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Do You Need a Magic Wand to Settle with a Billionaire?

The IP ADR Blog:

A mere muggle gets it. But will IP attorneys heed the call to mediate?

In the epic *Harry Potter* copyright fair use battle now under way in a District Court in New York, the mortal judge is wondering out loud — from the bench — why these parties *can't just settle their dispute*.

For background on this fascinating Copyright dispute, [click here](#).

U.S. District Court Judge Robert Patterson Jr., after referencing [Bleak House](#) — Charles' Dickens tale of endless litigation — noted that it was "a very sad story. Litigation isn't always the best way to solve things."

He went on to ask the parties: "Can it be resolved another way? I feel that this case could be settled and should be settled." "I think this case, with imagination, could be settled."

Despite the invitation, even Rowling's apparently boundless imagination could not be tapped to think creatively about a global settlement. As reported by the [WSJ Law Blog here](#), the parties have reached a settlement of the relatively inconsequential false advertising and deceptive trade practices claims, but the copyright/fair use dispute — the meat of the case — continues.

Is the judge wrong to think that a high profile copyright case that makes a star of the fair use doctrine could be settled? Or as one of the participant's asked, *how do you settle with a billionaire?*

Maybe the question was rhetorical, but it's a good question nonetheless. How *do* you settle a case when the opposing party has billions of dollars already stashed away?

Answer: To settle with a billionaire, you need to offer something that the billionaire wants more than money.

The first task, then, is to figure out what that is. Why is Rowling fighting in the first place? What is her motivation?

We get some indication of what propels her from her own testimony at trial: protection of her characters, her "17 years of . . . hard work," her desire to write a Potter encyclopedia of her own one of these days, proceeds of which she says she will donate to charity. Indeed, [in the preliminary injunction papers filed by Rowling, she made a point of saying that she has already donated \\$30 million to charities.](#)

This gives any good mediator plenty of things to work with in trying to explore settlement possibilities. Rowling may want good press; she may want to build an image as a philanthropist; she may want to be seen as a protector of authors' rights.

What about exploring a settlement where the Lexicon is published but some of the proceeds are donated in Rowling's name to a charity of her choice. If she is interested in giving young writers a leg up, the publisher could offer to open doors for young writers, one of whom could co-write or co-edit the Lexicon.

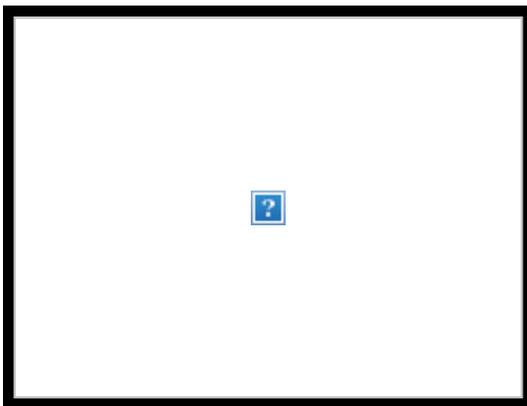
To protect Rowling's characters, RDR could agree to a licensing arrangement, thereby ensuring that no precedent is set.

A little imagination, as Judge Patterson so aptly noted, can go a long way towards finding ways to satisfy the underlying interests and motivations of all parties.

The conflict resolution side of me would love to explore ways to end the Rowling/RDR dispute in a way that satisfies all interested parties. I am convinced there is a settlement out there to be had, if only the parties would explore it with an open mind.

On the other hand, the fair use junkie in me is avidly interested in how this monumental battle will shake out. Fair use is an amorphous concept at best, as was made clear at the [USC IP Institute Fair Use Panel last month](#).

Further judicial guidance — and this one is definitely headed to the appellate courts — would be a welcome contribution so long as it helps to clarify, and not further muddle, er, *muddle*, what constitutes fair use.



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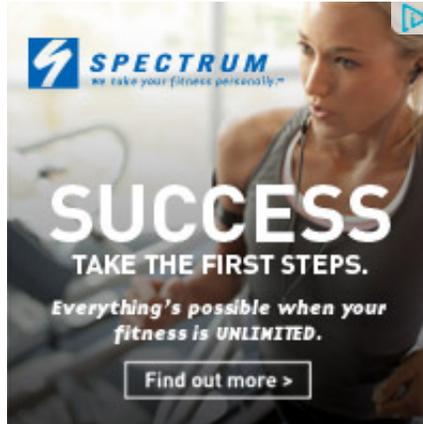
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