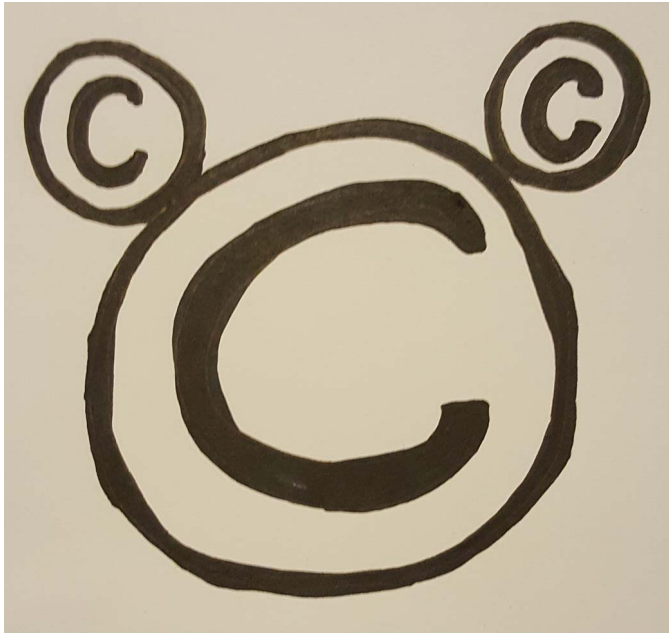


# ***DERIVATIVE***



***A ZINE ABOUT HOW WE USE INTELLECTUAL  
PROPERTY, FOR ANYONE MAKING THEIR  
OWN CONTENT***

***ISSUE #0***

# ***WHERE WE LAY OUR SCENE:***

“Piracy is stealing.”

There was a time when you couldn’t watch a movie without being warned that Hollywood was onto you, that they knew what you were using the Internet for, and they thought you were scum.

Time has passed, and the way we use the Internet has changed. While some still seem to perceive Internet users as ruthless downloaders, there have been other, much more interesting effects on the way we interact with intellectual property.

Just as technology has made it easier for us to access content digitally, the means of producing and publishing have been opened up to us too. This has implications for all of us beyond just whether or not we should feel guilty about downloading the latest episode Game of Thrones.



It seems quite natural for us to use the cultural artefacts of our times as reference points in discussion, whether online or in ‘traditional’ media. We talk about the world around us in terms that we share, and popular culture is a significant part of this. Technology has arguably opened up new possibilities for the general public to express themselves, giving the means of production to those who were previously excluded. I believe there’s been something of a clash of cultures caused by this change, as ‘traditional’ media gatekeepers attempt to deal with the influx of what could be called ‘everyday’ uses of media techniques which were previously exclusive and held to a different set of standards.

# **(NOT) THE DAWN OF HISTORY:**



As each advance in technology enables us to copy in new ways, copyright law is forced to adjust to new circumstances. Whether print, sound recording, photography or film, the fields of arts and entertainment have had to adjust to change in the way content is produced, distributed and consumed.

These challenges have been around for a very long time, long before the Internet opened things up and accelerated them. Generally, a range of forces such as the law, economics and industry practices have seen things balance out to form a functional environment. While it may seem that we are in a time of upheaval with the rapid technological changes of the Internet, other media forms have dealt with such upheaval in the past.

My personal view is that with each such change to the environment, we ultimately ask ourselves the same set of questions again around what is in the best interest of the various interested parties and the culture as a whole. I believe it is important to create a way of operating that attempts to be inclusive rather than exclusive. The key word in all discussion of copyright and intellectual property is “fair”, and it is the attempt to pin down a practical definition of this word that gives rise to such controversy.

# **TELL ME MORE ABOUT HOW WHAT YOU'RE DOING ISN'T STEALING...**

Some people *do* use the Internet to download digital copies of other people's work for their own consumption without paying for it. It happens.

However, the Internet has also led to new ways for us to express ourselves, and a significant part of that involves using portions of existing media.

Or maybe these ways of expressing ourselves aren't so new. Pop culture references have always been useful to cut to the core of a situation, whether a quote from *The Simpsons*, or a parallel to events in *Star Wars*. The difference is that now we can use the imagery directly.



## **MEMES:**

If you use social media at all, you've surely seen memes such as *Condescending Wonka*, *Crying Jordan* or *Futurama Fry* (Not Sure If...). Memes have become an accepted part of how we communicate, used by the general public and 'official' media to comment on anything and everything. Certain images have become common reference points with the value of 1000 words, needing only to be applied to a new context to have an effect.

## **GIFS:**

Sometimes it's hard to find the words to express the intensity and nuance of a feeling. Maybe a two-second loop from *Mean Girls* can say it better. Reaction GIFs contain so much, bringing their pop cultural baggage into new contexts to create a rich new meaning. They carry subtexts around what the speaker likes and relates to, undercut with self-deprecatory humour.

GIFs can also be used to report events with immediacy, giving those who were formerly the audience the power to run their own Instant Replay.

## **FANFIC:**

People have written alternate versions of existing media for a long time. The Internet has made it easier to share these creations in communities dedicated to discussing and analysing their favourite fandoms.

As well as being fun for fans, fanfic can often explore the possibilities of fictional worlds in more depth, telling us more about the way these worlds work and how they relate to real life.

However, interactions with fandom aren't only narrative based.



