

# Netflix sues BRIDGERTON MUSICALS:



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*POSSIBLE IMPLICATIONS FOR THE IP IN THE  
ENTERTAINMENT SPACE*

*BY: CINDY NARIASI*

# INTRODUCTION

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**Netflix** is a streaming service that offers a wide variety of award-winning TV shows, movies, anime, documentaries, and more on thousands of internet-connected devices.

Image Courtesy of Pinterest.



# What is bridgerton?

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The show is based on the popular "Bridgerton" book series of the same name that revolves around two families during "the season," an annual period where elite families would host formal events to introduce their children to society and find them a suitable marriage.

It speaks to a modern audience through its inclusive cast, orchestral versions of modern pop music and a female perspective on the characters' struggle against rigid societal norms and rules.

What is the main point of Bridgerton?

Set in Regency London, the story follows **families intent on marrying their daughters off to good husbands – wealth and status prioritized over love.**

Wealth and Status Prioritized Over Love??

Image Courtesy of Collide.



# Netflix v Unofficial Bridgerton Musical Case

## Facts:

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*The Unofficial Bridgerton Musical*, inspired by the Netflix show and book series by Julia Quinn, [began on TikTok](#) in early 2021 and was released as an album in September 2021, with 15 songs performed by Barlow and Bear. The duo won the [2022 Grammy Award](#) for best musical theater album.

Multiple times, in June and July 2022, Netflix informed counsel for Barlow & Bear that the July 26 performance and any subsequent live performances were not authorized and that such exploitation would constitute willful copyright and trademark infringement unless they negotiated a license—which Netflix was willing to do. Netflix offered Barlow & Bear a license that would allow them to proceed with their scheduled live performances at the Kennedy Center and Royal Albert Hall, continue distributing their album, and perform their Bridgerton-inspired songs live as part of larger programs going forward. Barlow & Bear refused.

Barlow & Bear then doubled down on their infringement and resulting harm to Netflix. Netflix found out from the press that the performance would include Broadway actors. Barlow & Bear announced via TikTok that their Kennedy Center performance would include *“some brand new songs, one that you’ve never heard before,”* and *“some, you know, little tasteful extensions to some of the [existing] Bridgerton songs.”*

# Netflix and Bridgerton Case Cont'd

The Kennedy Center performance went forward over Netflix's objections on July 26, 2022, in front of a sold-out audience, with seats available for \$29 to \$149 per ticket (in an 1,100 seat venue), and the option to purchase a "VIP package." Barlow & Bear performed 14 of the 15 songs from "The Unofficial Bridgerton Musical Album," including a new, full-length version of the song "Fool for You."

Barlow & Bear further sold merchandise featuring the BRIDGERTON marks, both at the Kennedy Center and prior to that performance online, including clothing, songbooks, and vinyl albums promoting "The Unofficial Bridgerton Musical," complete with a keychain of a vinyl record bearing the words "BRIDGERTON MUSICAL."

Image Courtesy of the Kennedy  
Center



# Netflix v Bridgerton Cont'd

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Barlow & Bear's Kennedy Center performance interfered with Netflix's long announced offering of the Bridgerton Experience in Washington, D.C.: It attracted Bridgerton fans who would have otherwise attended the Bridgerton Experience and created confusion as to whether Netflix had approved of Barlow & Bear's unauthorized derivative works. Barlow & Bear benefited from the confusion and false association with the BRIDGERTON brand.

On July 29, Netflix filed [a lawsuit in U.S. District Court in Washington, D.C.](#), alleging that Barlow and Bear have "taken valuable intellectual property from the Netflix original series *Bridgerton* to build an international brand for themselves. "The lawsuit cites specific instances where Barlow and Bear allegedly "copied liberally and nearly identically from *Bridgerton* across a number of original elements of expression," including lifting lines of dialogue from the show, "appropriating" characters, and "copying" key plot points.

See full case on <https://s3.documentcloud.org/documents/22125257/netflix-v-barlow-and-bear.pdf> as accessed on 11<sup>th</sup> September 2022.

