

The AIPLA’s 2023–2024
Giles Sutherland Rich Memorial
Moot Court Competition

Barbara Fields, Inc. v. Atomic, Inc.,

Case No. 2023-GSR

Problem Materials:

This year’s problem materials include:

1. This problem prompt.
2. The Joint Appendix. The Joint Appendix includes pages Appx001–Appx018

Overview:

This is an interlocutory appeal of the district court’s order granting a preliminary injunction. Plaintiff Barbara Films, Inc. (“Barbara”), whose founder Barbara Fields (“Ms. Fields”) is a pioneering filmmaker whose works include the computer-animated film *A Dog’s World*, alleges that Defendant Atomic, Inc. (“Atomic”), a leading technology and media company, committed copyright infringement, by creating—with extensive use of Artificial Intelligence (“AI”)—the screenplay and planned film, *Pet’s World*.

In the district court case, Barbara also asserts a patent infringement cause of action, which was not addressed in the current appeal. Atomic timely noticed this appeal the day after the district court granted a preliminary injunction.

Issues on Appeal:

Two issues are on appeal to the United States Court of Appeals for the Federal Circuit¹:

- (1) Whether Plaintiff is entitled to preliminary injunctive relief based on its copyright infringement claim;

¹ The Parties do not dispute that the Federal Circuit has jurisdiction over this appeal, as Plaintiff has asserted patent and copyright infringement claims. In addition, the district court granted preliminary injunctive relief. *See, e.g., Lego A/S v. ZURU, Inc.*, 799 F. App’x 823 (Fed. Cir. 2020) (interlocutory appeal of preliminary injunction order in copyright/patent case under 28 U.S.C. 1292(a),(c), and 1295(a)); *PlasmaCAM, Inc. v. CNCElectronics, LLC*, 24 F. 4th 1378 (Fed. Cir. 2022) (appellate jurisdiction over interlocutory court orders granting injunctions under 28 U.S.C. 1292(a)(1)).

- (2) Whether Defendant’s use of Plaintiff’s copyrighted works, including the training of TalkABC with Plaintiff’s copyrighted works, was fair use.

Trial counsel:

The appellant was represented in the Central District of Gilesead by the law firm of Smith & Smith LLP. The Appellee was represented in the District Court by the law firm of Jones & Jones LLP. The competitors are engaged as counsel only for this appeal.

Background:

Plaintiff Barbara Films, Inc.

Barbara Fields has been a leading filmmaker, screenwriter, film critic, and film theorist since the 1970s. During the 1970s, Ms. Fields was a major film critic writing for various newspapers and magazines. She wrote multiple leading books on screenwriting and film theory, many which have been taught in film schools since publication. Ms. Fields’ books on screenplay writing, film structure and genres, are particularly well known. In the 1980s, Ms. Fields moved to Gilesead and became a major figure in the entertainment industry. First, Ms. Fields wrote screenplays, including for hit “buddy” cop movies and action comedies. In the 1990s, Ms. Fields wrote and directed several comedies.

In 1992, Ms. Fields founded Barbara Films, Inc., which produced movies and other media. Barbara Films became a leading production company. In the late 1990s, Ms. Fields branched out to animated films, including computer-animated movies. Ms. Fields has produced, written, and directed ten animated movies. Ms. Fields is widely recognized as a pioneer in computer animation. As Barbara Films, Inc. is a major producer of computer-animated media, it owns a patent portfolio related to computer animation. As Ms. Fields is the leading shareholder of *Barbara Films, Inc.*, the company holds the copyrights to Ms. Fields’ films, screenplays, and books.

In 2002, Ms. Fields wrote and produced *A Dog’s World*. *A Dog’s World* grossed more than \$788 million in worldwide box office. In addition, *A Dog’s World* was named Best Animated Film.

Atomic, Inc.

