



**Selected Papers of Internet Research 16:  
The 16<sup>th</sup> Annual Meeting of the  
Association of Internet Researchers  
Phoenix, AZ, USA / 21-24 October 2015**

## **CONCEPTUALIZING COPY/RIGHTS: INTERNET FANDOM, CULTURAL NORMS, AND THE LAW**

The history of media fandom has been one of both early technological adoption and eager intellectual property reuse. Accordingly, fandom is a productive site at which to examine how contemporary culture imagines the Internet, intellectual property law, and creative practice. Conceptualizing Copy/rights approaches these questions using a productively diverse set of analytic frameworks, case studies, and national contexts. As a whole, the panel provides a deeply interdisciplinary look at how beliefs about the law impact the design and use of technology.

The Conceptualizing Copy/rights papers identify how people's beliefs about technology shape their engagement with the law and, in particular, how the practices of fan communities are shaped by their beliefs about technology and intellectual property. The first and second papers conduct in-depth analysis of specific communities and their norms and practices, while the third and fourth provide a complementary focus on how media industries interface with fans in legal and technological ways. In this way, the panel provides a comprehensive look at the conjuncture between fandom, the Internet, and the law.

Fandoms are one key contemporary arena where everyday Internet users, individuals without legal training, engage with the complexities of copyright. Moreover, fandoms are sites where media industries enact their interpretations of the law and work to shape digital behavior to facilitate their own interest in profit. Crucially, the legal framework of intellectual property, established in the print era, is increasingly maladapted to the realities of media creation and distribution in the Internet era. This mismatch between the law and production technologies then collides with community ethical norms and media industry goals to produce a variety of intriguing social phenomena. Significantly, community and industry priorities often find themselves at odds with both the law and what is technologically possible.

While fandom as a cultural practice long predates networked computing, Internet-based platforms have become vital to fandom in the contemporary era. These technologies are now central to the ways fans and industries negotiate creative practice and the law. All of these papers pose important questions regarding the use of commercialized platforms by current fan communities. In particular, "Selling Unauthorized Digital Remix Works in the U.S. and Japan" and "The Internet Intellectual Property Imaginary" discuss how the intersection of economics and the law plays a key role in the design of technological platforms. These papers outline ways that the affordances selected for

inclusion in these platforms can be influenced more by industry beliefs about the law and ethics than they are by the law itself.

Another key contribution of these papers is their examination of the ways pre-Internet power structures and cultural practices are adapting to the Internet, much as the law itself is having to be reworked and rethought due to technological change. Thus, *Conceptualizing Copy/rights* addresses how offline or preexisting socioeconomic inequality impacts access. *“Imagined Policies”* addresses the longstanding practices of fan communities and the ways their creative practices have adapted to new production technologies and digital networks. *“Fandom Problems”* identifies the different networks of fans that find themselves united under the label of “fandom” and their often competing norms and interests. Providing a helpful sense of scope or historical change, these papers demonstrate the ways older fan norms and practices are more or less suited to shifting technological and legal realities.

Overall, the research presented on this panel examines the ways that fans and media industries make sense of networked technologies and the law, as well as how fans negotiate their relationships with technology, intellectual property, and their communities. *Conceptualizing Copy/rights* will therefore provide important insight into one key aspect of the contemporary internet imaginary.

### **Imagined Policies: Intellectual Property and Social Norms in Fan Communities**

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When it comes to copyright, most people know that it is not okay to download a copyrighted song, but what about incorporating a piece of that song into a video? What if that video also includes clips from a television show? Can you draw pictures of the characters from that show, or write stories about them? Beyond simple piracy, copyright on the Internet gets complicated fast. Supreme Court Justice Story once referred to intellectual property as the “metaphysics of law,” and yet, with the explosion of user-generated content online, everyday Internet users are engaging with the complexity of copyright on a regular basis. A large part of this engagement involves appropriation and remix, everything from music mash-ups to remix videos to photo-manipulation memes. However, though these types of creativity have become widespread in an Internet-enabled world, fan communities have had appropriation at the core of their creative practices since long before the first networked computers. As a result, complex social norms surrounding content re-use have evolved and become highly ingrained in online fan communities.

