

3-1-2002

# Copyright Protection or Fan Loyalty - Must Entertainment Companies Choose - Alternate Solutions for Addressing Internet Fan Sites

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## Recommended Citation

Jennifer C. Moore, *Copyright Protection or Fan Loyalty - Must Entertainment Companies Choose - Alternate Solutions for Addressing Internet Fan Sites*, 3 N.C. J.L. & TECH. 273 (2002).

Available at: <http://scholarship.law.unc.edu/ncjolt/vol3/iss2/5>

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**Comment: Copyright Protection or Fan Loyalty—Must  
Entertainment Companies Choose?  
Alternate Solutions for Addressing Internet Fan Sites**

*Jennifer C. Moore*<sup>1</sup>

**Introduction**

Imagine you're an attorney for an entertainment company and one of your job responsibilities is to protect your company's copyrights. The company has, among other valuable properties, a top-rated television series. You discover someone is making unauthorized use of copyrighted images and sound clips from the hit show. Following standard procedure, you send out a cease-and-desist letter to the infringing party. The letter is effective and the person discontinues use of the material. Another job well done? Maybe not.

The infringement was on the Internet, and the infringer was a fan site owner. Although the fan complied with the demands of your letter and shut her site down, she has spread the word via the Internet to other fans about her unfair treatment. They form a large group of angry fans that plan an organized protest and a boycott of the show. Acting within your legal rights has cost the entertainment company something critical to its continued success: fan support.

A similar situation actually happened to 20th Century Fox Television (Fox) when it tried to enforce copyrights for the popular television show "Buffy the Vampire Slayer."<sup>2</sup> Incensed owners of

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<sup>2</sup> Kevin V. Johnson, *Show's Fan Sites Fight Off 'Demon'*; *Fox Production Company Cites Its Copyrights*, USA TODAY, Dec. 23, 1999, at 4D; Jo-Ann

fan sites began a letter-writing campaign and organized a one-day blackout for all fan sites of every Fox show.<sup>3</sup> The site operators, believing their sites provide an invaluable service to the studios by promoting the shows for free,<sup>4</sup> argued that it was unfair to force loyal fans to remove material not intended to harm Fox's copyrights and from which no harm occurred.<sup>5</sup>

The public nature of the Internet creates unique problems in copyright enforcement.<sup>6</sup> There are, however, practical solutions to

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Parks, *X-Files*, *Buffy Fans Protest Fox* (June 16, 2000), at [http://www.space.com/sciencefiction/tv/fanstock\\_000616.html](http://www.space.com/sciencefiction/tv/fanstock_000616.html) (on file with the North Carolina Journal of Law & Technology).

<sup>3</sup> See Johnson, *supra* note 2 (reporting Operation: Blackout was scheduled for May 13, 2000, for a 24-hour period). Fanstock, an outdoor protest, was scheduled for June 17-19 at Fox's Los Angeles headquarters. From the disappointing turnout, it appears that although fans are a vocal force online, they are apparently weak on offline action. As reported on the Fanstock website, only the organizer, her L.A. guide and the man to whom they gave a packet of information attended the event. See *Fanstock—What's That?*, [btvs.slayme.com](http://www.btvslayme.com), at <http://www.btvslayme.com/fanstock/what.htm> (last modified July 4, 2000) (on file with the North Carolina Journal of Law & Technology).

<sup>4</sup> See Lauren Yamamoto, Comment, *Copyright Protection And Internet Fan Sites: Entertainment Industry Finds Solace In Traditional Copyright Law*, 20 LOY. L.A. ENT. L. REV. 95, 99 (2000); Parks, *supra* note 2. See also Steve Silberman, *Paramount Locks Phasers on Trek Fan Sites* (Dec. 18, 1996), *Wired.com*, at <http://www.wired.com/news/culture> (site owner criticizes Paramount's actions and points to the value of fan sites by noting that even Paramount has used his site to gather material for a broadcasted anniversary show).

<sup>5</sup> See Parks, *supra* note 2.