# Nexus Between IP and Entertainment Law

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Intellectual property has paramount importance in the media and entertainment industry as it gives the necessary protection thus preventing the misuse of their work and accelerating the business growth.

The copyright law mainly protects the literary work of the author from misuse or use without consent for commercial gain. The trademark law on the other hand accords protection to any signs, goods, or services.

In the digitized era, intellectual property plays a more significant role. As more and more content is being uploaded online, disputes such as copyright piracy are rising. The work of the authors and artists needs protection after they have been created to avoid its misuse by other persons.

# Issues for Determination

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1. Did Barlow and Bear Infringe on Netflix Worldwide Entertainment IP Rights i.e Copyright and Trademark.
2. Is Netflix entitled to the Reliefs Sought? i.e
  - a. An injunctive Relief
  - b. Actual damages & any additional profits of the Defendants.
  - c. Cost including attorneys fees in prosecuting this action



# Law Applicable

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1. BERNE CONVENTION –INTERNATIONAL AGREEMENT GOVERNING COPYRIGHT

2. US COPYRIGHT ACT -1976

3, LANHAM ACT OF 1946- Also known as the US Trademark Act—S.32

# Analysis

## 1. Did Barlow and Bear Infringe on Netflix World Wide Entertainments Intellectual Property Rights i.e Copyright and Trademark?

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On July 26, 2022, over Netflix's repeated objections, Barlow & Bear staged a massive, for-profit stage show—entitled “The Unofficial Bridgerton Musical Album Live in Concert”—to a sold-out audience at the Kennedy Center, with tickets ranging up to \$149 each and VIP packages. The live show featured over a dozen songs that copied verbatim dialogue, character traits and expression, and other elements from Bridgerton the series. It included dramatic portrayals of Bridgerton characters by Broadway actors, emoting through the performance of the songs that comprise the “musical.”

Throughout the performance, Barlow & Bear misrepresented to the audience that they were using Netflix's BRIDGERTON trademark “with Permission,” while Netflix vigorously objected

Netflix Owns the Registered Copyright and Trademarks in the Wildly Popular Bridgerton Series

# Copyright and Trademark Infringement Cont'd

Netflix Worldwide Entertainment, as the copyright owner of Bridgerton, has the exclusive right to authorize derivative works based on the series. And as the registered trademark owner of the BRIDGERTON mark, Netflix Studios alone has the rights to promote the Bridgerton brand.

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Multiple times, in June and July 2022, Netflix informed counsel for Barlow & Bear that the July 26 performance and any subsequent live performances were not authorized and that such exploitation would constitute willful copyright and trademark infringement unless they negotiated a license—which Netflix was willing to do. Netflix offered Barlow & Bear a license that would allow them to proceed with their scheduled live performances at the Kennedy Center and Royal Albert Hall, continue distributing their album, and perform their Bridgerton-inspired songs live as part of larger programs going forward. Barlow & Bear refused

The online marketing for the event changed multiple times during this dispute—evidencing Barlow & Bear's realization that they had no rights to exploit Netflix's trademarks. At some point after June 21, 2022 and after Netflix told Barlow & Bear they were not authorized, they added a reference to Netflix Studios' ownership of the registered trademark. Later, they took that down at Netflix's request. Then, as of July 20, after Netflix had sent a settlement demand, they changed it to say the mark was being "used with Permission" of Netflix, when the parties had not reached an agreement and Netflix continued to object

# Copyright and Trademark Infringement Cont'd

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Barlow & Bear's actions will also lead to irreparable consumer confusion about whether their performances and merchandise are in fact authorized by the rights holders.

In addition to harming Netflix and everyone involved in creating the series, Barlow & Bear's infringing use of Netflix's copyrights and trademark may also encourage other third parties to develop derivative works based on Bridgerton without Netflix's authorization. This would dilute the value of Netflix's copyright in Bridgerton and cause Netflix to incur substantial additional expense in enforcing its copyrights

In the United States, The copyright and trademark laws do not allow Barlow & Bear to appropriate others' creative work and goodwill to benefit themselves.

