

## **A Legal Analysis of 'The Silmarillion' Adaptation: A Logical Framework**

This document presents a legal argument asserting that a specific type of partially animated video based on J.R.R. Tolkien's "The Silmarillion" can be created without infringing existing copyrights. This reasoning is grounded in a logical interpretation of EU/EEA and international law, buttressed by well-established precedents, particularly those demonstrated by online platforms.

### **I. Core Legal Logic: EU/EEA, International Law, and Copyright Exceptions**

The foundational legal premise centers on a reasoned interplay of international copyright treaties and national laws, moving beyond a simplistic view of "fair use" to encompass broader principles of permissible usage.

#### **1. Copyright Ownership and the Present Relevance of Expiration Dates:**

- From this perspective, the traditional expiration dates associated with J.R.R. Tolkien's death (1973) are deemed irrelevant for practical contemporary analysis. The decisive factor is unequivocally the ownership of all rights by the Tolkien Estate. This entity exercises complete control over the works, rendering individual copyright term discussions moot while the Estate actively holds and exercises these rights.

#### **2. Jurisdiction and the Enduring Force of International Treaty Reciprocity:**

- The creator is situated within the EU/EEA (Slovenia), while the Tolkien Estate is based in Oxford, UK. While Brexit has altered the UK's relationship with the EU/EEA, this geographical distinction does not nullify the enduring framework of international copyright protection.
- The Berne Convention, the TRIPS Agreement, and the World Intellectual Property Organization (WIPO) treaties remain universally applicable. Both the EU (including its member states like Slovenia) and the UK are binding signatories to these conventions. This ensures absolute reciprocal copyright protection; a work copyrighted in the UK is unequivocally recognized and protected in Slovenia, and conversely. Therefore, the strategic approach involves operating judiciously within the *exceptions and limitations* explicitly permitted by these international agreements and their robust implementation within Slovenian and broader EU law, rather than seeking to circumvent fundamental copyright principles.

#### **3. Educational Purpose and the Nuanced Scope of Adaptation:**

- A central and irrefutable pillar of this legal reasoning asserts the right to utilize copyrighted materials when their inclusion is demonstrably and undeniably necessary to properly convey an educational message. This right is affirmed as entirely permissible under Slovenian, EU/EEA, and international

law, provided specific, well-defined conditions are met and meticulously adhered to.

- **The Nature of the "Adaptation":** The video will, by explicit design, **not** be labeled an "adaptation" by its creator. Instead, it will meticulously employ a narrative logic primarily derived from "The Silmarillion" but will feature an extremely limited number of direct dialogues. While maintaining absolute fidelity to the original sources in terms of overall narrative and content (as would be expected by a deeply committed fan), the original text will be judiciously **shortened and rephrased**. The critical distinction lies in this rephrasing: its sole purpose is *not* to alter the original work's meaning or message, but rather to ensure absolute truthfulness to the source material while simultaneously fulfilling the precise legal requirements that render such usage permissible across many jurisdictions (including Slovenia) and internationally (given the binding ratification of the aforementioned international agreements). This approach consciously constructs a visual representation that, while undeniably based on the original, structurally differentiates itself to fall demonstrably outside the parameters of strict infringement.
- **Highly Creative Work as Valid Commentary:** The argument logically posits that a work of profound creativity, such as "The Silmarillion" (which resonates with the gravitas of ancient scripture), inherently provides expansive scope for diverse interpretations. Such an interpretation, when thoughtfully conveyed through the medium of video, fundamentally constitutes a legitimate form of "commentary." Even in the absence of a continuous, direct personal voice-over commentary, the video's inherent interpretive nature allows it to fulfill this essential function. For absolute clarity and demonstrability, a direct personal commentary could be explicitly incorporated at the video's conclusion, with this serving as a key point highlighted in the accompanying description.
- **Unwavering Non-Profit Commitment and Market Protection:** The video is unequivocally created for non-profit educational purposes, a fact that will be prominently declared at the video's commencement, conclusion, and within its description, potentially augmented by external URLs linking to corroborating supplementary information. To entirely preempt and disarm any concerns regarding market harm, the creator will explicitly state that, should any direct or indirect income inadvertently arise despite rigorous efforts to avoid monetization, all such profits will automatically and immediately be remitted to the rightful copyright owner, the Tolkien Estate. This proactive measure not only disarms potential arguments of market competition but also

provides a concrete, demonstrable assurance that even unintended revenue flows directly to the rights holder, further bolstering the non-infringing nature of the endeavor.

This strategic combination of unequivocally non-profit educational intent, meticulous rephrasing (that preserves original meaning), and a transparent commitment regarding potential earnings decisively aligns the project with the spirit and precise letter of copyright exceptions for socially beneficial uses. This operates squarely within the permissible boundaries of the "three-step test," ensuring the use neither conflicts with normal exploitation nor unreasonably prejudices the legitimate interests of the rights holder.

## II. The Indisputable Argument of YouTube/Google's Established Precedents

Beyond direct legal interpretations, a compelling and critical component of this argument hinges on the profound practical implications of YouTube's long-standing operational precedents.

- **YouTube as a Creator of De Facto Precedent:** The fundamental contention here is that while YouTube (as an integral subsidiary of Google) is undeniably not a judicial entity, its consistent and unchallenged allowance of videos that are equivalent to, or demonstrably exceed the scope of, the proposed project, has effectively forged a robust body of **de facto precedent**. This is not about YouTube's *policies* being mistaken for legal rulings, but rather about their consistent and unchecked *practices* definitively shaping and solidifying the perceived and practically accepted boundaries of permissible use within the digital realm. The existence of countless, long-standing, un-deleted videos of this nature on YouTube serves as concrete evidence of these established operational norms.
- **Profound Influence on Judicial Outcomes:** This argument asserts, based on observed realities, that in practice, courts consistently exhibit a reluctance to issue rulings that would, by direct extension or implicit consequence, imperil or "sink" a major corporation like Google or its subsidiaries. This reluctance is particularly pronounced when such corporations have demonstrably permitted the consistent usage of analogous content over extensive periods. This perspective posits that if YouTube/Google has historically and continuously sanctioned certain types of derivative or transformative content – *and specific examples of such un-deleted, long-standing videos can be clearly presented to the court, detailing their nature and how they are superseded by the proposed project* – then a court is logically compelled to find a pathway to uphold such usage for individual creators. Such an outcome is preferred over creating a disruptive precedent that would irrevocably undermine the platform's entrenched

operational norms, potentially triggering widespread legal liability or necessitating a massive, system-wide content purge, which no court would realistically seek to instigate.

- **Backing Legal Interpretation with Indisputable Practice:** From this robust viewpoint, the undeniable presence of numerous highly similar videos (which significantly predate and often exceed the scope of the proposed project) on a platform meticulously managed by Google lends overwhelming weight to a legal interpretation that might otherwise be deemed debatable in isolation. The "impenetrability" of this logic, as articulated, arises from the irrefutable reality that courts, when faced with such established platform practices, prefer to avoid decisions that would destabilize the existing, functional digital content ecosystem. This is especially true when confronted with evidence that major tech entities have, through their prolonged inaction or specific allowances, contributed to the establishment of these de facto norms.