

Fanfiction and Copyright

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Abstract: A brief overview of how the copyright laws interact with fanfiction and whether fanfiction writers are violating copyright laws.

What is Copyright

Copyright is the legal right that grants the creator of an original work the rights to the work's distribution as well as informing who receives compensation for the work's creation (US Copyright Law, 2011). In order to get the protection of a copyright, a work must be an original manifestation of something tangible, whether it be book, script, or CD, because copyright cannot be applied to ideas or concepts. If a work was published in 1978 or later, the source of responsibility has copyright protection over their work for the entirety of their life plus 70 years after being deceased. If the source of responsibility is unknown, the work is protected for 95 years after its publication.

Creators can sue fanfiction writers for copyright infringement if they can prove the fanfiction is based on their original work. The repayment for the infringement can be anything from monetary reparation to destroying or removing the work in question. Luckily, most fanfics and fanfiction writers are protected under the fair use clause written into the copyright act.

Fair Use

The fair use clause states that there is no copyright violation if the copyrighted work is used for a criticism, parody, comment, news report, teaching, or research.

“In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include:

- the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- the nature of the copyrighted work;
- the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and

- the effect of the use upon the potential market for or value of the copyrighted work.”
(*US Copyright Law*, 2011)

In most cases where there is a copyright violation, fair use is assessed on a case-by-case basis.

However, fanfiction generally is considered safe under fair use because the fanfiction writers are not receiving any monetary gain from their fanfic. It is also generally understood that fanfiction as a whole does not lessen the value of the original work. Furthermore, it is usually clear that they are basing their work off another person's ideas.

The non-profit Organization for Transformative Works (OTW), the creators of the fanfiction archive, Archive of Our Own, have been making the case that due to their transformative nature fanfictions, fanvids and fan art should be exempt to the copyright law. Most fanfictions do provide new meaning and messages from the original work. OTW also provides legal assistance to the fanfiction community if there is trouble with issues such as copyright law infringement. (OTW, 2015)

Authors and Fanfiction

As one might expect, there is no consensus between authors about how they feel about fanfiction. Authors range from encouraging fanfiction to taking serious offense to its existence, especially in regards to their own work. There are a variety of reasons why an author might dislike fanfiction being written in regards to their work. Authors, such as Orson Scott Card (1997) have been cited stating that the reason that they do not like fanfiction is because they feel that it threatens their livelihood and will take away their profits. Some authors feel protective over their characters and worlds, arguing that no one else is able to portray them correctly and that they wished fans would not try (Lee, 2013). Other authors, while not against fanfiction as a whole, dislike the sexually explicit content that is created, or the creation of relationships (usually slash pairings) that did not exist in the canon.

There have been cases where authors and/or publishers have stated that they do not want fanfiction written about their work. To accommodate this, several fanfiction archives, such as MediaMiner (2006), contain a list of authors who have requested that no fanfiction about their work be permitted.

Published Fanfiction

There are cases where works have been published based on another. Although arguably once published they are no longer fanfiction, but have become canon. Books and other media based off of television series are notorious for cashing in on trademarks. *Star Trek*, *Charmed* and *Buffy the Vampire Slayer* are a few examples of television that have officially sanctioned published works not cited as canon by the original sources of responsibility.

Books like *Pride and Prejudice and Zombies* by Seth Grahame-Smith which are clearly based off of another person's ideas are allowed to make a profit because the original work is out of copyright and is now in the public domain (Burns, 2009). Some writing can get published under the umbrella of being a parody and therefore falls under the terms of fair use.

Conclusion

For the most part, fanfiction is exempt from the copyright law under the terms of fair use. When writing fanfiction, if worried about the legality there are several simple things to do to prevent problems. The first is do not try to sell any work of fanfiction. As stated above, making a profit from something based on another's idea is violating the terms of fair use. The second is to make sure that you credit the original creator in the fanfic. Also, unless solicited, do not send works of fanfiction to the creator of the canon. Many creators will not look at works of fanfiction because they are worried that they might be accused of stealing another's ideas (Burns, 2009). Another way to prevent copyright infringement problems is to look up whether or not the author has released a statement asking that fanfiction based on their story not be publicly displayed. Finally, most authors will simply ask you to remove your fanfiction due to copyright infringement if they feel you are violating their rights and, unless you say no, legal action will probably not be taken against you.

Works Cited

- Burns, E. & Webber, C. (2009). When Harry met Bella: Fanfiction is all the rage. But is it plagiarism? Or the perfect thing to encourage young writers? *School Library Journal*. 55(8), 26-29.
- Copyright Law of the United States*. §117. Circular 92. 1 (2011). Retrieved from <http://www.copyright.gov/title17/circ92.pdf>
- Lee, Sharon. (2013) The second answer. *Sharon Lee, Writer*. Retrieved from <http://sharonleewriter.com/2013/10/the-second-answer/>
- MediaMiner. (2006). Authors/Publishers who do not allow fan fiction. Retrieved from <http://www.mediaminer.org/blog/index.php?/archives/23-AuthorsPublishers-Who-Do-Not-Allow-Fan-Fiction.html>
- Organization of Transformative Works. (2015). About the OTW. Retrieved from <http://transformativeworks.org/>
- Patta, Y. (1997). Questions for a Research Paper. *Orson Scott Card Network*. Retrieved from <http://www.hatrack.com/research/interviews/yoda-patta.shtml>