<sup>6</sup> See Michael J. Remington, *The Ever-Whirling Cycle of Change: Copyright and Cyberspace*, 3 N.C. J.L. & TECH. 213 (2002); Note, *Exploitative Publishers, Untrustworthy Systems, And The Dream Of A Digital Revolution For Artists*, 114 HARV. L. REV. 2438, 2438 (2001); Matthew Kane, *Copyright And The Internet: The Balance Between Protection And Encouragement*, 22 T.

the dilemma faced by entertainment companies who want to retain the loyalty of fans while protecting their valuable copyrights. This Comment will discuss those effective alternate solutions within the bounds of existing copyright law.<sup>7</sup> First it will discuss the copyright law's relevance to Internet fan sites and set the framework for a discussion of enforcement options available to entertainment companies. Next, it will explore the merits and disadvantages of the traditional approach used by entertainment companies to enforce their copyrights against infringing uses on the Internet. Finally, it will examine in detail two unique model approaches with varying degrees of control by the copyright owners. Either of these model approaches may be used with success by entertainment companies to balance the need for continued fan support with the protection of copyrights.

### Discussion of Copyright Law

The United States Copyright Act of 1976 is the controlling law protecting "original works of authorship."<sup>8</sup> The Act guarantees copyright owners several exclusive rights.<sup>9</sup> These rights include doing or authorizing another to: 1) reproduce the

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JEFFERSON L. REV. 183, 184-185 (2000) (estimating 320 million Internet users by 2001); Maria Eliseeva, *Beware! Risk Factors Associated With Internet Litigation*, Address at The 13th Annual Spring CLE Program: Patent, Trademark and Copyright Law: Litigation and Corporate Practice (Mar. 30-31, 1998), at <http://www.patentbar.com/aba1a.htm> (on file with the North Carolina Journal of Law & Technology).

<sup>7</sup> This Comment will be limited to a discussion of copyright law and its impact on entertainment fan sites although trademark protection with regard to fan sites may be another important concern of entertainment companies.

<sup>8</sup> Copyright Act of 1976, 17 U.S.C. § 102 (2000).

<sup>9</sup> 17 U.S.C. § 106.

work, 2) prepare a derivative work based on the copyrighted work, 3) distribute copies of the work to the public, or 4) publicly display or perform certain types of works.<sup>10</sup> Infringement occurs when one of these statutory rights is violated.<sup>11</sup>

Direct infringement is established by proof of one's ownership of a copyrighted work and of unauthorized copying of that work by the defendant.<sup>12</sup> Ownership is evidenced in copyright certificates of registration and is generally not at issue in copyright infringement cases.<sup>13</sup> Although it is often difficult to prove direct copying of material, the courts have found copying to exist by proof of a defendant's access to the copyrighted work, and a show of substantial similarity between the copyrighted work and the accused work.<sup>14</sup> Copying may alternatively be shown by evidence of "striking similarity" between the copyrighted work and the alleged infringing work when it is not possible to show that a defendant had access to the copyrighted work.<sup>15</sup>

When applying the two-pronged test for copying to cases of fan site infringement, even though substantial similarity of the copyrighted work might be easily shown, it may be difficult to prove the defendant had access to the copyrighted works.<sup>16</sup> A plaintiff might effectively argue that the television shows, movies, and publications idolized in fan sites are "widely distributed

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<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Playboy Enters., Inc. v. Frena*, 839 F. Supp. 1552, 1556 (M.D. Fla. 1993).

<sup>13</sup> *Playboy Enters., Inc. v. Webbworld, Inc.*, 991 F. Supp. 543, 550 (N.D. Tex. 1997).

<sup>14</sup> *Id.* (citing *Lakedreams v. Taylor*, 932 F.2d 1103, 1107 (5th Cir. 1991)).

<sup>15</sup> *Id.* at 551 (citing *Ferguson v. Nat'l Broad. Co.*, 584 F.2d 111, 113 (5th Cir. 1978)).

<sup>16</sup> *See id.*

throughout the United States” and therefore are accessible to fans.<sup>17</sup> Even if this access argument is unsuccessful, the alternative “striking similarity” test for copying easily overcomes the proof problem since most fan sites contain “virtually exact reproductions”<sup>18</sup> of copyrighted material such as illustrations from books and magazines, movie trailers, audio files, and captured television screenshots.<sup>19</sup> Finally, although it is unusual for an infringer to admit to copying, many fan site owners include admissions on their sites—perhaps not realizing such admissions may be used as evidence against them.<sup>20</sup> Thus, it may not require much effort for entertainment companies to establish copying by fan site owners.

