Remixers’ Understandings of Fair Use Online

Casey Fiesler
& Amy Bruckman
I DIDN'T TRAVEL 10000 MILES TO HEAR A PRESENTATION YOU WROTE ON A PLANE

(thx, @BesottedReviewer)
Academia Explained: Muppets

Undergrad
Grad Student
Post-Doc
Assistant Professor
Tenured Professor
Professor Emeritus
Casey Fiesler

I need a presentation slide image that illustrates sharing copyrighted material on social networks. So here's a picture of the Doctor and Amy.
Fair use is the legal doctrine that allows use of copyrighted content under certain conditions.
Catching Fire: Suzanne Collins' Hit Young-Adult Novels

In the hot new young-adult series, there are no wizards or vampires. Just regular kids, in a fight to the death

By Lev Grossman | Monday, Sept. 07, 2009

I used to tell my daughter stories about a family of mer-cats--kitties with fish tails--who lived in the East River and how they were persecuted by a mean purple octopus. I spent considerable time and effort coming up with nonviolent ways for the mer-cats to defeat the octopus at the end of each story. Finally one night I asked my daughter Lily, who was 4 at the time, how she thought the mer-cats should handle the problem. She chirpily replied that the mer-cats should find a sharp rock and then stab the octopus till it died. Ha, ha, ha! Kids.
Real Vampires Don't Sparkle

hhertzof

Summary:

Over the years, Lucard has crossed paths with many of his own kind. These are their stories.

Notes:

For astolat.

Edward Cullen

He should have got rid of those sparkly upstarts years ago. No one was quite certain when the vampire strain had deviated to create those abominations, but there had been a number of strange mutations over the years and he had never bothered to track all of them.

It wasn't that he minded leading young girls astray, but they should know their place. One of these days, he'd see about getting rid of them. Once he got those annoying Townsend children off his back.

One of these days.

Spike

Lucard had never had much use for Spike. The other vampire tried too hard to play the bad boy role, but Lucard knew too much about his past to believe the facade.

“Comic Book Glass Oval Necklace” in POShoppe (Etsy)
Real Vampires Don't Sparkle

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Many of his own kind. These are their stories.

No one wants to be seen with a friendless vampire. They should be a thing of the past. But when they're not, they're tried to fit in. Trying to find their place in the world. No one wants their special abilities to be a problem. No one wants to stand out. No one wants to be different.

“Buffy the Vampire Slayer” by Eireen (DeviantArt), CC-BY

“Comic Book Glass Oval Necklace” in POPShoppe (Etsy)
Real Vampires Don't Sparkle
hhertzof

Buffy vs Edward: Twilight Remixed – [original version]

"Buffy vs Edward (Twilight Remixed)" by Jonathan McIntosh – CC-BY-NC-3.0
Remixer: Anyone who makes use of content created by someone else in new, creative ways.

Fanwork: Art, writing, music, video, or other media based on media properties such as television shows, books, or videogames.
Thanks for the replies. Man youtube is such a pain now, it was awesome a year ago but now its copyright this and copyright that, I understand its illegal to take someone elses work and slap it on your movies but if anything, we're promoting it.

I tried saying that I dont own any song used in my video in the description box but that doesn't work either.

**Copying / The next Harry Potter**

I've been thinking about this for a while, and I wanted to get my peers opinions. What would constitute copying of Harry Potter? (I'm talking specifically about harry potter). Magic schools aren't exactly a new concept, and it's definitely not invented my J.K. Rowling. I was thinking about what book phenomenon would be "the next Harry Potter", and whether it would be about magic/schooling. It's not Percy Jackson, the fan base just isn't loyal enough. If someone wants to create "the next Harry Potter", would they have to be similar (not completely, but in some ways)? What would constitute copyright infringement?

**Sampling the original in a OC remix?**

Hello, I am allowed to use snipits of the original song in an OC remix submission? Or is that illegal? I want to chop up the melody and play it with new rhythms and stuff.

Thank you

~LittlebirdRen  Aug 22, 2012  Professional Traditional Artist

If I use book pages in my artwork (as backgrounds or decoupage etc that I work on top of) then make prints from the final art piece, am I violating copyright?
I was wondering what the problems (legally) would be of writing new characters and stories in a preset universe?

What would constitute copying of Harry Potter?

Am I allowed to use snipits of the original song in an OC remix submission? Or is that illegal?

Am I violating copyright?