Atomic, Inc., which was established in 1993, is a leading technology company. Based in Gilesead, Atomic has several business units, including:

- Atomic TV: A video sharing website and application, from which consumers share and view videos they upload to the service. Atomic TV also has a subscription-based video streaming service.
- Atomic Studios: An American film and television producer and distributor. Atomic Studios’ content is distributed through Atomic TV and theaters.

- Atomic Library: Starting in 1998, Atomic embarked on a publication-digitizing project. Atomic has digitized at least 40 million books and publications from university libraries, public libraries, and other public sources.
- TalkABC: An AI-powered language model developed by Atomic, which can generate human-like text based on context. TalkABC enables users to refine and steer a discussion towards a desired length, format, level of detail, and language used. TalkABC’s large language model has been trained by copying, *among other things*, the digitized text in the Atomic Library. Atomic continues to develop TalkABC by introducing more and varied text sources as inputs to train the model, regularly updating the dataset to include books, screenplays, plays, articles, and more. TalkABC, as it has copied and ingested the text in its training dataset, can generate naturalistic outputs in response to user prompts.

Entertainment Industry Strikes

In December 2020, labor strikes erupted throughout the entertainment industry. The leading entertainment unions, including the Writers Guild of the United States (“WGUS”), Media Actors Guild (“MAG”), and the Directors Guild of the United States (“DGUS”) all struck.

The entertainment industry strikes’ labor issues include, *among others*, the entertainment industry’s use of artificial intelligence. The industry strikes remain ongoing.

Atomic, Inc.’s Development of *Pets’ World*

Atomic, Inc. began developing film and TV content with non-labor support. For example, TalkABC project managers and staff have created screenplays largely by using TalkABC. Atomic, Inc. has undertaken massive efforts to “train” TalkABC so that it can create scripted media content with limited human interaction.

For instance, Atomic employees and contractors have “trained” TalkABC with large volumes of copyrighted screenplays, plays, books, articles, and other media—including all the copyrighted works of Ms. Fields and her company, *Barbara Films, Inc.* Likewise, Atomic has used a broad range of materials from the Atomic Library to train TalkABC. Neither Ms. Fields nor Barbara Films consented to use of their copyrighted works as training materials for TalkABC.

Joseph Lorre, a TalkABC project manager, used TalkABC to create the script of *Pets’ World*. Atomic Studios plans to produce a computer-animated film based on the *Pets’ World* script. It plans to use AI-text to video tools to create the footage. In addition, it plans to use AI tools for voice performances.

Upon learning of Atomic, Inc.’s screenplay and planned production of *A Pet’s World*, Plaintiff Barbara Films, Inc. filed suit in the Central District of Gilsead.

The Case Below:

On January 3, 2023, Plaintiff Barbara Films, Inc. (“Barbara”) filed suit against Atomic Studios (“Atomic”) in the Central District of Gilsead, which is part of the Ninth Circuit. The Complaint accused Atomic, Inc. of copyright and patent infringement.

On January 6, 2023, Barbara moved for a preliminary injunction, based on the copyright infringement claim. Barbara sought to enjoin Atomic from developing or releasing *Pets’ World*. In the motion for preliminary injunction, Barbara argued, *among other things*, it was likely to succeed on the merits as to the copyright claim. For instance, Barbara argued that Atomic had direct access to all of its copyrighted works, including *A Dogs’ World* and Ms. Fields’ books and articles. In addition, Barbara challenged Atomic’s use of AI, which had “scraped” a broad volume of Ms. Fields’ copyrighted works. In response, Atomic argued, *among other things*, that training TalkABC with Plaintiff’s copyrighted works was a fair use under 17 U.S.C. § 107.

On January 2023, the District Court ordered expedited discovery and a joint statement about similarities and differences between the works.

On May 2023, the District Court granted Barbara’s motion for a preliminary injunction. The District Court also held that TalkABC’s use of Plaintiff’s copyrighted works was not fair use.

Atomic, Inc. appealed the District Court’s grant of the preliminary injunction.