Once copying has been established, a copyright owner must prove a violation of one or more of the exclusive rights granted to copyright owners.<sup>21</sup> If the registered copyright owner’s work has been used in any manner proscribed in section 106 of the

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<sup>17</sup> See *id.* (finding proof of access through the wide availability of plaintiff’s well-known publications).

<sup>18</sup> See *id.*

<sup>19</sup> See Johnson, *supra* note 2.

<sup>20</sup> For example, one fan site included the following disclaimer:

Deadpool and all related characters are copyright to Marvel Comics. Characters, images, and all likenesses are used here without permission, but I’m a big friggin’ fan of the comic and I pay a lot of money for everything Deadpool, so if I’m sued . . . well I guess I’ll just keep buying. This site is used for entertainment purposes only . . . . Please don’t sue me. I’m fragile.

NBCi.com, *DEADPOOL: The Merc With A Mouth*, at <http://members.nbc.com/XMCM/widdlewade/dp/index.html> (last modified Oct. 16, 1999) (on file with the North Carolina Journal of Law & Technology).

<sup>21</sup> *Webbworld*, 991 F. Supp. at 551.

Copyright Act without her permission, a valid action for copyright infringement exists.<sup>22</sup>

In an infringement action by Playboy Enterprises against Webbworld, a fee-based website that posted images identical to those in Playboy's copyrighted magazines, copying was shown through the "striking similarity" test.<sup>23</sup> The images from the site were virtually identical to those in the magazine.<sup>24</sup> The United States District Court for the Northern District of Texas then analyzed Playboy's claims that its copyrighted images had been reproduced, distributed, and displayed without authorization, concluding that infringement had occurred in each instance.<sup>25</sup> Similar analysis may be used to reach the same conclusion regarding entertainment fan sites.

### Fan Site Copyright Infringement Claim Analysis

#### *Reproduction*

The *Webbworld* court found the images were available on several of the defendant's computers at full-size and had been reproduced at a smaller thumbnail size for ease in image selection.<sup>26</sup> Reproduction had first occurred when the defendants

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<sup>22</sup> Copyright Act of 1976, 17 U.S.C. § 501(a)-(b) (2000).

<sup>23</sup> See *Webbworld*, 991 F. Supp. at 551.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 551-52.

<sup>26</sup> See *id.* at 551. Cf. *Kelly v. Arriba Soft Corp.*, 280 F.3d 934, 942-44 (9th Cir. 2002) (finding reproduction in the form of thumbnails had occurred but was considered fair use because the purpose of the use was sufficiently transformative, creativity was not stifled, and the plaintiff's market was not harmed).

downloaded the images from Internet newsgroups to their own computers.<sup>27</sup> This reproduction occurred without permission; therefore, Playboy's right to authorize reproduction of its images had been violated.<sup>28</sup>

Unauthorized images on fan sites may come from a variety of sources. With modern technology, it is simple to create or obtain a file for use on an Internet website.<sup>29</sup> Existing digital files may be easily downloaded from an entertainment company's own site, other fan sites, or other Internet sources.<sup>30</sup> Images or text may be scanned from printed materials.<sup>31</sup> Sound recordings and motion pictures may be digitized and loaded onto a website.<sup>32</sup> All of these usual methods employed by fan site owners to gather materials without permission constitute reproduction of copyrighted material.

### *Distribution*

The purpose of the *Webbworld* defendant's site was to make images available for viewing and downloading to the site's users in exchange for a fee.<sup>33</sup> Thus, the court held that the

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<sup>27</sup> *Webbworld*, 991 F. Supp. at 551.

<sup>28</sup> *Id.*

<sup>29</sup> See MARY E. CARTER, ELECTRONIC HIGHWAY ROBBERY, AN ARTIST'S GUIDE TO COPYRIGHTS IN THE DIGITAL ERA 15 (1996); STEPHEN FISHMAN, THE COPYRIGHT HANDBOOK 14/11 (Stephen Elias ed., Nolo.com 2000) (1992); Remington, *supra* note 6; Kane, *supra* note 6, at 187-88.

<sup>30</sup> See CARTER, *supra* note 29, at 63-64.

<sup>31</sup> See *id.* at 107-08; Note, *supra* note 6, at 2446.

