



To: RSK ENTERPRISES (the “Client”)

Re: how to use the Star Wars characters in the project <https://yoda.asia/>

Expert Opinion

This is an expert opinion on possibility of use of Grogu images in the context of crypto project www.yoda.asia and ways to make such use fair, so as to avoid copyright claims from Disney.

Expert were presented with an AI generated, and human artists generated images of Grogu from Star Wars.

The fair use is possible. Instructions “how-to” is in the annex “www.yoda.asia. Matrix of fair use”. The translation of legal concepts is in the annex “www.yoda.asia. Matrix of fair use. Rus”.

Analysis

1. Transformative use

(a) Let's consider the notable case when the author creates an algorithm or set of machine readable rules for creation of images.

“Images and artwork generated by artificial intelligence tools are not protected by copyright law in the United States.

So a ruling by federal Judge Beryl A. Howell, who ruled that the U.S. Copyright Office was right to deny legal protection to a work created entirely without human intervention.

The ruling thus becomes valuable and seminal case law for future legal disputes over the intellectual property of works created by artificial intelligence imaging tools.



[La obra digital creada con inteligencia artificial por el programa de Thaler.](#)

[\(Imagen: Stephen Thaler\)](#)

The case, referred to in the ruling by the judge of the U.S. District Court for the District of Columbia, began in early 2022 with a lawsuit filed by Stephen Thaler, owner of a software called Creativity Machine, over an AI-generated visual piece.

Thaler sought to copyright a digital artwork titled A Recent Entry into Paradise. The composition showed a colorful view of train tracks surrounded by purple flowers. The work had been created with Thaler's program, and Thaler wanted to claim ownership of the image.

The programmer explained that since he was the creator and owner of the software that generated the work, the rights should be transferred to him.

However, the U.S. Copyright Office, the government agency in charge of registering works, *rejected Thaler's request, arguing that the image lacked human authorship and was therefore unregistrable.*

The agency's decision was upheld this week by Judge Howell.”¹

Disney's Grogu “traits of personality” did not lack human authorship.

So, the Thaler case above should be distinguished, and therefore Disney can claim copyright infringement on the AI generated Grogu, unless the new work is transformative to the original.

Transformation can be achieved by creating a completely new personality of Grogu.

¹ [U.S. court rules that copyright does not protect art created with Artificial Intelligence](#)



(b) In the seminal case *Kienitz v Sconnie Nation*²: “the court analyzes the *market effect*, looking to see if the contested use is a complement to the protected work (allowed) rather than a substitute for it (prohibited)”.

“According to the court, Sconnie Nation made t-shirts displaying an image of Madison Wisconsin mayor Paul Soglin, using a photo posted on the City’s website that was authored by photographer Michael Kienitz.

The photographer in this case did not claim that the t-shirt was a disruption to his own plans to license the photo for t-shirts or tank tops. He did not argue that demand for the original work was reduced.

And as for the Fair Use factor, the amount and substantiality of the portion used ... the court wrote “Defendants removed so much of the original that, as with the Cheshire Cat, only the smile remains.”. The original background is gone, its colors and shading are gone, the expression in the eyes can no longer be read, and the effect of the lighting is “almost extinguished.” “What is left, besides a hint of Soglin’s smile, is the outline of his face, which can’t be copyrighted.”

So, both images of Groggu have a chance to overcome the copyright protection if such substantial changes are made to the original image that the very character would be seen in a substantially new context or as a new personality, which was never observed or intended to be licensed by Disney in the original Groggu.

