

### Intellectual Property Issues and Trends: Fandom

November 11, 2019 | (Time to read: 3 minutes)

**Intellectual property increasingly defines a company's value and ability to grow and thrive. As such, careful management of intellectual property portfolios with an eye towards current changes and trends is necessary. Particularly among those working in entertainment industries, a notable social change is the rise of "fandom," communities of fans who bond over a shared interest, such as a show, book series, comic, movie, or video game.**

**Success in the entertainment industry is critically measured by number of fans; it's how the metric mass appeal exists. But as the number of fans increases, the control over the underlying material can decrease. Fans don't just consume source material anymore. In this day, true fans engage with the original material with self-made content, seeking to share their own creative works with other members of the fandom.**

Fans draw their favorite characters and plaster these images across social media. Fans will create and impersonate their favorite characters at Cons and for profit. Fanfiction, storytelling featuring the fictional characters and worlds of popular media, has also proliferated. Archive of Our Own, the most popular platform for publishing fanfiction, boasts over 5.2 million stories on its site.

Many copyright holders tolerate or even encourage the fanfiction and fanart of their work. Fandoms promote work and extend the longevity of the work's relevance within popular culture.

However, the monetization and exploitation of content is the dark side of fandoms. With so much content exchanging hands within fandoms, so are monetized goods, protected intellectual property materials are commercially used without the permission of owners.

On retail site Etsy alone, a search for "Stranger Things" yields over 18,000 items, "Mario" over 33,000 items, and "Pokemon" 75,000 items. This proliferation of unofficial, unlicensed goods puts intellectual property owners in a difficult position.

#### Intellectual Property Law and Fandom

Legal action against unlicensed fan activity can turn the loving devotion of fans into bitter resentment. At the same time, while it is generally considered poor business practice to sue fans and alienate them, it is also unwise for intellectual property owners to allow copyright violations to go unchecked and for unlicensed merchandise to edge out official merchandise. In a recent example of how entertainment companies are handling fandom, Netflix used humor in a cease and desist letter asking fans who had created a "Stranger Things" pop-up bar to not extend the bar beyond its six week run and to please ask for permission if they planned to do anything like that in the future.

Another issue that intellectual property owners face with fandom is the increase in fanfiction authors professionally publishing their work, posing a competitive threat to the original work and occupying a gray area in terms of copyright law. A notable example: E.L. James' Fifty Shades of Grey series originated as Master of the Universe, a fanfiction of the Twilight books by Stephenie Meyer. James reworked her fanfiction by renaming the characters, making minor changes to their appearance, and polishing her prose before commercially publishing it as Fifty Shades of Grey. The main characters

of Fifty Shades of Grey, unsurprisingly, bear an uncanny resemblance to those of the Twilight books, raising questions of whether they are infringements of Meyer's intellectual property and if Meyer is owed a cut of the revenue for the Fifty Shades of Grey works.

Owners of intellectual property in entertainment fields must be mindful of the fandoms that may surround their work and balance the protection of intellectual property with the maintenance of positive fan relations. Fans frequently infringe on copyrights, and while much of it begins and remains as not-for-profit endeavors unlikely to cause harm, careful scrutinization of fandom activity is necessary to maintain the integrity of original work and guard against profit loss.