Angela Anderson

Matt Thompson

PRAD 575

Group Ethics Case Study

Copyright: Prelude to Axanar

U.S. Copyright law can be traced back to 17th century Great Britain when the Licensing Act of 1662 was created. However it was not until the Statue of Anne in 1710 that a fixed term was established for ownership by the author. These acts and statutes are the predecessors for the fourteen year fixed term an author has control over their work established in the Copyright Act passed by the U.S. Congress. This has yielded much debate regarding who’s protection should take priority, the author or those inspired by an original work? Copyright is defined as the right to copy. Copyright law determines who is in control of the work and gives legal protection and exclusive rights to the owner to copy, create derivative works, perform, display, and distribute it. There are things that can be copyrighted and some that can not. Copyrighted works have to be positioned in a tangible medium. For example, a live performance can not be copyrighted but a written or recorded display of choreography can. Copyright holders, although they are protected by rights within the law, do not possess absolute control over works to encourage a balance of free expression rights of those who would like to use the works, regardless of the author’s emotions. Fair use allows copyrighted material to be used only after consideration of use, nature of work, amount of work used, and effect on the market are decided. All four factors are weighted in the determination of fair use.
 Axanar Productions found themselves defending their fan film *Prelude to Axanar* from copyright infringement against CBS Studios and Paramount Pictures in 2015 claiming a fair use defense. Alec Peters wrote *Axanar* as a short film inspired by the Star Trek franchise. The documentary-style film was 21-minutes long portraying the battle between the Federation and the Klingons. Peters had an original crowdfunding goal of $10,000, however after fan interests sparked an abundant $101,000 was raised and the film was anticipated to be released at the San Diego Comic-Con in July 2014. To produce this work Peters used only funds raised from Kickstarter and intended to share the film for free because Paramount Studios prohibits sales of tickets and merchandise for fan works. In 2015, the studios filed a lawsuit claiming infringement based on elements of characters, races, and species enhanced by distinct costuming. Axanar rebuts these claims, stating their website gives a disclaimer for being a noncommercial, independent fan film that uses intellectual property of CBS. Fans were outraged at the legal action taken by the studios, citing highly-commercialized films that derived from fan fiction like Twilight and Fifty Shades of Grey. Others claimed this is a way to deter fans from making professional-quality fan works. In 2017 both parties agreed on a settlement, allowing Axanar to produce films but under strict guidelines. A film time limit was imposed, along with production budget restrictions, casting restrictions, prohibited commercial merchandising and naming restrictions. Going forward “Star Trek'' can not be incorporated in the film title, but “A STAR TREK FAN PRODUCTION” must be included in the subtitle. Currently the film has almost 5 million views on YouTube.

 The key stakeholders for the movie Axanar are; Kickstarter, CBS Studios, Paramount Pictures, Youtube, Axanar Productions and their employees, along with Star Trek fans and those who donated money on the Kickstarter site to fund the film. For those unfamiliar with Kickstarter, it is a crowdfunding platform based in New York that has many projects anyone can donate money to in order to get a production underway. Alec Peter’s who is the writer for the film said over 10,000 Star Trek fans donated to the making of this film (Geuss, 2016). CBS Studios and Paramount Pictures are stakeholders in this case for they own the rights to the Star Trek film and television franchise. CBS and Paramount took Alec Peters and Axanar Productions to court to halt further production of any fan film that violated copyright law. CBS and Paramount set firm guidelines, upon settlement, for future fan film to be made with a specific budget cap and ensure there is no production of merchandise or any other commercialized elements. Youtube was the platform that Axanar Productions posted their prelude to an unfinished fan film of Axanar that generated 3.4 million views. It was the prelude that generated so many views that caught the attention of CBS and Paramount to file the lawsuit. Axanar Productions and their employees were subject to unwanted attention from the lawsuit. Their hard work was put into question by the court system after they took provisions to prevent this very issue. And finally, our last stakeholder in this case would be the thousands of fans worldwide who helped the funding for this film to be made. While Axanar Productions was dealing with the court battle, many fans were concerned about the money they had donated. Many were worried the film was not going to be made so they were asking for refunds on their donations. Many comments were being made on the Kickstarter page that Alec Peters was trying to cover up. Peters threatened to not give back donations to those who would post negatively on the site and said, “Let me be clear, I tried to be nice, I tried to accomodate people who seem to have nothing better to spew lies and hate and bullshit. But they proved incapable of acting like adults. Eric Berry, Armsman and Glen Hine, like Sandy Greenberg before them, have proven that I cannot give refunds. We tried and you ruined it. Case closed” (Pedraza, 2019).

 In this particular case, referencing the PRSA Code of ethics, there were two codes of ethics that relate to this case. One code of ethics that stood between the studios of Paramount Pictures, CBS Studios and Alec Peter’s and Axanar Productions was competition. Stated in the PRSA Code of Ethics under competition it looks to promote healthy and fair competition among professionals and preserves an ethical climate while fostering a robust business environment (*PRSA Code of Ethics*, 2021). Now, it is slightly different for this case. Alec Peter’s and the fan film Axanar was not meant to delegitimize CBS and Paramount as the authors of the Star Trek franchise, however by mimicking the likeness, as they had, could be deemed as unfair competition. The sole purpose of making this film was to create an extension of the franchise for the fans that donated to the overall production. CBS and Paramount initially took this fan film as a threat to the overall image of the Star Trek franchise which is why they made sure under copyright law that they followed certain guidelines in the production of the film. Another principle in the PRSA Code of Ethics we found was conflicts of interest. Written under the guidelines of this principle it states, avoid actions and circumstances that may appear to compromise good business judgment or create a conflict between personal and professional interests (*PRSA Code of Ethics*, 2021). In this case we have a concerned group of studios making sure the Star Trek franchise still holds it’s reputation as one of the leading film and television franchise’s in the world. In allowing Alec Peters to bring his extension on this universe to life, he had to respectfully follow what the studio’s asked him to do. The studio’s wanted to protect the image of its original content made by the original authors to ensure it did not lose any credibility.

