

Jason Bloom in Bloomberg Law: Pepe Settlement is 'Missed Opportunity' for Fair Use Guidance

June 19, 2019 Jason Bloom

PRACTICES Intellectual Property Litigation, Copyright, Intellectual Property

Bloomberg Law quoted Haynes Boone Partner [Jason Bloom](#) in an article about a recent copyright infringement lawsuit settlement between Alex Jones' Infowars LLC and the artist behind Pepe the Frog. Infowars sold posters that contained the Pepe image.

Here is an excerpt:

Infowars paid \$15,000 to settle a dispute heading to trial, where a jury was to determine whether adding Pepe the Frog to a poster featuring right-wing political figures and President Donald Trump was fair use under copyright law. Alt-right and neo-Nazi fringe groups also had adopted the Pepe character.

The case, brought in the U.S. District Court for the Central District of California, was unusual for a copyright infringement action, Jason Bloom, head of Copyright Practice Group at Haynes Boone, said.

In typical copyright disputes, “you end up with someone who is infringing work for their own profit, but not necessarily using it in a way that takes on a connotation other than what the original work had,” Bloom said. But in this case, a copyrighted character was “taken over and used by the alt-right movement for negative reasons.”

The lack of a trial in the case left important questions in the air, Bloom said, such as “to what extent is a negative use like this taken into account into the fair use analysis and damage analysis,” especially when the image becomes primarily associated with the “negative connotation.”

“It would have been nice to get some kind of opinion beyond the summary judgment saying we’ll have a jury trial,” Bloom said. “The more case law on this topic, the better.”

To read the full article, click [here](#).