## 2. Is Netflix entitled to the Reliefs Sought?

### A. Injunctive Relief

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Barlow & Bear's decision to usurp the Bridgerton series and brand for itself threatens Netflix—and everyone engaged in the Bridgerton franchise—with irreparable harm.

Beyond their Kennedy Center performance, Barlow & Bear have also announced a September performance of “all your favorite tunes from The Unofficial Bridgerton Musical alongside the BBC Orchestra at Royal Albert Hall!” They posted the announcement to their official Facebook page nearly a month after Netflix had made clear that Barlow & Bear did have permission to exploit the work of everyone involved in creating the Bridgerton series. The current marketing for the show features the word mark BRIDGERTON in a large font:

Barlow & Bear have also stated that they are planning further live performances of “The Unofficial Bridgerton Musical.

# Relief's Continued

## On Injunctive Order

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An injunctive order will ensure that Barlow and Bear do not continue to undermine the rights holders' ability to offer legitimate, authorized derivative works of Bridgerton, including live stage productions such as musical theater performances and the ongoing Bridgerton Experience offered by Netflix in Washington D.C. and other cities, not to mention their own branded merchandise, soundtracks, and other consumer products.

Netflix just has to satisfy to the court that they have met the conditions set out in **Giella v Cassman Brown** which include: whether the applicant has shown prima facie case with a probability of success; whether the applicant shall suffer irreparable injury which cannot be compensated by damages; and if the court is in doubt then it can decide the application on a balance of convenience.

## B. Actual Damages and any other additional profits of the defendants

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Netflix Studios has continuously used the BRIDGERTON mark in commerce throughout the United States since December 25, 2020 in connection with the distribution, promotion, marketing, and advertising of the Bridgerton series, the “Bridgerton Experience,” and related merchandise.

Barlow & Bear further sold merchandise featuring the BRIDGERTON marks, both at the Kennedy Center and prior to that performance online, including clothing, songbooks, and vinyl albums promoting “The Unofficial Bridgerton Musical,” complete with a keychain of a vinyl record bearing the words “BRIDGERTON MUSICAL.

Defendants have used and continue to use Netflix Studios’ mark on merchandise without Netflix Studios’ license or authorization. ” This is likely to cause confusion, to cause mistake, and/or to deceive consumers as to the affiliation, connection, or association of Defendants with Netflix and/or as to the origin, sponsorship, or approval of Defendants’ merchandise.

# Reliefs Continued

## Actual Damages and any other additional profits of the defendants

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In this regard the court may order ;

- I. that the Plaintiff be allowed to take an account of how much the Defendant has benefited from infringement of the Plaintiff's copyright.
- II. The Court can also award to the Plaintiff an amount calculated on the basis of reasonable royalty which would have been payable by a licensee in respect of the work or type of work whose copyright has been infringed



## C. Reliefs Cont'd

### Costs of the Suit

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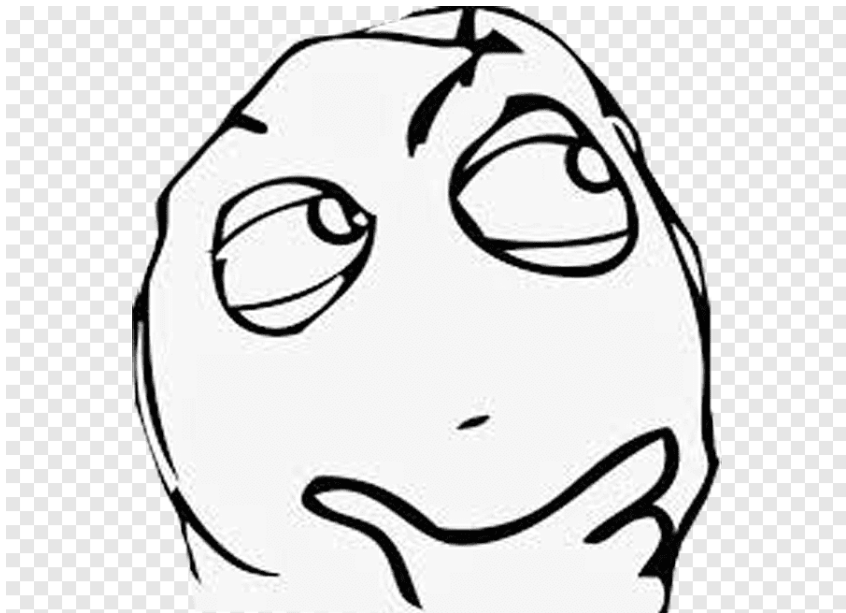
The issue of costs is the discretion of the Court and is used to compensate the successful party for the trouble taken in prosecuting or defending the case and not to penalize the losing party.

