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Copyright, Legal Issues, and Policy - 1804
Assignment 2: Fair Use in the News
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Part 1:

Power Rangers Vs. Power/Rangers

In February 2015, Joseph Kahn released the 15-minute short film *Power/Rangers*, a fan film featuring the beloved, morphin' characters the Power Rangers. Shortly after the release of the film via Vimeo, creator of the Power Rangers (not to be confused with the fan film *Power/Rangers*) Haim Saban issued "a copyright claim to Vimeo asking that the short be removed."¹ Kahn was not pleased with this, taking to Twitter saying that he had not used any copyrighted material and claiming that he did not infringe any copyright whatsoever. Vimeo complied with the request. The short was also posted to YouTube and removed shortly thereafter, and Kahn claimed fair use.²

Fan fiction presents a unique challenge for courts because it is a relatively new "genre" in the media world and has not been litigated much. One could argue that this is on par with a lot of the copyright issues surround digital reselling digital copies of music or other born digital media—currently, the United States Copyright (U.S.C.) code simply does not take into consideration such uses of copyrighted material. When applying the four factors of section 107 of the U.S.C.³ in this particular case (between Power Rangers and *Power/Rangers*), a claim for fair use should be considered, while also looking beyond the four factors.

To briefly touch on the four factors, the purpose of Kahn's use of the Power Rangers in his film was not of an immediate commercial benefit. Kahn claims: "I am not making any money on it and I refuse to accept any from anyone. It was not even Kickstarted, I paid for it myself. This was made to be given away for free."⁴ Saban claims copyright over the use of the characters and the ability to create derivative works,⁵ but Kahn claims not to have used any copyrighted material—except of course the characters. The effect on the market value of Saban's Power Rangers is what contains the biggest ambiguity. This is a very difficult consideration to measure. If Saban's version flops, there would certainly be a large number of factors that could contribute to that, likewise if it does well. Kahn could argue that if fans enjoy his version, it would only have a positive impact on Saban's version. The most clear argument Saban could make is that the work by Kahn is a "darker" rendition of the characters, while Saban describes his version of the characters as cleaner and more "PG-13,"⁶ and this could create confusion between the two.

¹ Cox, "Director of Power Rangers Gritty Reboot Fan Film Being 'Harassed' by Saban, Copyright Claim Made to Vimeo," <http://www.themarysue.com/saban-fanfic-legality/>.

² Orange, "The Power Rangers Fan Video May Lead To One Of The Most Important Lawsuits In Movie History," <http://www.cinemablend.com/new/Power-Rangers-Fan-Video-May-Lead-One-Most-Important-Lawsuits-Movie-History-69992.html>.

³ "U.S. Copyright Office - Copyright Law: Chapter 1, Section 107."

⁴ Cox, <http://www.themarysue.com/saban-fanfic-legality/>.

⁵ "U.S. Copyright Office - Copyright Law: Chapter 1, Section 106."

⁶ Orange, <http://www.cinemablend.com/new/Power-Rangers-Fan-Video-May-Lead-One-Most-Important-Lawsuits-Movie-History-69992.html>.

The repercussions of a case like this going to the courts could have a huge and varied impact on all fan fiction both positive and negative for both sides. It could have more of a negative impact on copyright holders that their claim that fan fiction infringes their copyright. Firstly, this particular piece of fan fiction was, well, created by fans. If the original creator Saban wants to please his patrons or at least not openly spurn them, he would do well to do exactly what he did and let the piece exist. Although it may not align with his vision of what “Power Rangers,” he cannot dictate the interpretation or reading that his fans have when they watch his work. To this end, fan fiction is an artistic extension of fans’ interpretation or reading of a particular artist’s works. Copyright was not designed to stymie creativity; therefore, fan fiction should easily be covered under fair use.

However, Saban has a legitimate claim that others are attempting to appropriate his hard work and even make unauthorized derivatives. Previous instances of copyright infringement have been determined when artists create characters that have almost identical characteristics of well-known characters (such as the car commercial featuring an awfully familiar spy⁷). In these particular instances, copyright holders have had legitimate claims to their work, i.e., their creation of unique characters. It seems like situations like this will have to be dealt with on a case-by-case basis.