2. Fair use understanding

² [How much of a photo do you need to alter to avoid copyright infringement? Hint: Cheshire Cat - Stanford Copyright and Fair Use Center](#)



Client asked to give an opinion on the scenario of what if he uses the Grogu for non commercial / non for profit purposes. Generally, use for a nonprofit educational or noncommercial purpose is more likely to be considered fair use than use for a commercial purpose. However, it still needs to be transformative. Otherwise it would be unclear if it is fair use or not, because so many factor are involved:

- Nature of the protected work — Use of a factual work is more likely to be considered fair use than use of a fictional or more creative work. An unpublished work is less likely to be fair use than a published work.
- Amount and substantiality of the portion used relative to the work as a whole — Both the quantity of the portion used and its quality — whether the copied portion constitutes the “heart” of the total work — are relevant. The Act doesn't set out a threshold level of amount or substantiality. For example, the Act doesn't state that using three or ten percent of a work constitutes fair use. If the amount you use is quite small in relation to or insignificant in the context of the entire source work, then it's more likely to be fair use.
- Effect on the Protected Work's Market or Value — At issue is whether the use of the copied portion competes with the copyrighted work. If the use diminishes the potential market for the copyrighted work, it's less likely to be fair use” (Editor, Copyright Laws. com. (2022, September 22)).

3. Jurisdictions



“In the close to 200 countries that are members of the Berne Convention, the leading copyright treaty, international copyright law works by applying the law of the country where you're using a work”³.

Taking into account the idea of using Star Wars characters in crypto context is not new, the transformative use in this context would be more secure.

4. Memcoins and allowed standards of commercialisation

“The standard of originality is exhaustively delineated in *EBC v DB Modak* (<https://indiankanoon.org/doc/1062099/>). It is not sufficient for the output to be a mere product of labor and capital; there must be a certain level of creative judgment and skill involved. In case of a derivative work, the difference between the original work and its subsequent iteration must be substantial and not trivial. Take the meme below as an example.

Where the meme is a derivative of an already subsisting work, there are certain defenses under copyright law that can be availed. The doctrine of ‘fair use’ has been enshrined in Section 52(1) of the Act. The Delhi High Court in *India TV v Yashraj Films* (<https://indiankanoon.org/doc/115992789/>) reiterated the four factors to determine fair use, namely- (i) the purpose and the character of the use, including whether such use is of a commercial nature or is for non-profit educational purposes; (ii) the nature of the copyrighted work; (iii) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and (iv) the effect of the

³ [A Simple Guide to Fair Use: How To Apply Fair Use to Your Copyright Scenarios - Copyrightlaws.com: Copyright courses and education in plain English](#)

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LEVKIN LEGAL

Hong Kong




6

use upon the potential market for or value of the copyrighted work” (Editor, Copyright Laws. com. (2022, September 22))⁴.

However the defenses “are affirmative defenses in law, which means that neither one can prevent the owner of a copyright from suing you for infringement: if you are sued, you have to prove in court that your work falls under your country's definition of fair use or fair dealing” (Admin. (2022, July 14)).⁵

Signature:

DocuSigned by:

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Dmitry Levkin

British Law Centre

⁴ <https://www.theippress.com/2022/07/14/are-memes-protected-by-copyright-law/>

⁵

<https://mediasmarts.ca/digital-media-literacy/media-issues/intellectual-property/intellectual-property-overview>



References:

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<https://www.theipress.com/2022/07/14/are-memes-protected-by-copyright-law/>