The question of whether remix is copyright infringement is not a simple one, largely because the exception to copyright law that potentially governs this activity, *fair use*, is decided on a case-by-case basis. Though there are many examples in case law of remixes that judges have ruled to be fair use, the doctrine involves a great deal of uncertainty. Factors that go into determining whether a work is fair use include whether the use is commercial, how transformative it is, how much of the original is used, and

whether it harms the market for the original, among others. However, there is no bright line rule about how to weigh these factors in making a determination. Legal scholars have long argued that fanworks are fair use (Tushnet 1996), and remix creators might make educated guesses based on their understanding of fair use factors and past cases, but there is rarely 100% certainty.

Due to this uncertainty, fair use can be difficult to understand. My past research has uncovered patterns of misconceptions about fair use among fanwork creators. Though many participants had a sense of the exceptions to copyright law that allowed for their types of creative work, many of their intuitions about fair use did not track completely to the law. Instead, ideas about fair use seemed to stem from ethical heuristics and social norms. Other researchers have also shown that intuitions about content re-use might rely on norms and community constructions of law (Marshall and Shipman 2013). Given these findings, my current research focuses on understanding these social norms and how they function to enforce behavior in fan communities online.

Fan communities are often longstanding and tight knit, and their social norms tend to be strong. Unlike online communities that grow up around certain technologies like Wikipedia or Youtube, fandoms have migrated with technology, losing and gaining members but maintaining core values and ideas. For example, one of my interview participants has been writing and sharing fan fiction since the mid 1990s, first on Usenet, then Yahoo Groups, Livejournal, and, more recently, Tumblr. Many fan communities have been in place long before the Internet—sharing fan fiction in zines printed and passed out at conventions, and creating fanvids using VCRs (Jenkins 1992). These communities have also long had a precarious relationship with publishers and copyright. As Anne Jamison (2013) notes in *Fic: Why Fanfiction is Taking Over the World*, “thou shalt not profit from fanworks,” is a founding principle of fandom and a “sacred and inviolate” rule.

In contexts in which the law is gray, strong social norms can fill in the gaps, often proving more effective as enforcement mechanisms than law (Ellickson 1986). This happens often in the case of ever-changing Internet laws and policies. Fan communities are a good example of this phenomenon, exacting sometimes-severe consequences for individuals breaking social norms. One example is fan “hypervigilance” about policing plagiarism, with some communities maintaining lists of known plagiarizers (Busse and Farley 2013).

In my research into the role of copyright in online creative communities, I have combined insights gained from personal interviews with analysis of trace data, including content analysis of hundreds of public conversations about copyright on online forums devoted to remix and fanworks. Drawing from what I learned from studying these online communities, I conducted further interviews with fan creators. I uncovered nuanced social norms in fan communities relating to copyright—some of which track to the law, and some of which don’t. These rules as constructed and interpreted by fan creators serve to regulate behavior around issues such as commercialization, permission, and attribution. Additionally, these norms are sometimes in direct conflict with law or with the policy of a particular online community.

However, I argue that norms play an even more important role than law or policy in regulating fans' behavior with respect to copyright. Based on these findings, I encourage remix communities to formalize norms, particularly in the context of online spaces. For example, the Organization for Transformative Works, a non-profit dedicated to preserving and defending fanworks, formed following online discussions about the policies of existing online spaces for fans (Jamison 2013), and now has a seat at the table in U.S. copyright policymaking (Tushnet 2014). Community constructions of policy can provide roadmaps for creators negotiating the uncertainty of fair use. Additionally, since social norms are often even more important than official policy in copyright decision-making and behavior, online community designers and maintainers should seek an understanding of these norms and when possible incorporate them into design and policy decisions.

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## Fandom Problems: Networks of Practice, Digital Publishing, and the Dilemmas of Fans Going Pro

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In May 2013, Amazon announced Kindle Worlds, an e-publishing service promising to “enable any writer to create fan fiction... and earn royalties” (Amazon Media Room 2013). The announcement revealed that Amazon had secured licensing deals with several major media franchises. Kindle Worlds was a new approach to a much older product: the tie-in novel. In May 2014, Simon & Schuster announced a six-figure deal with popular Wattpad author Anna Todd (Reid 2014). Todd’s novel *After*, a work of One Direction fan fiction with over one billion views, would be gently cleansed of references to One Direction and published as an “original” work of fiction. Parallels between *After* and *Fifty Shades of Grey* (also a popular work of fan fiction republished and sold as original fiction) were clear. Simon & Schuster sought to duplicate the success of *Fifty Shades* and to see if popular fan fiction could be mined and used to generate bestsellers.

