

## **Playing outside the box: Transformative works and computer games as participatory culture**

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### **Abstract:**

The main purpose of this study is to examine the creative fan community as a paradigm of participatory culture, from a computer games perspective. A review of relevant literature is used to examine transformative works and the related subculture in its many diverse forms. The produced discussion seeks to respond to a number of questions, such as: What exactly constitutes transformative work, what is the legal status of such work, and how can it be improved? To what extent do transformative works constitute a part of the play experience and enjoyment of games? Does participation in associated creative activities influence, shape or redefine the aforementioned experience? Can transformative works be appreciated as valuable artistic pieces on their own merits, outside the communities in which they are produced? Does the existence of the transformative work benefit the wider gaming culture from an artistic, financial or other point of view?

**Keywords:** Art, fan, fandom, transformative, derivative, computer games, culture, remix.

### **Introduction**

Games – like photography, like writing, like any medium – shouldn't be shoehorned into one of two kinds of uses, serious or superficial, highbrow or lowbrow, useful or useless. Neither entertainment nor seriousness nor the two together should be a satisfactory account for what videogames are capable of. (Bogost 2011)

The relationship between computer games and art is a topic that has been studied and discussed in many relevant publications. This research is mainly concerned with the artworks produced from computer games - derivative art coming from established, widely acknowledged creative practices (graphic design, sound art, literature, costumery,

performance, film, etc.) that are inspired, informed or otherwise built on the source material of existing computer games and exist in a shape, way or form that would be impossible without the existence of aforementioned source material. The presence of such creative works is well-known, but not equally well-understood, studied or documented (Newman 2008). Fan works - much like computer games themselves - are frequently interpreted as a low form of culture and a niche hobby, associated with “geeks”, “nerds” and other derogatory labels which imply an unhealthy obsession with the subject matter. Despite the fact that art historically draws inspiration from all kinds of sources, art derived from computer games and other popular media is often seen as lazy or uncreative and shunned by the wider art community and art education. Creators of fan art are stereotyped as lacking in the technical skill and devotion required to produce “proper”, original work and their labours and identities as fan artists are rarely respected outside the fan communities in which they operate – despite many of them being, in reality, highly motivated and skillful craftspeople (Manifold 2009; Winship 1994).

The impact of such works on western culture and even computer game culture is typically not considered significant enough for them to be acknowledged by the general public or the creators and publishers of the original media they are derived from. Legally, fan works seem to exist in a grey zone, where their production and distribution is happening without the consent of the company holding the rights to the source material, but is tolerated. Unlike other transformative forms of art (such as comedy), computer game fan art is generally not protected under fair use laws and is therefore considered illegal (Schwabach 2011; Stroude 2010). Despite this, it is rarely perceived as having enough influence to be threatening to the interests of the developers and publishers of the original works -fan communities typically operate under a gift economy (De Kosnik 2009; Hellekson 2009), where derivative work cannot be sold for profit or displayed in public without giving due credit to the source material. Exceptions do exist, however, with fan conventions where fan artwork is sold and bought in the open, being a particularly notorious example. Certain high-profile cases of fan art being used for profit or other personal gain have attracted enough attention to receive cease and desist orders and further threats of legal action (BMB Finishes 2009).

Considering the imbalance of power between the individuals producing fan work and the companies whose financial interests are protected by copyright law, such cases almost universally end in a removal of the offending artwork from the distribution networks, with little consideration for said artwork’s potential cultural or transformative value. Again, exceptions do exist, with certain game companies embracing the phenomenon to at least some extent and proceeding to officially endorse particular artists or grant permission for certain pieces of fan art to be produced and distributed (Fletcher 2012; Hayes 2008).

## **Relevance**

With copyright laws constantly under violation and games producers under growing financial pressure, the rights and cultural standing of the fan communities could be easily

dismissed as a trivial or secondary issue. Similarly, potential discussion on the legitimization, acknowledgement and appreciation of derivative subculture - when the source material's cultural legitimacy is still up for debate and art itself is lacking a concrete definition- may seem like bad prioritization. The fan community, however, and the colourful derivative subculture it has created around games, could be an essential component in the on-going discussion on the nature and limits of interactive media; games are made to be experienced on a personal level. What the fan communities are essentially doing is taking that element of interaction several steps further, playing with the videogames, outside the boundaries of the code, the prescribed rules of play and the author's control. By redefining their interaction with the medium, it could be argued that they also – unintentionally – redefine what the medium can be and what it is capable of (Salen and Zimmerman 2004).

