

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 Al 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.

1



<u>La obra digital creada con inteligencia artificial por el programa de Thaler.</u>

(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 Al-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 <u>Kienitz v Sconnie Nation</u>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 Grogu 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 Grogu.

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



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/

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



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- Admin. (2022, July 14). *Are memes protected by copyright law?*. The IP Press.

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

Benchmark example	Retrieved from	Original work	Art work	Kature of use	What was done	Fair Use case?	Reasoning	Instructions	What was the key words	Grouu case	Use of Grogu	Case S followed?	Similarity of cases	Use of Gregor	Case followd?	Similarity of cases	Use of Grogu	Fair Similar 9 yof cases	it is there a	Solution 1	Solution 2
The United States District Court of Appeals for the Second Circuit decision in the case of Patrick Carriou v Richard Prince	hites (frones silergin com) 658 (345 cm) 658 (345 cm) 658 (345 cm) 758			Art	use Carlou's photographs to create paintings.	Yes	Transformative use	When Carlos's service and deficiency compared correlate education in the control problem of the characteristic and Relativistics and infection problems of the characteristic and Relativistics and the characteristic and processing control of the characteristic and the first and in PCF v. 21 Dec. (Earlies's 1846-1846-1846) and other than 1 and 1 CF v. 21 Dec. (Earlies's 1846-1846-1846) and other characteristics and characteristic and other characteristic and characte	composition presentation scale, color palette, and media	use of paintings to create paintings		No	50%		No	50%		Yes 75%	1	Delete color?	
The United States District Court of Appeals for the Second Circuit decision in the case of Patrick Cariou Richard Prince	Judge Rules Agenst Richard Prince in Appropriation Case— ARTheres co	·		Art	use of photograph to create paintings and college	Yes	Transformative use	In Westweeting a decision of gends to be not by levely in a of the telly contented extent, using failington Parter states. Why conduce that Process ranges, except for froze or electrons recommiss John New Process ranges, except for froze or electrons recommission has been added to the control of the contr	different character	use of paintings to create paintings and add pinups		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 Patrick Cariou Richard Prince	Richard Prinze: Reck in Hardt (heoraldroi c.com)			Art	use of photograph to create paintings and collage	Yes	Trans'omative use	In Wednesday's decision, grouting fair use to benefy the of the Berly contessed weeks, subge Berlington Parker Estates, "This conduction seeks, adequate There are allowed security of both where Persons strapes, conclude There are allowed by Berlington Parker and There are a sometimes of the Berlington Security of the Person Security of the Pe	different character	use of partings to create painings and add pinups		No	50%		Yes	65%		Yes 75%	1	Add pin-up?	
Ragers vs. Koons	5 famous coperabl infrapement cases hinhat you can listen) (Bidesigns, pr am)			Parody, but commercial (add for significant profit)	use photograph to create stables	No	fair use by parody	Kools defense was rejected under the argument that he could have used a more generic source to make the larer assencer—while copying flugies are formed to the country and are sourced to the country of	could have used a more generic source	use of e paintings to create paintings		Yes	65%		Yes	50%		No 50%	1	to use more generic source	vector-tracing a photograph
The Associated Press vs. Fairey	5 famous propriet infringement cases tabel you can barni (Botesams p am)		HOPE	Presidental compaign: presumably, non commercial (like a fantouse)	use of phiograph to create poster	YealNo	Gefense of fair use, claiming his work clieft reduce the value of the original photograph	The artist and the AP prices came to a physiols estiblement in James y 2011, part of which included a split in the profits for the work.	It's unlikely that Carcia's work could have ever reached the level of term it did, if not for Fatrey's poster	use of paintings to create paintings		Yes	50%		Yes	75%		No 75%	1	Attribution to Disney and split of royalty	·
Modern Dog Desig vs. Target Corporation	(Sodesigns.c om)	Parties No.		Commercial	use of design to crease T-Short	TBD. There hasn't been a decision yet in this case but Modern Dog has been campaigning online pretty heavily for publicity and funds to help with its legal fees over the issue.		Scale design from Modern Day, allisted a series of skelchner of degree in their compendium and saulty Chronide Scots in 2006. The files sales got that discretized from that design have been used in a Table syndrode by Chronyl Registron Scale, and their a lessed in 2015.	major corporation with many more resources than me, utilizes my artwork for profit	use of paintings of Disney to create and sell coins		Yes	85%		Yes	65%		No 55%	1		·
Vanita Ice vs. Covi BoxiesFreddie Mercury	5 femous coverisht infringement cases inher you can you can (Seriesions a am)	·	httissu Janualla kanhidilalak Tisso	Commercial	Vanilla loe had a hit, in 1991, with loe loe Baby — it eampled but did not credit the song Under Pressure by David Bravia and Queen	Yes/No	Vanilla los later refracted the statement soying it was "a joke".	The case was settled philetily and of court with bis paying an understand sum of money and crediting Bower-Cusem on the track.	sampling the	e sampling the work of Disney		Yes	75%		Yes	85%		Yes 50%	o		
Kiecitz v Sponecie Naisca	How much of a photo do you need to aber to avoid opposibil infrancement 2 Hin: Cheshine Cal - Stanford Ganziahi and Far Usa Center		Sorry Fores Parting	Commercial	msking T-short using a pholograph		The court looked to the Laconour Princia decision, but complained that it is approach complained that it is approach court and the laconour principal court is approached to see the laconour principal court is approached to the laconour control court in principal court in the laconour court is present in the contested use is a complained to the producted work (allowed) rather than a substitute for it, principalized work (allowed) rather than a substitute for it (principalized) conflicted?	"Defendants removed so much of the original that, as with the	The photographer in this case did not claim that the Lestint was a disruption to his own plans to license the photo for Eshirts or tank tops.	e "What is left, he besides a hint of a Sogim's a smile, is the outline of his face, which can't be copyrighted."		No	75%		No	75%		No 50%	9	Must use in such a context first Disney wouldn't claim it was its plan	

COCCUMBAT TO	прерисскиу Grogu, которан может быть правомерной с точки эрения су															Окспертное мнение, в	аком стиле перерисовыва	Th.			
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bittes: broad line control of the co			Использованы оригиногичной оригиноги		Танаблизійч вветра-оформационов испольсевние	Рабиль Бару. Ставління в притимня спистанням прирож за наблания фитурфин Либраног природну притурфиненция за опривительня притурфиненция за биру притурфиненци		Мы используем расучес для создания расучея		Her 50		Her 50%		Да 75		В прецадання был робавлям цвет поверх черко белой фотопровых В нашим случая мы нерерхосываем цветной расучос. Взаманом, следует рати от цвета в черко бесов изо?		В прецидания сделам рисских поверх фото. Взаможно, ставрет сробамить фито ико риссумат Дойомить дакумах уже к фото 7		В прецеденте худоння траниформарован образ противоположный Воливом траниформационный функтубит и вырчито образа Gregut?	
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