Fan reactions to these two events reveal complicated and contradictory attitudes towards the monetization of fan work. After the announcement of Kindle Worlds, fans responded with concern and outright confusion. If these were just novelizations, why bother to call it fan fiction? What was Amazon’s agenda? To many, Kindle Worlds suggested a larger industry effort to redefine fan fiction and take greater control of fan practices. Reaction to *After* was more contradictory. Many One Direction fans were outraged, accusing Todd of doing harm to the members of One Direction, exploiting real lives for personal pleasure and profit. However, the reaction in fan fiction communities was quieter. Kindle Worlds provoked *Daily Dot* articles on the controversy, fierce debates between fans on Tumblr, and cautionary coverage from the Organization for Transformative Works. However, *After* seemed to be met with shrugs and framed as a predictable outcome to the success of *Fifty Shades*.

This paper examines three recent events in publishing: the success of *Fifty Shades of Grey*, the announcement of Kindle Worlds, and the October 2014 release of *After*. The paper traces the different reactions internet-based fan communities had to each event and uses these reactions to explore what it means to be a fan or to participate in fan networks today. Many fans once viewed their non-commercial status as an essential element of fan communities, practices, and work. By refusing to profit, fans argued they were simultaneously protecting themselves from industry lawyers, respecting media producers, maintaining spaces for media critique, and building communities of practice free from market constraints. This older non-profit ethos stands in sharp contrast to the daily realities of contemporary fans. Today’s fans rely heavily on monetized web-spaces like Tumblr and Twitter to connect with each other. Fan interests and web habits are tracked by these sites and sold back to media franchises, used to refine digital outreach and product marketing strategies. On social networking sites, barriers between fan and industry spaces are also falling away. Fans regularly interact with actors and showrunners on social networking sites and are encouraged to participate in fan fiction, art, or vidding contests organized by media producers. These practices blur the line

between social interaction and marketing strategy, as well as graying the division between sanctioned and unsanctioned fan practices.

Within this shifting environment, many contemporary fans defend the legality of fan practices and claim ownership over their creative work. As fans assert their rights to own and profit from their labor, they also directly challenge fan cultures' older non-profit ethos, redefining what it means to be a fan or a member of a fandom today. The variety of fan reactions to *Kindle Worlds*, *Fifty Shades* or *After* offer a window into these clashing notions of fandom.

Significantly, these reactions also indicate how problematic terms like “fandom,” and “fans” can be. Fandoms have traditionally been framed as coherent communities united by a common interest. In reality, the term “fandom” represents something far more complex, artificial, and transitory. Online, fandom has become a user interest, a tag or keyword used to clump individuals together and, in the process, forge connections between other long-standing networks of practice, temporarily connecting, for example, pop-music fans and a variety of digital writing communities under the umbrella of the One Direction fandom.

Using comparative case studies, this paper outlines ways that the idea of fandom is being reshaped by the commercialization of fan work. I connect these shifts to the actual social networking spaces fans use to interact, arguing that the monetization of the web plays a critical role in the increasing commercialization of fan work and networks. Identifying the different stakeholders involved in this process, I argue that this is not simply a fight between industry and audiences for control of fandoms. Instead, this represents a more complicated jostling of interests, as different generations of fans, different communities of practice, and different industry stakeholders find themselves linked by the label of “fandom.” Deconstructing the term fandom, allows us to better understand the different interests at play in fan communities today, the larger implications of fans “going pro,” and challenges scholars to examine their own role in defining what it means to be a fan today.