By creating a direct association between games and several other, established, 'high' forms of art, fan artists are not only unintentionally furthering the discussion on the artistic standing of interactive media, but also illustrating an existing desire amongst consumers to have a more active role in their relationship with games and games production. As game development becomes more transparent, the need to establish and maintain a healthy dialogue between game creators and their audience becomes more and more relevant.

At the moment, the conditions for such a dialogue to fully develop could be considered less than ideal. In his books *The Future of Ideas* and *Remix*, Lawrence Lessig (2001; 2008) describes modern media culture as consumptive or Read Only - a term that can be extended and applied to gaming culture as well. Read Only is a culture of permission, where media are produced and controlled by a small group or groups and consumed by the masses. In the particular case of the game medium, players are buying a permission to consume the final product, but have limited rights beyond the specific limitations the individual publisher has placed. Consumer feedback that is considered irrelevant to sales is often devalued or ignored.

Copyright and piracy are burning issues for producers of original work and as a result, more and more security measures are established in an uphill struggle to maintain control over product distribution and player behaviour. Consumers are known to react with agitation and disdain, as they see former privileges being withdrawn and respond with hacking, illegal file sharing, complaints and boycotts – a situation that can be mostly observed in the AAA part of the industry. This climate of mutual dissatisfaction and antagonistic behaviour between creators and consumers could be related to both the financial struggles and the resulting low-risk, low-creativity investments AAA is known for.

At the same time, an opposite movement in regards to business practices can be observed in a different part of the industry - mostly indie and small/medium business – with the emergence of crowdsourcing and initiatives like Steam Greenlight, that treat the development process like a democracy. Community feedback is taken into account and its members are allowed participation in creative, financial and marketing decisions, allowing for a theoretically more equal relationship.

These new approaches, albeit empowering, are still unproven. Still, any derived success could potentially be used as an argument that computer games can be defined not only as consumptive culture, but as participatory, Remix culture – the ideological opposite to Read Only – permits and encourages derivative works, which do not replace original work but co-exist with it and compliment it artistically. It defines the public as an active component in the creative process and the production of cultural texts, rather than passive buyers and consumers. In an ideal form, it would allow for a plurality of creative voices and skills, satisfying needs for individual contentment and providing fertile ground for innovation to grow (Lessig 2008).

### **Legal Status of Fan Works**

Due to a variety of reasons, such as the availability of legal information, the location of several Western game developers and publishers and the fact that the majority of fan work produced outside Japan comes from the US, the following research was conducted mainly in reference to US law.

### **Copyright Law Overview**

In simple terms, in order for a cultural artefact to be copyrighted, it needs to exist in a fixed, tangible form of expression. As soon as a piece of art is created, the law automatically assigns ownership to the artist/author, who is then guaranteed certain exclusive rights. By the above legal definition, a piece of music (fixed in written or recorded form) can be copyrighted, but an improvised performance of that music cannot (Estes 2009). Before 1976, copyright was registered only at the request of the author, who had to mark the work accordingly, send a notice explicitly claiming ownership and control over it, deposit it with the Library of Congress and renew the copyright after the initial term. Because of this, the vast majority of published work at the time was not copyrighted. The opt-in system was cumbersome and complicated, but it was self-regulating. Authors who wanted the protection of the law could claim it, for as long as they felt was appropriate. The current opt-out system automatically extends to all creative work upon its creation, for the maximum available term which in certain cases can be over 100 years.

From the above, it is easy to understand the logic behind copyright law. Regulating copies of creative work made sense at a time where the analogue artefacts of Read Only culture had specific limitations, which made the content industry possible. Imitation was imperfect and manipulation extremely difficult. The law supported this business model; however, at that point the legal regulation was secondary to the reality of the fact that copyright was largely maintained through the products' physical limits alone.

The constraints of analogue technology do not apply to digital technology. Through existing and freely available hardware and software, original material can be reproduced and manipulated at will - a behaviour which comes naturally to the digital native generation and is therefore, extremely hard to control and regulate. Furthermore, modern technology

makes a copy practically every time a digital product is used – e.g. when legally purchased content is transferred to an iPod, when a game is installed or when a program makes temporary files. Regulating “copies” in this type of environment, where the law is triggered by simple everyday use, can be seen as both impossible and unreasonable. A law which penetrates this deep and is triggered so often is, arguably, a law which regulates too far (Lessig 2008).