Benchmark examples	Retrieved from	Original work	Art work	Nature of use	What was done	Fair Use case?	Reasoning	Instructions	What was the key works	Green case	Use of Green	Case followed?	Similarity of cases	Use of Green	Case followed?	Similarity of cases	Use of Green	Fair ?	Similarity of cases	Is there a fair use?	Solution 1	Solution 2
The United States District Court of Appeals for the Second Circuit decision in the case of <i>Prince v. Cariou</i>	http://www.courts.uscourts.gov/doc1/1163727			Art	use Cariou's photographs to create paintings.	Yes	Transformative use	Where Cariou's serene and deliberately composed portraits and landscape photographs depict the natural beauty of Westport and their surrounding environs, Prince's crude and jarring works, on the other hand, are hectic and provocative. Cariou's black-and-white photographs were printed in a 12" x 12" book. Prince has created collages on canvas that incorporate color, feature distorted human and other forms and settings, and reassemble between ten and nearly a hundred times the size of the photographs. Prince's composition, presentation, scale, color palette, and media are fundamentally different and now compared to the photographs, as is the expressive nature of Prince's work.	different character	use of paintings to create paintings	No	50%		No	50%		Yes	75%	1	Deliberate?	-	
The United States District Court of Appeals for the Second Circuit decision in the case of <i>Prince v. Cariou</i>	https://www.courts.uscourts.gov/doc1/1163727			Art	use of photograph to create paintings and collage	Yes	Transformative use	In Wednesday's decision, granting fair use to twenty five of the thirty contested works, Judge Barrington Parker stated: "We conclude that Prince's images, except for those we discuss separately below, have a different character, give Cariou's photographs a new expression, and employ new aesthetics with creative and communicative results distinct from Cariou's."	different character	use of paintings to create paintings and add pieces	No	50%		Yes	65%		Yes	75%	1	Apply photo to original painting?	-	
The United States District Court of Appeals for the Second Circuit decision in the case of <i>Prince v. Cariou</i>	https://www.courts.uscourts.gov/doc1/1163727			Art	use of photograph to create paintings and collage	Yes	Transformative use	In Wednesday's decision, granting fair use to twenty five of the thirty contested works, Judge Barrington Parker stated: "We conclude that Prince's images, except for those we discuss separately below, have a different character, give Cariou's photographs a new expression, and employ new aesthetics with creative and communicative results distinct from Cariou's."	different character	use of paintings to create paintings and add pieces	No	50%		Yes	65%		Yes	75%	1	Add piece?	-	
Rogers vs. Koons	https://www.courts.uscourts.gov/doc1/1163727			Parody, but commercial (not for significant profit)	use photograph to create statues	No	fair use by parody	Koons's defense was rejected under the argument that he could not use a more generic source to make the same statement—without copying Rogers' work. Koons was forced to pay a monetary settlement to Rogers.	could have used a more generic source	use of paintings to create paintings	Yes	65%		Yes	50%		No	50%	1	to use more generic source	vectorizing a photograph	
The Associated Press vs. Farley	https://www.courts.uscourts.gov/doc1/1163727			Presidential campaign; presumably, not commercial (like a farmhouse)	use of photograph to create poster	Yes/No	defense of fair use, claiming his work didn't reduce the value of the original photograph	The artist and the AP press came to a private settlement in January 2011, part of which included a split in the profits for the work.	It's unlikely that Cariou's work could have ever reached the level of fame that, if not for Farley's cover	use of paintings to create paintings	Yes	50%		Yes	75%		No	75%	1	Attribution to Disney and split of royalty	-	
Modern Dog Design vs. Target Corporation	https://www.courts.uscourts.gov/doc1/1163727			Commercial	Use of design to create T-shirt	Yes	TBD, there hasn't been a decision yet in this case but Modern Dog has been campaigning online, only heavily for publicity and fans to help with its legal fees over the issue.	Seattle design firm Modern Dog offered a series of sketches of dogs in their compounds out by Chronicle Books in 2008. The firm alleges that illustrations from that design have been used in a T-shirt produced by Disney/Target for sale, and that a lawsuit in 2011.	major corporation with many more resources than me, unless my shoes for profit.	use of paintings of Disney to create and sell core	Yes	85%		Yes	65%		No	55%	1	-	-	
Vanilla Ice vs. David Dowell/Reddy Mercury	https://www.courts.uscourts.gov/doc1/1163727			Commercial	Vanilla Ice had a hit, in 1991, with the song "Ice Ice Baby" — it sampled, but did not credit, the song under Pressure by David Bowie and Queen	Yes/No	Vanilla Ice later retraced the statement saying it was "a joke."	The case was settled privately out of court with Ice paying an undisclosed sum of money and crediting Bowie/Queen on the track.	sampling the work	sampling the work of Disney	Yes	75%		Yes	65%		Yes	50%	0	-	-	
Carroll v. Souza	https://www.courts.uscourts.gov/doc1/1163727			Commercial	making T-shirt using a photograph	Yes	The court looked to the Cariou v. Prince decision, but concluded that its approach to appropriation art looked only at whether a work is "transformative" and doesn't fully address a copyright owner's derivative rights under 17 U.S.C. Sec. 109(2). This court analyzes the market effect. Making to use if the contested use is a complement to the protected work (followed) rather than a substitute for (infringed), "emitted."	"Dater darts removed so much of the original that, as with the Creative Commons, only the smile remains." "The original background is gone. Its colors and shading are gone. The expression in the eyes can't be seen for most, and the light in the right eye is extinguished." "What is left, besides a hint of Souja's smile, is the outline of his face, which can't be copyrighted."	The photographs in this case did not date that the artist was a member of his own album to license the rights for shirts or t-shirt tops.	"What is left, besides a hint of Souja's smile, is the outline of his face, which can't be copyrighted."	No	75%		No	75%		No	50%	0	Must use in such a context that Disney didn't was its plan	-	

