

NEWSSTAND

Update on Potter

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Since the last publication of the IP Bulletin, the United States District Court for the Southern District of New York delivered a decision in *Warner Bros. Entertainment, Inc. v. RDR Books* (575 F. Suppl 2d 513), also known as the "Harry Potter Case." The Court issued a permanent injunction and awarded limited damages to Warner Bros. and J.K. Rowling and held that the Lexicon created by the defendants, which was comprised of a list of spells, characters, creatures, descriptions, and potions from Rowling's works, was not a "fair use" under United States copyright law. What is particularly interesting in the opinion, however, is that, overall, the Court found that the Lexicon was "transformative" (a criteria within the four factors of fair use that typically tips the scales in the defendant's favor), but that it wasn't transformative enough in light of the amount of the Potter series that was taken to create it.

The Court was careful, however, to point out that titles similar to the Potter Lexicon have a tremendous value and serve the public interest. In its conclusion, the Court states specifically, "while the Lexicon, *in its current state* (emphasis added), is not a fair use of the *Harry Potter* works, reference works that share the Lexicon's purpose of aiding readers of literature" generally should be encouraged rather than stifled. As a result of this decision, creators of such reference materials must carefully choose what portions of another party's work they want to include in their publications and should take no more than is absolutely necessary to create such reference materials.