### **Application to Fan Work**

Fictional work that is understood as “creative, imaginative, and original” generally receives a lot more protection compared to other forms, for example historical fiction. As copyright laws have expanded over time, the law can be triggered by most expressions of fan creativity, although typically it is only enforced at the request of the copyright holder. As a large portion of derivative art is character-based, the majority of the legal concerns in regards to fan work are related to character ownership. Creators are normally assumed to have a copyright over their original characters, separately from the rest of the story. This doesn’t cover stock and public domain characters, as a character needs to be well-defined and unique in their own right to be copyrightable. The legal boundaries, though, for what constitutes an original character are loose and up to interpretation (Tushnet 2007).

Some original content creators are comfortable with fan works, often openly approving of it and acknowledging it as a labour of love. Fantasy authors, for example, have been known in the past to give feedback to fan fiction, collect and publish it in fanzines or incorporate selected pieces into an extended universe. Others reject fan works completely, seeing them as a potential form of competition and a threat to their ownership, and will seek to pursue the matter legally. Since Remix culture is typically presumed to be illegal, any piece of fan work brought into attention will need to be examined as a potential case of Fair Use.

### **The Fair Use Doctrine**

As mentioned before, a piece of work based on pre-existing work, such as an adaptation, a sequel or a translation (or in the case of fan art, a tribute or reimagining) is labeled as “derivative”. One of the rights copyright grants authors is control over derivative works; however, being labelled under Fair Use would place a piece of work outside that control. Whether the author of a derivative work can claim protection under Fair Use depends on whether said work is perceived as a copyright infringement. In the case Fair Use applies, the fan author is entitled to their own contributed material, minus the original content. In the case it doesn’t, they are entitled to nothing at all. According to 17 USC § 107, the use of a copyrighted work ‘for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright.’ The four criteria which define Fair Use are (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 (Tushnet 1996).

As is evident by the above, the criteria are very much subject to individual interpretation. Under the present doctrine, each piece potentially protected as Fair Use needs to be examined individually. Work created for personal, non-commercial purposes is much more likely to be classified under Fair Use. In the case of non-commercial fan art and fan fiction, because they have been publicly shared and tolerated for so long, it would be safe to assume that a claim of Fair Use should offer sufficient protection, although there's no guarantee.

When derivative work is sold commercially, it can still be protected under Fair Use if it's deemed sufficiently transformative, e.g. in the case of parody or critique, both well-accepted forms of transformation. Similarly, the smaller amount of copyrighted material a derivative piece is using, the more likely it is to be protected. Transformation in fan works can take many forms, including several which are not easy to identify by the above definitions and understanding. Fan works often transform the original by adapting a new style or point of view or expanding on the narrative. This, however, might prove hard to recognize for those unfamiliar with fan art and its many creative dimensions.

Market harm and potential market harm are big components in the legal argument and quite often, the argument for Fair Use protection will hinge upon the fan artist's ability to prove they are not financially damaging the copyright holder. If fan work is found to be competing with the source material, e.g. if a fan artist is selling prints of a copyrighted character, when the original publisher is also doing the same or planning to do the same in the future, financial harm can be claimed. Derivative work, in that case, could be defended if it was deemed transformative - and therefore, different - enough that it doesn't compete with the original, e.g. if the aforementioned hypothetical fan art prints were made in a unique creative style. Since, legally, parody is more or less synonymous with comment, deconstruction and critique, a piece of derivative work which criticizes in a way that deters other people from buying the original doesn't count as market harm.

In summary, taking into account the lack of definition with Fair Use law and its reliance on discretionary interpretation, the strongest arguments for protection would be made for derivative work which is (1) clearly transformative, (2) borrows as little from the source material as possible, and (3) is either non-commercial or doesn't compete with the original (Bartow 2010; Estes 2009; Heymann 2008; Judge 2009; Katyal 2006; Noda 2006; Noda 2010; Tushnet 2007a; 2007b; 2007c; 2007d; Van Steenhuyse 2011)

### **Remix Culture in Practice**

In his book *The Cult of the Amateur*, Andrew Keen (2008: 64) argues that the democratization of media is 'undermining truth, souring civic discourse, and belittling expertise, experience and talent.' Well in line with his argument, it is evident - from its inner

structure and the wording of the legal framework which protects it - that Read Only culture holds skill, professionalism and proficiency at the highest esteem. By eschewing amateur creativity and performance, it has created a higher standard for consumable art, at the cost of widespread artistic literacy and individual expression (Lessig 2008).

