



Remixing Information Behaviour, Copyright, and Participatory Culture: A Study of Fan Fiction Writers' Legal Knowledge

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ABSTRACT

The field of library and information science has paid scant attention to fan fiction, perhaps because of practical and/or legal concerns about the genre. Fan fiction is, after all, a form of derivative creativity that uses pre-existing and often copyrighted media as a springboard for new stories. However, it is also a thriving example of digital 'read/write' culture, the shift from a culture in which audiences consume works to one in which they also rewrite, remix, and use cultural texts to create new content. This democratic creativity parallels trends in libraries, archives, and museums, which are responding to read/write culture by engaging the public with makerspaces, crowdsourced content, and other participatory initiatives.

Despite fan fiction's power to engage and inspire consumers-turned-creators, the genre raises legal challenges that should be better understood. Fans may, in some instances, benefit from copyright limitations similar to those which libraries, archives, and other, better-recognized institutions benefit from. However, fans' actual knowledge of and ability to exercise their legal rights is unclear.

This presentation reports on a pilot study of Canadian and US fan fiction writers' legal information behaviour. Background, methods, and preliminary data are addressed.

BACKGROUND

- Participatory cultures defined as those with low barriers to creation/engagement, support for creating and sharing, informal mentorship, sense that one's contributions matter, & social connection between creators (Jenkins et al, 2009).
 - Comparable to "read/write culture" (Lessig, 2004), in which citizens read *and* contribute.
- Comparable to trends in library and information world, e.g., Maker movement (see e.g. Fontichario, 2015), crowdsourcing in GLAM (Oomen, Aroya, 2011).
- Also comparable to amateur fan productivity in fandom or fan communities, which has inspired considerable scholarship (see e.g. Jenkins, 2013).
- Fans may create 2nd generation works inspired by a 1st generation source text, e.g., fan fiction – stories based on identifiable segments of popular culture (Tushnet, 1997).
- Considerable literature on whether fan fiction is legal under US fair use law (e.g., Christian, 2013; McCardle, 2003; Nolan, 2006; Schwabach, 2011; Tushnet, 1997).
- Some consideration of fan fiction's legality under other national laws (e.g. Katz, 2014; Lim, 2015; Peaslee, 2014; Reynolds, 2010).
- Less work on fans' own legal knowledge and information behaviour, consistent with little work on fans in LIS generally (Price, Robinson, 2016; Price, 2017).
- Fiesler et al found that fan creators share law-related intuitions, misconceptions, norms & turn to each other (Fiesler, Bruckman, 2014; Fiesler et al, 2014; Fiesler et al, 2015).
- Freund (2014) investigated fan vidders' copyright literacy and experiences, finding baseline knowledge of fair use, & a variety of coping strategies.
- Thomson (2013) interviewed fan artists & found, consistent with other creative communities, that fans used heuristics, defended creativity with reference to affinity for source text, legal concepts e.g. fair use, attribution. Fan artists also expressed concerns about IP owner attempts to restrict their work.

RESEARCH QUESTIONS

- How do fan fiction writers benefit from fan fiction?
- To what degree are fan fiction writers aware of objective intellectual property (IP) law concepts which could either discourage or defend fan fiction? What factors (age, language, education, country/province) affect fans' legal awareness?
- How do fan fiction writers perceive relevant IP law? What factors (age, language, education, country/province) affect fans' perceptions?
- Do fan fiction writers seek out legal information? If so, how?
- What are fan fiction writers' needs with regard to laws that affect fan fiction?

PILOT STUDY METHODS

- Recruited 3 pilot participants in October 2017 through Facebook, Tumblr.
- Two Canadian participants, one American.
- Conducted semi-structured interviews.
- Interview guide developed based on research questions, literature review, Fiesler, Bruckman's interview guide, and Organization for Transformative Works survey.
- Participant feedback, data analysis allowed me to refine interview guide.

RESULTS

Fan Fiction: Benefits and Motivations

- J, S, and H all experienced significant social benefit, made valuable friendships through fandom and fan fiction.
- J, S, and H also developed skills, primarily writing skills.
- Feedback on writing both a benefit of participation in fan fiction and a motivation for sharing it.
- J, S also cited desire to expand canon as a desire for writing fan fiction, while H (who studies TV writing) focused more on improving writing skills.
- Other motivations cited include fun, exploring the source text or its characters, writing down "daydreams" about living in the fictional canon world.