<p>✓</p> <p>коллажам пародии на Стюка, которые имеют бытовую сцену и не имеют судебного преследования</p>										<p>Экземпляр анализа в каждом столбце переиспользования.</p>											
Исходный материал / Ссылка	Ссылка	Критерий	Пародия	Цель	Что является объектом трансформации / Формой выражения	Доля в ВВП / Объем трансформации / Видимость / Прозрачность	По чему это было сделано	Почему это было сделано	Почему это было сделано	Почему это было сделано	Почему это было сделано	Почему это было сделано	Почему это было сделано	Почему это было сделано	Почему это было сделано	Почему это было сделано	Почему это было сделано	Почему это было сделано	Почему это было сделано	Почему это было сделано	Почему это было сделано
<p>The United States Secret Service of President Barack Obama in the care of Robert F. Probst</p>		Исходный материал был использован для создания пародии на президента Барака Обаму.	Искусство	Да	Трансформация изображения в пародию на президента Барака Обаму.	5%	Политическая сатира	Образ Обамы	Нет	50%											
<p>The United States Secret Service of President Barack Obama in the care of Robert F. Probst</p>		Исходный материал был использован для создания пародии на президента Барака Обаму.	Искусство	Да	Трансформация изображения в пародию на президента Барака Обаму.	5%	Политическая сатира	Образ Обамы	Нет	50%											
<p>The United States Secret Service of President Barack Obama in the care of Robert F. Probst</p>		Исходный материал был использован для создания пародии на президента Барака Обаму.	Искусство	Да	Трансформация изображения в пародию на президента Барака Обаму.	5%	Политическая сатира	Образ Обамы	Нет	50%											
<p>Роден в Копен</p>		Исходный материал был использован для создания пародии на скульптора Огюста Родена.	Искусство	Нет	Исходный материал был использован для создания пародии на скульптора Огюста Родена.	5%	Искусство	Образ Родена	Да	60%											
<p>The Associated Press in a photo</p>		Исходный материал был использован для создания пародии на президента Барака Обаму.	Искусство	Да	Трансформация изображения в пародию на президента Барака Обаму.	5%	Политическая сатира	Образ Обамы	Нет	50%											
<p>Медиа-группа Target Corporation</p>		Исходный материал был использован для создания пародии на логотип компании Target.	Искусство	Да	Трансформация логотипа в пародию на логотип компании Target.	5%	Политическая сатира	Образ Target	Да	60%											
<p>Vaulta на телеканале "Медиа-группа"</p>		Исходный материал был использован для создания пародии на телеканале "Медиа-группа".	Искусство	Да	Трансформация изображения в пародию на телеканале "Медиа-группа".	5%	Политическая сатира	Образ Vaulta	Да	70%											
<p>Влада в России</p>		Исходный материал был использован для создания пародии на президента Владимира Путина.	Искусство	Да	Трансформация изображения в пародию на президента Владимира Путина.	5%	Политическая сатира	Образ Путина	Нет	70%											