Within this sort of mindset, it might be difficult to visualize a change in legal and social norms which would allow Lessig's vision for an open, sharing culture to exist outside the untamed niches of the internet – a culture which would respect, protect and celebrate the amateur as much as the professional. Outside the US, however, Japan can already demonstrate a living example of Remix culture that has coexisted with the local commercial culture for decades (Noda 2008).

Doujinshi is the Japanese umbrella term for self-published works, typically used in reference to amateur manga, magazines and novels, although it can also include games, art books, animation and various items of erotica. In Japan, the deep cultural penetration of videogames and manga, as well as the wide acceptance of amateur creativity, have provided fertile ground for the most devoted fans to express their love for their favourite fictional universes - creating, in the process, a huge market for non-canonical material and derivative works.

The symbiotic relationship between the popular culture industries (i.e. manga, anime, videogames) and the wide fan community is comprised and maintained by the several dedicated transmedia groups known as doujinshi circles, which produce and distribute the creative content. Unlike other forms of derivative work, doujinshi is almost always sold commercially, which would make it a clear infringement of copyright and a potentially, a source of market harm. However, it is tolerated to such a degree that copyright holders not only accept it, but on occasion, endorse it and vendors sell it freely.

Comiket (i.e. Comic Market), a grassroots effort solely devoted to the trading of self-published goods, was held for the first time in Tokyo in 1975, with less than 700 attendees and 32 doujinshi circles. By 2012 these numbers had soared to an estimated 560,000 attendees and 30,005 circles -an enormous testament to the growth and spread of doujinshi as a practice and a subculture (Comiket 2012).

### **Why is Doujinshi Tolerated?**

Permissiveness and tolerance, in this case, are understood to be in the best financial and creative interest of the copyright holders. The doujinshi subculture can perpetuate interest in a franchise for years, sometimes decades after publication, through various community exchanges and activities. Fan response and sustained interest can, and has, ensured the continuation of anime and games series in the past. Moreover, as Jenkins and Kelley (2013) note, 'more and more literacy experts are recognizing that enacting, reciting, and appropriating elements from pre-existing stories is a valuable and organic part of the process by which children develop cultural literacy.' The amateur art scene in Japan is the safe and comfortable environment in which new talent is nurtured.

Unlike American media, which tend to favour consumption and encourage children to identify with a set of pre-made characters, children in Japan are encouraged to explore, collect and exchange media content to suit their personalities. From that perspective, making fan art is an acceptable way for one to learn to draw, before they graduate into doujinshi and eventually into making their own original stories (Mehra 2002). Some of the most successful professional manga artists started in fan art -something which is a mere fact of their careers, rather than a source of shame. Professional artists will often remain active in the amateur scene and continue to self-publish items for a variety of reasons, e.g. projects which don't meet the content regulation guidelines of publishers or collector's items, intended only for limited print.

The fact that doujinshi – like all forms of fan art – often contains explicit erotic material is a common point of argument, contributing to a popular view which paints it as an almost exclusively pornographic type of pulp art, with little actual merit beyond cheap stimulation. Indeed, in 1999 Nintendo, in a rare act of copyright exercise against doujinshi culture, filed a complaint which led to the arrest of an amateur artist publishing erotic manga set in the Pokémon universe (Mehra 2002). The complaint itself mainly revolved around the claim that such items could damage the image of the franchise. Still, several years later, such works are still produced and are easily accessible through the various - online and offline - distribution channels.

The large and constantly growing demand for erotic doujinshi, as well as the fact that a large proportion of the creators and consumers of these works are women, could indicate a possible gap in the market which mainstream, male-oriented pornography and the available, sexually sanitized, game and anime franchises, do not fulfil. As we will be examining in a later section, this perceived disparity between commercial products and community demand is often at the heart of fan creativity.