Another ethical value that conflicts with cases of fan fiction based upon copyrighted works are plagiarism, the effect it will have on the market and differences in intended use or messaging. Plagiarism is known as the act of taking someone’s work or ideas and passing them off as your own. A work deemed non-transformative could be considered plagiarism. The Ninth circuit court appealed a judgment by a district court in the case of ComicMix LLC v. Dr. Seuss Enterprise. ComicMix LLC collaborated with an author of a Star Trek episode to create an illustrated book to inspire recent graduates to go out into the world, boldly! The book entitled *Oh, The Places You’ll Boldy Go!*, featuring elements of well-known Dr. Seuss books and Star Trek characters, was ultimately cited for being non transformative, unfair competition in the market and using a substantial amount of the copyrighted work. Boldly used over 60% of elements from the original works ruling against ComicMix’s fair use argument. Furthermore Dr. Seuss is an established brand in the market, since ComicMix planned to make a profit from their book and release during graduation season it is reasonable for the author to be fearful of affected revenue. The court found that this unauthorized work would target their demographic and harm the author’s future profits for imitative works (Finnegan, 2021). Seuss Enterprise had found themselves in a fair use battle just a few years prior to this appeal. Penguin Books USA, Inc. created a book entitled *The Cat NOT in the Hat*, intended to be a parody, presented the elements of the O.J. Simpson trial in the rhyming style of a Dr. Seuss book. The Ninth District Court ruled against Penguin Book’s fair use claim, citing the book relied too heavily on The Cat in the Hat image itself. By using this copyrighted image as the basis for the imagery of their work, Penguin Books violated conditions of fair use (Weintraub, 2019). By using a copyrighted image and associating it with a characteristic that differs from the author’s original idea could have an adverse effect on the company’s core demographic. In this case The Cat in the Hat, widely associated with children and folktales, will possibly be associated with a murder trial.

Prelude to Axanar did not cross any ethical lines while producing this fan film. Axanar Production was proactive, upfront, and ethical when they placed a statement on their website. The statement explained that the project was an independent film using the intellectual property of CBS, with no intention to commercialize the film or any products associated with the film. Axanar used costuming and distinct species’ names to identify characters associated with the original work to produce the film, but because it is transformative, original in context, and not used for profit the work should not be considered unethical.

When creating a work inspired by another, one must be very mindful to prevent themselves from committing copyright infringement. However based on the number of views the prelude to this fan film had on Youtube, the money it raised, and the overall excitement and buzz across the Star Trek fan universe, CBS Studios and Paramount Pictures missed an opportunity to create another stream of revenue.. They also ultimately upset a lot of their fan base when they took Alec Peters and Axanar Productions to court. CBS and Paramount enforced a budget cap on production, making sure that any fan film going forward could not exceed $50,000. The guidelines laid in place by the major studio’s involved were fair, except for the budget. The budget limitation ensures a fan film will not have the production quality of a major studio.

The best way to protect both artists and fan film creators would be for them to work together. Companies have to take inventory of their fan base to see where they should take the steps to bridging the gap. As stated in the reading, fans were upset with CBS and Paramount for taking legal action. Many successful film franchises have stemmed from fanfiction films, for example Fifty Shades and Wicked. By allowing creatives the freedom to express themselves from a place of inspiration and have the support of the big studios, it could generate fresh content for fans and increase revenues for the artist and company. From a business perspective, CBS Studios and Paramount Pictures should have reached out to Alec Peters in regards to a collaboration on making a great and profitable fan film. Moreover, the studios could have simply ignored Axanar and allowed them to produce their works. According to the reading, Axanar Production was stunned at the filing of this lawsuit due to previous fan films inspired by Star Trek not being subject to legal action.

Copyright law can be very tricky, especially when using a fair use argument. There are four specific factors in determining the validity of a fair use defense. Axanar Productions fan film totes the line of these factors, specifically, the amount of the portion of the original work was used. Although Axanar developed an original script, many of the elements that are tethered to Tekkie language and culture were used and not transformed into something new. Luckily both parties were able to reach a compromise and the film was able to be seen by fans through YouTube.

References

Finnegan. (February 25, 2021 Thursday). Dr. Seuss/Star Trek Mashup Boldly Goes to Ninth Circuit but Loses Fair Use's Balancing Act. *Newstex Blogs National Law Review.* <https://advance-lexis-com.ezproxy.depaul.edu/api/document?collection=news&id=urn:contentItem:6237-GS91-JCMN-Y23Y-00000-00&context=1516831>.

Geuss, M. (2016, May 10). *Judge: Star Trek fanfic creators must face CBS, Paramount copyright lawsuit*. Ars Technica. <https://arstechnica.com/tech-policy/2016/05/judge-star-trek-fanfic-creators-must-face-cbs-paramount-copyright-lawsuit/>

Pedraza, Carlos (2019, April 24). *Kickstarter Deletes Axanar Spam, Peters Suspends Refunds*. AxaMonitor.

<http://axamonitor.com/doku.php?id=no_refunds>

*PRSA Code of Ethics*. (2021). Www. <https://www.prsa.org/about/prsa-code-of-ethics>

Weintraub Tobin. (March 22, 2019 Friday). Dr. Seuss And Fair Use, What 20+ Years Will Do!. *JD Supra.* https://advance-lexis-com.ezproxy.depaul.edu/api/document?collection=news&id=urn:contentItem:5VPJ-TV21-F03R-N4N0-00000-00&context=1516831.