



Business Law Alert

Goliath Picks a Fight with David

J.K. Rowling and the maker of the "Harry Potter" films have filed a lawsuit against a small Michigan publisher, RDR Books, over its plans to release the "Harry Potter Lexicon," a book version of a popular Harry Potter Web site. The proposed book will be 900 pages. Among other claims, the lawsuit alleges copyright and trademark infringement. "

This case raises an interesting legal issue. Will the court recognize RDR as an encyclopedia or instructional book, though it indexes a fictional work? Will the court rule that Warner Brothers gave construction permission when Rowlings endorsed the website? Will the court merely rule that RDR's book copies an impermissibly large section of Rowlings' work and is thus illegal? All RDR needs to prove in court is that its writer did independent research and its book is an independent work, and thus defeating Warner Brother's claim based on the doctrine of "fair use". The copyright law does not give the

author exclusive right to use the material. Other people can use it. "Progress would be halted if an author had monopoly over everything in the book" [Author unknown]. So Warner Brothers does not have a cut and dry case.

The bigger question is the battle worth the costs? Though Warner Brother is very large corporation, I would wager that it cannot afford to fight this case. They are going spend at least \$250,000 fighting this case.

The value of a copyright lies in preventing others from infringing. That old saying "give 'em an inch and they will take a mile", is clearly true in this case. If Warner Brothers wanted to prevent infringement and thus a reduction of market share, it should not have allowed RDR to create its website. Instead of aggressively defending its copyright, it approved the site by allowing Rowlings' to call the website "a great home for me".

In addition, Warner runs the risk of alienating its client base. Harry Potter fans are a loyal, dramatic bunch.

Seminars::

LLC or S-Corp:
Which is best for me?

Sept. 21st at 6:30 pm

Speaker: Sharmil McKee, Esq.

Networking::

Brain Trust: Brown Bag Lunch Series

Sept. 15th at Noon

El Vez Restaurant

Host: Center City Proprietors Association

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(They have festivals where participants dress up as their favorite character). Can Warner Brothers afford to offend any of them? In this age of consumer awareness and environmentally friendly practices, the big corporations are moving targets. This case looks like Goliath vs. David. Warner Brothers has no way to spin this story in their favor. Along with the fact that the law is not clearly on their side, I think this is a bad case for Warner Brothers.

As much as I like to go to trial and fight, my client's bottom line is the most important factor. If I represented Warner Brothers, I would recommend buying the publishing company and giving the current owners majority stake. In this instance, a lawsuit does not protect the bottom line.

What can you learn from Warner Brother? Hire a business-savvy trial lawyer. Understand that the copyright law does not protect ideas. It merely protects the expression of an idea. Also, your business weakens its case, if it allows an infringer to steal from you without challenge.

Do not wait until the company infringing on your copyright announces a 900-page book before you find an attorney.

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Guest contributors to the Business Law Alert are welcome.

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