### **The Value of Fan Work**

Besides the issue of copyright, the two most common arguments against derivative works revolve around the fact that (1) the majority of said works are thought to be of poor quality, and (2) even the best examples of derivative work are considered unimaginative by comparison to original work and will always fall short in terms of creativity. These are legitimate concerns, which largely ignore the context surrounding derivative works, their subculture and their production; the final product, to a large extent, doesn't matter. Amateur work will never be held to the same standard as professional work and to expect so would be in many ways unreasonable. What is important is that it provides people with the tools to learn and practice their creativity, and encourages a culture of participation, rather than passive consumption.

OverClocked ReMix (Lloyd 2013) is a non-profit organization and web community, committed to the preservation and celebration of videogame music. Its website is currently hosting thousands of creative rearrangements and music tributes, information on game music and composers, resources for artists, and a forum. OCReMix, as it is also known, has

received notable coverage from the gaming press and heaps of praise from respectable industry composers. A number of amateur members eventually developed into professional sound designers.

Valve, the critically-acclaimed developer behind Steam and the Source Engine, has a long history of encouraging the modding of its own games, as a form of creative training. Learning by making is essential, by Valve philosophy, and providing the tools for the community to explore and learn unhindered is a commitment that has greatly benefited both sides. Valve as a company is well known for hiring talented modders as full-time staff and building popular fan-projects (such as Counter-Strike, Team Fortress and Defence of the Ancients) into successful franchises.

Similarly, derivative work cannot be judged on originality alone, as this is not its primary function and purpose. By focusing on re-invention and execution, rather than conceptualism, it practices an entirely different set of skills compared to original art. Moreover, Remix requires a level of esoteric knowledge and understanding of the source material, which is regularly overlooked by those outside its inner circle. The cultural tokens which comprise the remixed product have a meaning and a power not found in the raw material of ideas. By mixing these symbols, the fan artist creates new meaning that could not have existed otherwise.

A few days before December 21st 2012 – a date connected to a considerable amount of superstition and eschatological belief – a mysterious website, simply known as Time's End launched unexpectedly, featuring nothing but a single page, with a live countdown to the above date and some obscure references to Nintendo's Legend of Zelda; Majora's Mask – a game that also revolves around a doomsday scenario. The website quickly gathered a following from fans of the game, creating a huge build-up of excitement and tension, until the countdown was over and the website was revealed to be a clever front for a tribute music album for Majora's Mask, containing ten remixed tracks from the original soundtrack and custom artwork. The album itself was available for free, although fans were welcome to donate at their own discretion (Theophany 2012).

On May 6th 2013 a video labelled Pokémon Ballet (Plotner 2013) emerged on Youtube, gathering over 200,000 views in a just a few days. The 30-minute performance, a creative interpretation of the franchise's first generation games, was choreographed by Andrew Plotner and performed at the Creighton Lied Arts Center in California. The piece incorporated music from Pokémon Reorchestrated: Kanto Symphony, a tribute music album to Nintendo by Braxton 'Skotein' Burks.

To the uninitiated and the casual observer, projects such as the above hold no meaning and probably little to no value. The intricacies, depth and beauty of the re-imagining would be completely lost to anyone not familiar with the original material. To the devoted fan, however, who has already invested significant time, effort and sentiment into their games, the transformative value of well-executed derivative work is immediately obvious and can have a huge emotional impact. Clearly transformative artwork can complement original work beautifully; expanding on aspects of the source material the

original creator had never explored or creating transmedia narratives. By incorporating a personal approach and a personal style, the fan artist is free to explore their creative identity, style and technique within the boundaries of a fictional universe they feel comfortable in.

Ten Paces and Draw is a collaborative community project between several illustrators and designers. Every week Ten Paces will offer a theme as a challenge, which the community is invited to draw and swap sketches for. It is meant to encourage a dialogue between creative people and provide a learning experience to the various artists who are called to re-iterate and build upon each other's work. During July 2012, Ten Paces hosted a Legend of Zelda artist swap, another general Fan Art swap on April 2013 and more similarly-themed projects (Ten Paces and Draw 2012; 2013). It would take the harshest of critics to not appreciate the creative energy and stylistic diversity in the resulting works. Moreover, it would probably sound almost perverse to suggest to these successful, professional artists – many of whom went on to create and sell prints of their fan art – that their derivative work is somehow lesser or uncreative .