As a general rule cost should follow the events and the case at hand is still at it's inception Phase.

# My Opinion

Images Courtesy of pngwing.com

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***Just My Opinion***



# My Opinion

Since there's ample evidence Barlow and Bear did infringe on Netflix's intellectual property, I don't think they will want to go to court. If the case does proceed to a full trial, the decision will come down to whether the *Unofficial Bridgerton Musical* is deemed fair use.

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It is no secret that in early 2021, Netflix did not stop what Barlow & Bear represented as their personal TikTok fan tribute to Bridgerton. Numerous individuals involved in the creation of Bridgerton, including actors, producers, and Netflix, applauded Barlow & Bear, including with the tweet: "Absolutely blown away by the Bridgerton musical playing out on TikTok." Barlow & Bear benefited from the attention: They went viral

Fan fiction can be protected under fair use as long as the work is "transformative and adds new meaning to the original work. It also has to be non-commercial in nature.

Several factors are considered when determining the fair use doctrine, including the purposes of the use, the nature of the work that was copied, the amount of the original material taken and the impact on the market.

# My Opinion

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Fair use can certainly exist in the absence of parody, but here, Barlow & Bear took the characters, plot and even verbatim dialogue from 'Bridgerton' and used these elements to faithfully tell what's essentially the same story in musical form."

Other fan musicals have avoided copyright charges by clearly transforming the source material or staging performances for charity **e.g Ratatouille: The Tiktok musical which premiered as a one-night charity livestream in January 2021.**

## My Opinion :

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1. Netflix Worldwide Entertainment Owns the Registered Copyright of the Bridgerton Series and as the registered Trademark Owner Netflix Studios alone has the rights to promote the Bridgerton brand.
2. Defendants do not have a license.
3. Defendant's Conduct is willful.
3. Defendants Copyright Infringement has injured Netflix World Wide Entertainment and threatens to cause irreparable harm to Netflix Worldwide Entertainment.
4. Netflix has advanced cogent grounds to warrant the reliefs sought.

# CONCLUSION

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It's still too early to predict the end result of the law suit.

There's a range of possible outcomes and most cases like this tend to settle out of court.

There's clearly ample evidence Barlow and Bear did infringe on Netflix Intellectual Property Rights

If the case settles somewhat amiably, Netflix may choose to use Barlow and Bear's work as its foray into theater. But, Netflix may also not want to work with Barlow and Bear in any capacity once the lawsuit is settled, regardless of the outcome.

# Conclusion Cont'd

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Part of the motivation behind the lawsuit may be to shut down other potential fan projects based on Netflix's extensive catalog.

The lawsuit alleges that *The Unofficial Bridgerton Musical* "may also encourage other third parties to develop derivative works based on *Bridgerton* without Netflix's authorization."

However, Fan Culture is extremely good for brands.

Corporations just need to strike a balance between protecting their economic and business interest and not picking fights with fans making work that to some extent extend the value of the brand.

# Thanks for Listening

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*I shall revert with the full verdict if the case does proceed to full trial.*

Image Courtesy of  
Gratsography