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## **The Internet Intellectual Property Imaginary: The Case of Fandom**

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United States intellectual property regulation intends to "encourage the progress of science and the useful arts," under the logic that the nation benefits from innovation, which is incentivized through short-term, government-granted monopolies on otherwise uncontrollable ideas. Intellectual property law seeks to serve the public good, yet both old and new media industries exert control that supports their interests in profit at the expense of the people's interest in a rich public domain. Moreover, the legal framework of IP is a print-age model ill-suited for the digital era's wild proliferation of copies and copyability that precludes scarcity, pointing to a contemporary disjuncture between socio-technical systems and their governance. Digital technologies that make all information comparable and sharing increasingly frictionless are inherently at cross purposes to IP protection that seeks to delimit appropriate circulation of information. The balance to date has been tipped toward more laws and greater enforcement—foreclosing forms of IP use that could be seen as creative in the name of preventing "theft" or "piracy."

Fans of television and film have long engaged in the creative reuse of IP, from fan fiction to making videos to producing replicas of costumes, but such practices have

proliferated as digital technologies make existing forms of production far easier, enable new ones, and lower barriers to distribution. Divisions between production and consumption diminish in the Internet era, letting more people be media makers and not just audiences. According to advocates, the capacity to create digital objects is usefully understood as a new freedom of speech or an updated public sphere. This is often framed as democratic and egalitarian by comparison to top-down or hierarchical production. However, the most optimistic accounts neglect how—as was true of earlier forms of speech, creativity, and public participation—access is unevenly distributed, and offline inequalities follow us online. More pessimistic approaches caution against romanticizing fair use, pointing to long histories of perfectly legal appropriation of IP from marginalized populations such as African Americans and indigenous peoples.

Contemporary, digitally-enabled fan activity in the U.S. often exists in a legal gray area: some consider it copyright infringement, others term it fair use, and others still classify it as free advertising. Actual case law is scarce, for legal disputes between industry and fans don't tend to go to trial. However, in some sense the law itself matters less than the way fans and industry understand the law's impact on technology and communicate to each other about and through it. The great innovation of *Code and Other Laws of Cyberspace* was Lessig's (1999) call to look beyond laws or even norms to take seriously the way code impacted what could be done with technology. There has subsequently been a drive to look at both how things that are *legally* possible are being *designed* out of technologies and how things that are *technologically* possible are being rendered *illegal*. However, norms have dropped out of the conversation, though these social-cultural formations are well known to impact how technologies are produced and used. This paper attends to how we imagine technologies, the law, and fandom as a cultural practice and how these beliefs impact actual and potential uses of the Internet by fans. It examines the media industry's use of law and legalistic language to define "appropriate" fan use of the Internet. Through means such as website Terms of Service (a legally binding contract), the media industry forbids things copyright law allows and that are technologically possible. I argue that the law continues to operate as prohibition or repression even as the overall trend in the digital era is toward encouraging participation.

I examine these issues by analyzing a large archive of web interfaces and Terms of Service for websites made by industry for their fans, industry worker statements about fans, and representations of fans for how people conceptualize the intersection of IP and technology in the realm of fandom. Using a method I call "Big Reading," I employ qualitative data analysis software to aggregate hundreds of analyses of specific demonstrations of beliefs about fans, the Internet, and IP to produce a broad discourse analysis. Big Reading shares characteristics of what Franco Moretti has called distant reading. As Moretti (2005, p. 4) notes in his discussion of literature, "A field this large cannot be understood by stitching together spare bits of knowledge about individual cases, because it isn't a sum of individual cases: it's a collective system, that should be grasped as such, as a whole." Distant reading is "grasping as a whole," "where distance is however not an obstacle but a specific form of knowledge; fewer elements, hence a sharper sense of their overall interconnection" and their "shapes, relations, structures" (Moretti, 2005, p. 1). Close reading, by contrast, is a method that originates in the literary tradition and examines particular social artifacts for the beliefs animate them. Big

Reading zooms in and out between these scales of analysis and allows two interventions. First, this project has unusual breadth for qualitative work, reading hundreds of cases alongside one another rather than focusing on a few case studies, permitting a social scientific examination of large-scale processes. Second, the project's depth allows a full accounting for complexity and nuance through humanistic inquiry.

Fans have historically been both tech early adopters and eager IP reusers, making fandom a key site at which to examine the internet IP imaginary. Ultimately this paper is an interdisciplinary attempt to give insight into larger questions about how beliefs about law shape technology and beliefs about technology shape law.

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