

Adam Andre
1804- Copyright, Legal Issues, and Policies
Greg Cram
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Part 1- Fair Use in the News

Summary

Glenn Hauman (writer, editor, illustrator), David Gerrold (writer), and Ty Templeton (illustrator) launched a Kickstarter campaign under the company ComicMixLLC to create an illustrated book titled *Oh, The Places You'll Boldly Go*. As ComicMix put it, the book is a "parody, mash-up" of *Star Trek* and Dr. Seuss's artistic style. The campaign reached and surpassed its goal of \$20,000. Shortly after, DLA Piper, the law firm that represents Dr. Seuss Enterprises (the estate of Dr. Seuss), sent a Cease and Desist letter to Kickstarter on October 7, 2016 stating that ComicMix is infringing on the copyright of Dr. Seuss's *Oh, The Places You'll Go*, which resulted in the removal of the Kickstarter page and the death of the online campaign. ComicMix has not been sued yet so this dispute has not been taken to court. If ComicMix continues to pursue this project it is safe to assume that Dr. Seuss Enterprises will sue and bring this to court.

Arguments

Since this dispute has not been taken to court, the arguments of the two sides will be predicted. This dispute is fairly new, so all of the facts can't be found which will result in a good amount of assumption.

ComicMix:

ComicMix promoted *Oh, The Places You'll Boldly Go* as a "parody mash-up", so it is safe to assume that they would argue Fair Use. This side would argue that they are using the illustrative style of Dr. Seuss in a parodic way, therefore making the work "transformative". ComicMix is using this style extensively in order to "conjure up" the work of Dr. Seuss so that the parody is more blatant and obvious to the consumer. The intent is not to impersonate or steal identity to mislead. The intent is to use Dr. Seuss's style to comment on and contrast characters and sensibilities of both *Star Trek* and Dr. Seuss in a humorous way.

Dr. Seuss Enterprises (DSE):

This side knows that ComicMix is trying to prove that their work is a parody. But normally in parody, the parodic work is attempting to ridicule or create social commentary of the original. If the ComicMix book doesn't do this then that is one facet where they can be exposed. They would also argue that ComicMix may be giving new expression and therefore "transforming" *Star Trek* characters but

clearly only copying the illustrative style of Dr. Seuss. New aesthetics were not created and no new, unique value has been given to the illustrations.

Because the ComicMix work is an illustrated book, just like most of Dr. Seuss's famous work, it is in the same market. DSE could argue that if ComicMix is allowed to copy the illustration style without enough transformation it will allow other companies to do the same, flooding the market with copies that "fulfill the demand of the original."

4 Factor Fair Use Analysis

1. The Purpose and Character of the Use

Both works, ComicMix's *Oh, The Places You'll Boldly Go* and Dr. Seuss's *Oh, The Places You'll Go*, are illustrated books. ComicMix's work, as seen by the similarity in the title and the style of the illustration, are meant to "conjure up" the work of Dr. Seuss. It is established that the new work is meant to be parody. Has the new work added new expression or meaning to the illustration style of Dr. Seuss? Was value added to the original? Does adding *Star Trek* characters to a Dr. Seussian world create a new meaning or value? Does the ComicMix book also attempt to recreate the Dr. Seuss rhyme style and language? Without knowing the exact content of the book it is very tricky to answer those questions definitively. But, because they are both illustrated books being sold for a commercial purpose using a strikingly similar illustration style, the purpose and character of the use are the same.

2. The Nature of the Copyrighted Work

Oh, The Places You'll Go by Dr. Seuss was first published by Random House on January 22, 1990. The book is filled with colorful and detailed illustrations and unique rhyming and language, making it a highly creative piece of work.

3. The Amount and Substantiality of the Portion Used in Relation to the Copyrighted Work

Dr. Seuss's illustration style is used heavily throughout the entirety of the ComicMix work. Parody normally allows for a larger portion of the copyrighted work to be borrowed. Presumably, direct copies of content were not taken from the original copyrighted work.

4. The Effect of the Use Upon the Potential Market

It has been established that both works are illustrated books with a similar title and illustration style. It is not known how widely these ComicMix books were planning to be distributed and how much of the Kickstarter fund they planned to use to do that. But if both works were to be distributed in the same spaces, such as a physical bookstores or online stores like [amazon.com](https://www.amazon.com) and [barnesandnoble.com](https://www.barnesandnoble.com), consumer confusion

may be a result which could affect the sales of the original copyrighted work. Would ComicMix's book "fulfill the demand" for the original Dr. Seuss book? It can be argued that the the addition of *Star Trek* makes it different enough and the popularity and sales of Dr. Seuss's book won't even be stifled by the power of an immensely popular science-fiction franchise.

Conclusion

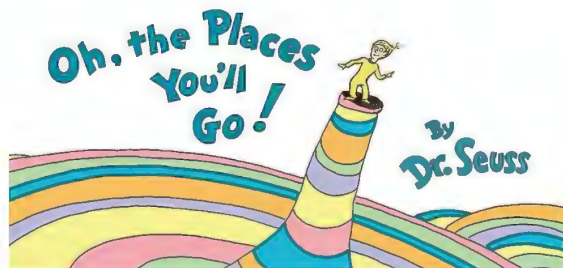
If I were judge, I would rule that (probably unfair to make a legal judgement without reading the book) ComicMix's *Oh, The Places You'll Boldly Go* is not within the bounds of Fair Use. The purpose and character of the use are too similar for me, not making it "transformative" enough. The nature of the original work is highly creative making it more problematic when it comes to Fair Use. Dr. Seuss's distinctive style is used throughout the entire work. It borrows too much from the original without providing enough commentary, criticism, ridicule, or humor. I don't see ComicMix's book having too much of an effect on the sales of Dr. Seuss's *Oh, The Places You'll Go* but the fact that it's in the same format and illustration style weighs too heavily against ComicMix.

Part 2 - Archives and Fair Use

In the future, a film archive may find the last existing film print of Richard Linklater's *Dazed and Confused*. The archive clearly doesn't own the copyright on the film, but the condition of the film is so volatile that the archive can't waste any time. This film is so important to the film world and American culture specifically that it has to be saved. So, the archive decides to make several copies of *Dazed and Confused* so that it can live on for many more years in several different formats. Technically, the archive infringed copyright but since their intentions were so good in this case, the copying may be exempt and allowed. It wasn't done for profit or recognition but out of necessity and for the greater good. After the copying, the film archive would contact the respective copyright owner and let them know of the situation. I would imagine that the owner would be amazed and ecstatic about the work of the archive and no legal action would take place. But even if it did, I believe a judge would rule fair use in favor of the film archive.

“Dr. Seuss Enterprise v. ComicMix” Images

The original Dr. Seuss Illustrated Cover



The ComicMix Illustrated Cover



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Oh, The Places You'll Boldly Go! is the subject of an intellectual property dispute and is currently unavailable.

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KICKSTARTER

Oh, The Places You'll Boldly Go! [Submitted by DLA Piper LLP (US)]

Date: Oct 7 2016

Sender

[Private]

DLA Piper LLP (US)

500 8th Street NW

Washington, DC 20004

US

Sent via online form

Recipient

Kickstarter, PBC

58 Kent Street

Brooklyn, NY 11222

USA

Re: Oh, The Places You'll Boldly Go!

Description of copyrighted material: Dr. Seuss Enterprises is the owner of the work "Oh The Places You'll Go," which is an illustrated children's book.

Description of infringing material: The infringing material use Dr. Seuss's intellectual property without Dr. Seuss's authorization in connection with an illustrated book.