Dr. James Brown, intended to be “symbolic logic made
8 speakable.” *Id.* at 1039. He created an institute to promote the
9 language, which registered the mark “Loglan” for “Dictionaries and
10 Grammars” in 1988. *Id.* at 1040. A splinter group later formed and
11 published a newsletter that made several references to Loglan, and
12 was threatened by the Loglan institute with a trademark
13 infringement suit. See *id.* The splinter group then successfully
14 petitioned the TTAB to cancel the registration for “Loglan” because
15 the term was generic for the Loglan language. *Id.* The Federal
16 Circuit affirmed the cancellation, finding the term to be generic
17 because it was commonly used to refer to a specific language. See
18 *id.* at 1041-42.

19 Just as “great men do not seek power, it is thrust upon them”,³²
20 this Court now has the opportunity to weigh in on the copyrightability
21

22 _____
23 ³² *Star Trek: Deep Space Nine, Tacking Into the Wind* (orig. air May
12, 1999) (stardate: unknown).

1 of language and declare that there is no basis in either law or policy
2 to allow copyright in a spoken language.

3 **4.0 The Intellectual Property Clause Would not Protect a Language**

4 'ᲗᲚᲛᲗ' ᲑᲚᲛ ᲛᲚᲚ ᲑᲚᲛᲗᲗ' 'ᲗᲚ ᲑᲗᲗ ᲚᲗᲗ'³

5 To claim copyright in a language is to claim ownership over all
6 possible thoughts and artistic expression that might employ that
7 language. If not ownership, such a claim at least provides some
8 support for the idea that the copyright owner could, at some point,
9 simply pull the plug on any future development in the language. It is
10 a breathtakingly vast legal assertion that encompasses particular
11 expression that the claimed copyright owner, by definition, cannot
12 even conceive of.

13 The Framers of the Constitution would have been familiar with
14 the role of the Académie Française, which exercises oversight of the
15 entirety of the French language. In effect, significant parts of French
16 are constructed. The Framers would have been shocked to learn
17 that they might be prohibited from writing and speaking in French
18 were the Academy to register copyright in its constructions.
19 However, that would be the eventual result, if this court commits the
20 ᲑᲚᲛ ᲑᲗᲗ³⁴ of blessing Paramount's claim to the intellectual
21 property inherent in a language.

22 ³³ Latin transliteration: "'oHbe' yab bang QutlhwI' 'oH ghItlh Hol."

23 ³⁴ English translation: "bad idea." Latin transliteration: "qab qech."

1 existed. Paramount would have caused the Klingon language to
2 stagnate, or at least would have severely hindered its development.

3 Plaintiffs attempt to downplay the significance of their claim of
4 ownership over the Klingon language by arguing that “a language is
5 only useful if it can be used to communication with people, and
6 there are no Klingons with whom to communicate.” (ECF 31 at 16.)
7 First, this is a non-sequitur; a process or system need not be “useful” in
8 order to preclude copyright protection, and Plaintiffs provide no
9 authority to the contrary.

10 But more importantly, this is an insulting assertion. Many
11 humans speak Klingon. The annual qep’a’ involves singing and
12 storytelling in Klingon. (See **Exhibit 6**.) People get married in Klingon.
13 (See **Exhibit 10**.) Linguist d’Armond Speers even spent three years
14 teaching his infant son to speak Klingon. (See Tara Bannow, “Local
15 company creates Klingon dictionary,” MINNESOTA DAILY (Nov. 17,
16 2009), attached as **Exhibit 12**.)³⁸ Speaking and writing in Klingon is
17 not simply a matter of transposing words from a different language,
18 either; it has an unusual grammatical structure that provides a
19 different connotation than other languages. (See **Exhibit 2** at 5.) For
20 example, the Sesame street theme song lyrics “Sunny day, chasing
21 the clouds away” translates into Klingon as **ᠠᠨᠠᠨ ᠠᠨᠠᠨ ᠠᠨᠠᠨᠠᠨ**

22 ³⁸ Available at: <[http://www.mndaily.com/2009/11/17/local-](http://www.mndaily.com/2009/11/17/local-company-creates-klingon-dictionary)
23 [company-creates-klingon-dictionary](http://www.mndaily.com/2009/11/17/local-company-creates-klingon-dictionary)> (last accessed April 27, 2016).

1 Sword of Kahless to hang over anyone who wishes to speak or write
2 in Klingon does not serve the purpose of the Copyright and Patent
3 Clause, and instead robs the world of valuable expressive works.

4 **5.0 CONCLUSION**

5 Klingon gave Star Trek characters convincing dialogue. But, it
6 broke its chains and took on a life of its own – a life that the
7 Copyright Act has no power to control. Klingon, like any other
8 spoken language, provides tools and a system for expressing ideas.
9 No one has a monopoly over these things, effectively prohibiting
10 anyone from communicating in a language without the creator’s
11 permission. This is not permitted by the law, and it is not why the
12 Constitution allows Congress to provide copyright protection. Thus,
13 Defendant’s motion to dismiss should be allowed with respect to
14 Plaintiffs’ copyright claims over the Klingon language. **QAPLA’!**⁴¹

15
16 Dated: April 27, 2016

Respectfully Submitted,

17 /s/ Marc J. Randazza
18 Marc J. Randazza
19 Alex Shepard
20 RANDAZZA LEGAL GROUP, PLLC

*Attorneys for Amicus,
Language Creation Society*

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22
23 ⁴¹ English translation: “Success!” Latin transliteration: “Qapla’”

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 27, 2016, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that a true and correct copy of the foregoing document is being served via transmission of Notices of Electronic Filing generated by CM/ECF.

Respectfully Submitted,



Employee,
Randazza Legal Group, PLLC