Final Fantasy VII is a game which game out in 1997 for the original Playstation. Sixteen years later, the fan community is still producing costumes of the characters, along with various pieces of art and fan fiction. The game remains one of the most popular in the series, with the copyright holder SquareEnix under constant pressure to remake it. The fan demand was eventually met by a number of side projects, released between 2004 and 2007. The series, known as the Compilation of Final Fantasy VII, included a huge variety of media, from animated features, to short novels, games and downloadable content.

The Compilation would probably never be made without the ongoing support of the fan community. By sharing their love for the franchise and the products of their creative labour, the fan artists create interest in both themselves and the original material, increasing visibility and strengthening the commercial brand. Through participatory activity and creative re-appropriation, the fan artist can effectively critique the commercial industry, communicating clearly the wants and needs of the community – even addressing some of its most problematic aspects, such as sexism, racism and transphobia.

Between November 2012 and March 2013, three separate game hacks, by three separate authors were released; replacing Mario with Pauline in the original Donkey Kong, Link with Princess Zelda in the original Legend of Zelda and switching all the gender pronouns for Link in Wind Waker. All the above were motivated by the simple desire to either play as female or empower their daughters to play as a female in their favourite games (Fingas 2013; Narcisse 2012; Smith 2013)

The proliferation of erotic content in the doujinshi and the western fan fiction subcultures, as mentioned previously, is well-known and well-documented as an outlet for primarily female desires, otherwise not served by popular culture (Chander and Sunder 2007; Tushnet 2007). Beyond the stereotyping of all fan work as masturbatory material, the existence and popularity of such works helps highlight the disparity between commercial availability and customer demand, between the wide perception that videogames are for

children and the reality that the majority of the consumers are adults, almost half of them are female and a huge number amongst them would be probably be happy to see mature, fully developed relationships in the games they play. Quantifying fan culture, in its many forms and motivations, is nearly impossible. In the absence of a central dogma, it can only be communicated informally, passed from person to person, where it is allowed to grow in an organic fashion, through revision, transformation and appropriation. In traditional folk culture and traditional African culture, such practices were not thought of as stealing but as the natural way for art to grow and evolve. Re-iteration, in that context, is enrichment and the creation of art, a fundamentally absorbing process.

## **Conclusion**

The dual purpose of copyright law, as we examined it in earlier sections of this paper, is defined as (1) 'preserv[ing] an artist's or author's incentive to create,' and (2) 'the desire to augment the quality and quantity of creative works available to the public.' Despite the fact that it was established to protect and foster creativity, it is fairly evident that the way copyright law is interpreted and enforced today has a lot to do with guarding corporate financial interest and very little in relation to cultural and artistic development. As Nathaniel Noda (2008: 29) eloquently puts it, copyright is often treated 'as a zero-sum paradigm, which views growth of the public domain and maintenance of the copyright holder's economic incentives as diametrically opposed goals.'

However, as the Japanese paradigm of thriving Remix culture has demonstrated, there is no reason for things to be this way. There is strong alignment of interest between fans and copyright holders; both want the original creative work to be successful, so that it continues to be produced and consumed. The end of a beloved franchise can be extremely hurtful to the fan community which has invested so much in its hobbies and activities. A fan relies too much on the creator of the original to knowingly engage in any predatory or competitive behaviour that could compromise the creator's incentive.

Where artistic and financial integrity becomes a concern, experience has shown that fan communities typically display a strong force of self-regulation, which separates canon from non-canon material, commanding respect for the source material and adherence to its boundaries. A firm line is drawn between original and fan content and the deep knowledge and understanding of canon that usually defines the devoted consumer, ensures that this line remains visible at all times.

To improve the current situation, a number of proposed reformations of copyright and Fair Use law could be applied. Updating the Fair Use doctrine -specifically, the first and fourth criteria - as per Noda's suggestion, would refine the law to protect fan-based activity and better accommodate the needs and interests of the modern media consumer; protected fan-based work would be defined as work which is (1) undertaken as a complement to, rather than in competition with, the underlying work, and (2) enhances, in aggregate, the creator's economic and creative interests (Noda 2008).

Legislative reformation would be ideal, albeit unlikely in the current climate surrounding the subject, as copyright holders and their lobbyists are generally averse to anything that might reduce their enforcement rights. Still, one can only wonder how many pieces of derivative artwork would have to be purged if copyright was enforced overnight, and what kind of impact such perfect adherence to the law might have on a generation, which has been brought up with a wealth of technological means to create and the legal obligation not to.

### **Biographical notes:**

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