## **FANART:**



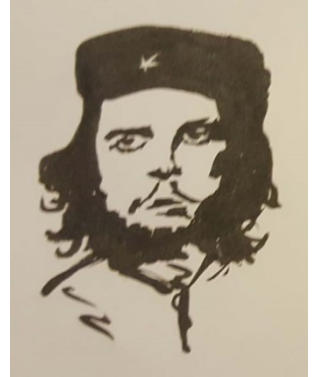
It's natural for fans to respond to visual media by creating their own visual works. This might be done through attempts to recreate existing visuals as a test of the fan's own skills, or exploring alternate versions of texts, or by creating mashups between fandoms. Positioning texts alongside others can give new insights into both, and into the real world.

These examples only scratch the surface of the ways modern technology allows us to interact with existing media creations. Pop culture is culture we share, and while its merit as art might be at times disputed, its ability to give us common touchstones cannot be denied. Pop cultural history could well be considered as folk history, telling us a lot about who we are. If this is our history, then who should have the power over that history?

# ***AN INFORMATION REVOLUTION?***

There are valid reasons for copyright holders to feel entitled to earn economic benefit from their work, but how do we find a balance between economic concerns and the other issues raised by our uses of intellectual property?

It would be ridiculous to suggest that I should have been sued for all of the times I recited dialogue from Monty Python with my friends as a teen. Now technology enables us to ‘recite’ not just dialogue but other sounds and images taken directly from the source. Is this the same thing? Or is it stealing? Should the original creator be entitled to economic benefit from such use of their work?



With so many questions around the rights of the various parties with an interest in intellectual property, perhaps we shouldn’t expect a resolution and should look instead for equilibrium. Market forces, legal rulings, technological change and user behaviour will continue to swirl around each other like the weather, each exploring their own interests and impacting on the system as a whole.

## ***HOPE (I DON'T GET SUED):***

Australian law allows for some use of copyrighted material without permission of the copyright holder under certain conditions. The use must be a “fair dealing” under one of the following circumstances:

- research or study;
- criticism or review;
- parody or satire;
- reporting news; or
- professional advice by a lawyer, patent attorney or trademarks attorney



(See Australian Copyright Council, (2014) for more detailed information)

For our purposes, we can put aside research or study and professional advice and concentrate on the other circumstances listed. What do they mean for us?

It's relevant to note that most of the terms are not defined directly in the Copyright Act itself. If you intend to use copyrighted materials in these ways, then it's a good idea to look up existing definitions of these terms to be sure that your application applies in your context. If someone's going to claim that their use is for parody, then they should really make sure that they understand what parody is.

It's also significant to note that the copyrighted materials you use don't have to be the subject of your overall work. You might use an image from Spongebob Squarepants to comment on Malcolm Turnbull, for example, and this in itself would not exclude your use from falling under the fair dealing circumstance of criticism or parody.

Ultimately, the main questions to be asked are "is the use fair?" and "is the intent genuine?" A good rule of thumb might be to make sure you're not using more of the copyrighted work than you need to in order to make your point.

It's also worth noting the other ways that the law affects us before matters get anywhere near the courts. Laws such as the US Digital Millennium Copyright Act impact the way websites such as YouTube deal with copyright claims over content posted online. A copyright holder need only make a claim that their rights have been infringed in order to have the site take down the allegedly infringing content, putting the onus then on to the uploader to prove that the takedown was not valid. This gives a lot of power to copyright holders, since most uploaders will not have the resources to stand up for their rights to have their content reinstated.

## ***MARKET FORCES:***

When we talk about copyright in terms of what is fair, we inevitably end up talking about economic factors. The need for copyright law to protect the economic interests of copyright holders seems self-evident, but it's not always evident what the best way to protect those economic interests is. Ruling over copyright with an iron fist, suing everyone who touches their 'property' can be counterproductive, as it is often in a copyright holder's best interest to work with their audience.

This is especially evident in fandoms where communities build around copyrighted characters and worlds. The communities built around Star Trek over the years, for example, have created a wealth of fan art and fiction which

has ensured the legacy of the franchise across time. The original 1960s TV series was relatively short-lived, but persistent interest resulted in a revival through movies, spin-offs, sequels and re-boots that keep the franchise alive today. Encouraging fandom paid off.

Such communities of fandom survive through application of their own agreed rules around what is permitted or not, and it can be these guidelines that make their relationship with copyright holders work. So long as their use is seen as fair and does not cross certain lines with regard to upholding the image of the original works, such communities can often thrive in a spirit of cooperation.

## ***ATTRIBUTION:***

Ultimately, it's hard to argue that use of copyrighted material is fair without giving proper attribution. We see similar principles in other areas, such as the way that academic writing requires us to attribute the source of our ideas through referencing. However, methods of attributing are not usually so clearly defined. As social media use begins to resemble an alternate version of everyday conversation, how can we expect users to attribute properly, especially when technology imposes limits on space?

## ***WE CAN DO IT!***



Ultimately, we all have choices. We can take a strictly legal approach to the problems we face and toe the line of the law, or we can push the limits to explore what's possible. I've always felt that friction between such opposing forces is what creates the most interesting content. Consider the questions before you and use them to find your own way.

There's one question that I ask myself above all others:

***IS USING SOMEONE ELSE'S WORK REALLY THE BEST WAY TO MAKE MY POINT?***



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# **DERIVATIVE** ISSUE #0