Legal Information Behaviour

- S, J expressed low legal knowledge and confidence.
- S's information behavior included observing peers, "parroting" fan consensus to answer legal questions, watching a relevant documentary, attempting some research, and asking other, non-fans.
 - Found primary legal sources inaccessible to laypeople.
- J observed peers, asked a non-fan family member about an issue, and demonstrated information avoidance.
- H self-reported higher copyright knowledge, extensive legal information behavior:
 - Keeping a folder of research, notes from seminars and webinars;
 - Discussing legal issues with lawyers, other writers who had contacts with lawyers;
 - Research in law libraries and online, including using her own information literacy-type principles to "vet" legal resources.

"If you want intellectual property knowledge, you've consulted an intellectual property or a tax attorney, that's pretty legitimate. If you find the information in a law library, also pretty legitimate. A Web site that has peer reviewed information and articles written by attorneys... Again, pretty legitimate. And also case law in some select cases couldn't be more legitimate." ~H

"[...] It depends on whether you consider [...] intellectual property to be something that only one person or organization can own; they get final say on everything; everyone can do nothing but consume. The role of other people is to consume; they cannot think about it; they cannot talk about it; they cannot write about it or make art about it. [...] To me that's saying that other people can do nothing but consume it almost mindlessly? I think there's something really wonderful and creative [...] about being able to take someone else's thing and make it different..." ~S

RESULTS, CONTINUED

Overall Perceptions of Law

- Sense of safety for text-based fan fiction, less so for other fan works.
- S, J expressed engagement with ethical – not strictly legal – issues and reasoning.
 - S concerned about potential abuse of copyright (and may have desire to learn more).
 - J concerned with respecting source text creator, competing with other sellers of fan merchandise.
- Varied levels of legal knowledge: S, H familiar with fair use, but neither Canadian participant (S or J) familiar with Canadian fair dealing regime.
- H had more formal legal knowledge, opportunities to gain such knowledge, but also addressed ethical issues in defending fan fiction.
- J, S indicated some inaccurate perceptions of copyright, adherence to fan ethical norms which track law imperfectly.
- Do commercial/professional interests, attitudes drive legal information behavior?

"My instinct is the fact that people are not putting disclaimers on their fan fics anymore leads me to believe that this has maybe been settled once and for all and that [...] maybe it's not *legal* but it's *okay*..." ~S

"I don't think the copyright law really affects fanfiction writers. They write no matter what." ~J

DISCUSSION

- Social, writing skills benefits validates prior research on fans (see e.g. Black, 2008; Jenkins, 2013).
- Copyright practices also consistent with previous research:
 - Use of peer spaces (Fiesler, Bruckman, 2014; Fiesler et al, 2014; Fiesler et al, 2015).
 - Emphasis on fan norms, ethics, e.g., non-commerciality, market good and lack of market harm to source text (Fiesler, Bruckman, 2014; Fiesler et al, 2014; Fiesler et al, 2015; Freund, 2014).
 - Varied legal knowledge, with some exposure to legal issues from work experience (Fiesler, Bruckman, 2014; Fiesler et al, 2014; Fiesler et al, 2015; Freund, 2014).
 - Canadian fair dealing versus US fair use made it hard to determine whether pilot participants had baseline familiarity with copyright defenses and exceptions.
 - Misinformation about copyright circulates in fan spaces (Fiesler, Bruckman, 2014; Fiesler et al, 2014; Fiesler et al, 2015).
- Pilot participants engaged in documented and new information behaviour, e.g. asking non-fans, legal research using academic resources and law libraries.

CONCLUSIONS

- Too early, small scale to answer research questions.
- Not aiming for generalizability.
- Pilot highlighted several challenges and avenues for reflection:
 - Participants demographically similar: recruit more diverse participants.
 - Are demographic characteristics in research questions relevant, or are attitudes to law, professional motivations more significant to information behavior?
- Varied fan activities; fan fiction is not necessarily a silo.
- Varied information behavior, including, in H's case, navigating law libraries.
 - Relevance to library, education fields – is there a case for incorporating fan creativity *and* greater resources on fair dealing/fair use?