In the case of *Power/Rangers* vs. the Power Rangers though, it seems as if fair use has prevailed somewhat. Instead of taking this issue to the courts, Kahn and Saban have come to an agreement, and the video has returned to the internet. However, there has been one small change to the short. According to Kahn, the following statement was required to be included at the beginning of the film:

Deboot of the Power Rangers. My take on the FAN FILM. Not a pilot, not a series, not for profit, strictly for exhibition. This is a bootleg experiment not affiliated or endorsed by Saban Entertainment or Lionsgate nor is it selling any product. I claim no rights to any of the characters (don't send me any money, not kickstarted, this film is free). This is the NSFW version. An alternate safe version is on youtube.⁸

Taking into consideration this concession, it seems that Saban is allowing the fair use of his characters to not hurt the prospects of his upcoming film. Whereas this is not a direct victory of fair use, it sets an interesting precedent for artists who believe their characters have been ripped off. Fan fiction i.e., unauthorized derivatives are allowed because it ultimately boosts the market for the originators works.

Ultimately, it seems that fan fiction will have a positive market impact (see Section 7), except of course when it does not. Revision to the fair use section could allow for instances like this to garner royalties in cases where the derivatives are made for profit. This would allow fan fiction to more easily take advantage of the benefits of copyright, while originators could still maintain their copyright. However, to creators like Saban, this situation might be a slippery slope and lead to further loss of copyright. In this instance though, it seems fair use was the rule of the day.

⁷ Samuelson, “In Search of James Bond’s Essence | Authors Alliance,” <http://www.authorsalliance.org/2015/02/08/in-search-of-james-bonds-essence/>.

⁸ Orange, <http://www.cinemablend.com/new/Power-Rangers-Fan-Video-May-Lead-One-Most-Important-Lawsuits-Movie-History-69992.html>.

Part 2:

A prominent film scholar passed away a few years ago and his widow donated much of his film ephemera to an archive (whose names I will omit to avoid implicating anyone). Included in the donation were dozens and dozens of VHS cassette tapes that he recorded from television, and on the tapes were hundreds of films that played on a prominent classic movie channel. Most of the films on the tapes are from the 1920s to 1940s and the television station that broadcasted them most likely owns the rights. There is also the likelihood that the movie channel has copies of the films.

When the archive acquired these tapes, there was a big question: what should they do with the tapes? VHS tapes are a very volatile medium, and they would decay pretty quickly. It would be too costly and time-consuming for the archive to research and determine the copyright statuses of all the films. Making copies of these tapes would go against Section 106 of the United States Copyright Law, which states that copyright holders are entitled to the exclusive right “to reproduce the copyrighted work in copies or phonorecords.”⁹ This would prohibit the archive from copying these tapes onto a more stable medium, like DVD.

However, there are certain caveats to this situation. The archive is part of an educational institution and often make other copies of films (which they obtained legally) accessible to students. They are not planning on selling these copies but may rent them to students free of charge. Finally, many of these titles are probably not accessible commercially. This final point and a combination of the four factors within Section 107 of the United States Copyright Law¹⁰ could contribute to the archive justifying their use (i.e., copying the tapes onto DVD) as fair use. The purpose of the copying would be for non-profit educational uses. The works are most likely copyrighted and the archive would be copying entire works. However, the effect that the copying of these tapes would have on the potential market for these films would be microscopic, if any impact at all. Because of the limited access to these films and the almost non-existent impact that this copying would have on the market, the archive copying these tapes onto DVD should be considered fair use.

Furthermore, it would likely be foolish for the movie channel to sue the archive for making these copies, as there would not be much of a financial incentive and they would not be cultivating goodwill in a shrinking market for classic movies. It would be more in the interest of the movie channel to allow film students to have access to these films, which might encourage them to access the channel at a later date.

⁹ “U.S. Copyright Office - Copyright Law: Chapter 1, Section 106.”

¹⁰ “U.S. Copyright Office - Copyright Law: Chapter 1, Section 107.”