- LittlebirdRen  Aug 22, 2012 | Professional Traditional Artist
  If I use book pages in my artwork (as backgrounds or decoupage etc that I work on the book pages) is that okay?
Research Questions

- How do remixers forced to engaged with complicated parts of copyright law make decisions about what they can and can’t do?
- What knowledge and attitudes about copyright law do these creators have?
- How does this knowledge affect how they create and share work online? Does it help or hinder their creativity?
Methods

In-depth, semi-structured interviews with 11 online content creators, self-identified as creators of fanworks.
## Methods

In-depth, semi-structured interviews with 11 online content creators, self-identified as creators of fanworks

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<th>Fan Video</th>
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Questions on the themes of:

- Online activities, including type of content creation & sharing, and online community participation
- Scenarios related to copyright and content creation, asking for judgments about how the law applies and how they think it should apply
- Knowledge about U.S. copyright law
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Questions on the themes of:
◦ Online activities, including type of content creation & sharing, and online community participation
◦ Scenarios related to copyright and content creation, asking for judgments about how the law applies and how they think it should apply
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Thematic analysis of data
◦ Focused in on the theme of fair use
Findings: Fair Use

• Fair use as a concept was relevant for the creative work of every participant.

• 9 out of 11 were familiar with the concept by name, and the remaining 2 had an intuition about a copyright exception.

• Based on previous research* we expected to see misunderstandings of the law, but a surprising finding was the similarity of misconceptions.

* Aufderheide & Jaszi, 2011; Diakopoulos et al., 2007; Graveline, 2010; Humphries, 2008; Larssen & Naerland, 2010; Monroy-hernández et al., 2011
Fair Use

1. The **purpose and character** of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;

2. The **nature** of the copyrighted work;

3. The **amount and substantiality** of the portion used in relation to the copyrighted work as a whole; and

4. The effect of the use upon the **potential market** for or value of the copyrighted work

(17 U.S.C. § 107)
Findings: Common Myths

• Perception of noncommerciality as the sole deciding factor of fair use
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- Addition of attribution as an explicit fair use factor
  - **REALITY:** Giving credit to the original creator is not required for fair use, and neither is it an explicit part of the test
Findings: Ethical Judgments

- Distinction between “profiting” from someone else’s work and commerciality
  - Any tangible benefit is frowned upon, but commerciality that doesn’t benefit the new creator is okay.
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• More consideration for the “little guy” with respect to market harm
  • Not all copyright owners are equal.
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  • Any tangible benefit is frowned upon, but commerciality that doesn’t benefit the new creator is okay.

• More consideration for the “little guy” with respect to market harm
  • Not all copyright owners are equal.

• Potential for “market good”
  • Not only is the new work not harming the market for the original, but it’s actually helping.
## Dimensions of Copyright Decision-Making

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<td>What the law says</td>
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## Dimensions of Copyright Decision-Making

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<tr>
<th>Dimension</th>
<th>Participant Scenario</th>
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<tr>
<td>What the law says</td>
<td>One part of a fair use judgment is whether a new use is noncommercial.</td>
</tr>
<tr>
<td>What they think the law says</td>
<td>It is always illegal to make money from fan fiction.</td>
</tr>
<tr>
<td>What they think is ethical</td>
<td>It is not right to profit from someone else’s work.</td>
</tr>
<tr>
<td>Community norm</td>
<td>Fan fiction writers are heavily sanctioned by the community for selling their work.</td>
</tr>
<tr>
<td>What they actually do</td>
<td>There are fan fiction auctions where the proceeds go to charity.</td>
</tr>
</tbody>
</table>
Knowledge about fair use does affect their creative activities.

- Lack of confidence has a chilling effect on online content creation/sharing.
- Participants who were more knowledgeable about fair use seemed empowered.
For vidding [creating fan videos], I [post to] my personal journal just because of the hassles of the copyright violations associated with vidding... because YouTube and sites like that have all those things where they can take down your video. Once YouTube took down one of my vids because of copyright violations. Just because I know that I’m not violating the law doesn’t mean that they know that... I really wish I could share with more people.
Findings: Technology Use

Policies for technologies/communities are affecting creative activity.

- Some participants stopped using certain sites due to disagreeing with the way they deal with legal threats.
- They were more likely to use sites that support established norms or have creator-friendly policies.
“You could get in a lot of trouble. That’s how the law works.”
- YouTube’s “Copyright School”
Implications for Technology Designers

• Legal problems are bad business, but so are chilling effects that might drive users away.

• Legal understandings are part of a model of your user.

• There is an opportunity for supporting established norms and scaffolding legal knowledge.
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Research Supported by
The National Science Foundation HCC
“Copyright and Online Communities: An Empirical Study of Social Norms and User (Mis)Conceptions”