Study reveals copyright complexities, social norms in online media creation

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In the age of mashups, fan fiction and content sharing, online media creation has spurred new complexities in copyright, effectively turning the legal concept of "fair use" on its ear, according to a new study from Georgia Tech.

Research into fan fiction and other types of remix communities reveals many legal misconceptions persistent among different groups when applying copyrighted work to their own creations. The research also highlights online social norms – independent of actual law – that guide the use of copyrighted works in fan communities.

For the study, Georgia Tech researchers interviewed content creators who participate in remix and fan creation activities – think "Gangnam-style" parody videos or Twilight fan fiction – and found that legal ambiguity, rather than technical limitations can be a higher barrier to creating media online. The study focused on participants' understanding of the U.S. copyright law's "fair use" provision, which allows for the use of copyrighted material without permission from the owners in certain instances.

"We wanted to take a group of people who make subtle judgments about what they think they can or can't do in a legally gray area and see how that affects their daily decisions in what they are creating online," says Casey Fiesler, Ph.D. candidate in human-centered computing at Georgia Tech and the primary investigator in the research.

The study revealed several common legal myths about fair use that were strikingly similar among participants who represented different media types (fiction, art, video, graphics and music). These included:

- Perception of noncommerciality as the sole deciding factor of fair use. (REALITY: Courts use a four-pronged test to determine fair use; also, monetary gain doesn't necessarily forbid fair use of copyrighted content.)
- Blanket exception for educational use. (REALITY: There are no such blanket exceptions, although parodies have been tested in case law and more often than not were protected as fair use.)
- Addition of attribution as an explicit fair use factor. (REALITY: Giving credit to the original copyright holder is not required as part of the law, nor does it automatically protect the new creator.)

Fiesler, who also holds a law degree from Vanderbilt University, says the problem with fair use is that it's decided on a case-by-case basis. She said: "The only way you ever know for absolute sure that something is fair use is if you are sued, and a judge says 'Yes, it's fair use' or 'No, it's not.'"

Researchers also discovered patterns of ethical judgments by participants that are related to fair use. These included:

- Distinction between "profiting" from someone else's work and commerciality. In fan communities, even if money doesn't change hands, tangible benefits to the remixer/fan creator are frowned upon.
- More consideration for the "little guy" with respect to market harm. The perception exists that individuals are less likely to obtain content illegally and more likely to attribute a source when the copyright source is a smaller artist.

- Potential for "market good." This is a notion that remixes and fan works expose copyrighted work to broader audiences.
- Implicit attribution. This is an idea that attribution isn't necessary when the content source is obvious.

The research indicates that many of the participants' ethical judgments likely stem from the social norms of larger fan communities that predate the Internet. The fandom community has a "gift" economy, rather than a commercial one, says Fiesler, and that helps dictate norms about how both the underlying works and the new works are treated.

Where the law is vague in what constitutes commercialization, the Georgia Tech researchers found that fan communities often extend the definition to any type of "profiting." One participant, for example, said that banner ads on a website with remixed work is profiting from the art and should be disallowed. Fan debates on what qualifies as profiting also help to keep the artists in line with legal doctrine.

"What the community typically believes and does can actually affect what is judged legal," says Amy Bruckman, professor in the School of Interactive Computing at Georgia Tech and researcher on the study. "So it's in their interests to have cohesion to craft codes of best practice."

Researchers also found that content creators receive uneven guidance on fair use from market leaders who publish their content. YouTube's Copyright School (a four-minute video for copyright offenders) features a cute woodland creature that attempts to push the fair use legal information off the screen when it appears. Fiesler says YouTube's approach might imply that fair use is too hard and that anyone considering it should get a lawyer or beware, a message that could have a chilling effect on how technology is used.

More information: The research study, "Remixers' Understandings of

Fair Use Online," will be presented at the 17th annual Association of Computing Machinery Conference on Computer Supported Computational Work and Social Computing, or CSCW 2014, taking place Feb. 15-19 in Baltimore, Maryland.

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