<sup>32</sup> See *id.* at 64.

<sup>33</sup> *Webbworld*, 991 F. Supp. at 550.



defendant effectively distributed the works by making the electronic images available for downloading and printing.<sup>34</sup>

Images posted on fan sites also may be easily downloaded or printed at the option of the site visitor even if not intended for such purpose by the site owner.<sup>35</sup> However, "intent or knowledge is not an element of infringement, and thus even an innocent infringer is liable."<sup>36</sup> Therefore, even without intending to distribute the materials, fan site operators could likely be found to have violated this exclusive right of copyright owners simply by placing unauthorized images on their sites.

### *Display*

Courts have recognized a broad definition of display.<sup>37</sup> "To 'display' a work means to show a copy of it, either directly or by means of a film, slide, television image, or any other device or process."<sup>38</sup> Permitting an electronic file to be viewed on a

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<sup>34</sup> *Id.* at 551.

<sup>35</sup> See CARTER, *supra* note 29, at 63; Even though there are technological means available to prevent a site visitor from copying an image directly (electronic watermarks, image locks or encryption methods), the visitor might be able to copy all of the images displayed on the monitor through a "screen capture." Methods to prevent this type of copying are not widely available. Although the resolution of a screen capture would be too low to produce high quality images through traditional printing techniques, the resolution would be perfectly fine for use on another website. See Note, *supra* note 6, at 2456-57 (suggesting that it is unrealistic to rely on existing copy protection systems because they are vulnerable to countertechnology by motivated rogue programmers).

<sup>36</sup> *Playboy Enters., Inc. v. Frena*, 839 F. Supp. 1552, 1559 (M.D. Fla. 1993).

<sup>37</sup> *Id.* at 1556.

<sup>38</sup> Copyright Act of 1976, 17 U.S.C. § 101 (2000).

computer screen is one form of display.<sup>39</sup> However, display is only actionable as copyright infringement if the display is public.<sup>40</sup> Public display occurs in a space open to the public or where a substantial number of people have gathered, other than a circle of family and social acquaintances.<sup>41</sup>

In *Playboy v. Frena*, the court determined that a subscription website audience, although limited to the number of subscribers, was sufficient to constitute a public display.<sup>42</sup> Using the same interpretation of "public display," the defendants in *Webbworld* also violated the plaintiff's exclusive right to display the copyrighted works.<sup>43</sup>

Fan site owners that include electronic files of copyrighted works on their sites are indirectly "showing a copy of it" to anyone who visits their site. Fan sites are generally accessible to all Internet users without charge and therefore have a more "public" display than the subscription websites in the *Playboy* cases discussed. Therefore, owners of fan sites using unauthorized materials may be found to have infringed the copyright owner's display rights.

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<sup>39</sup> See *Webbworld*, 991 F. Supp. at 552.

<sup>40</sup> See *id.*

<sup>41</sup> 17 U.S.C. § 101; 2 MELVILLE B. NIMMER & DAVID NIMMER, NIMMER ON COPYRIGHT § 8.14[C][1], at 8-185 (2000).

<sup>42</sup> *Playboy Enters., Inc. v. Frena*, 839 F. Supp. 1552, 1557 (M.D. Fla. 1993) (citing 2 MELVILLE B. NIMMER, NIMMER ON COPYRIGHT § 8.14[C], n. 36 (1993), and *Columbia Pictures Indus., Inc. v. Redd Home Inc.*, 749 F.2d 154 (3d Cir. 1984)).

<sup>43</sup> See *Webbworld*, 991 F. Supp. at 551.

## Fair Use Defense and Its Applicability to Fan Site Copyright Infringement

There are exceptions to the copyright owner's section 106 exclusive rights.<sup>44</sup> Under certain circumstances described in section 107 of the Copyright Act, unauthorized use of a copyrighted work is permissible if the use is considered fair.<sup>45</sup> A copyrighted work used for teaching, scholarship, comment and criticism (among other purposes) is considered a fair use and does not constitute copyright infringement.<sup>46</sup> However, fair use is an affirmative defense to a claim of copyright infringement.<sup>47</sup> Only a court can determine if the defendant has met his burden of proof as to whether his particular use was "fair" or not.<sup>48</sup> Courts consider four factors to make such a determination:<sup>49</sup>

- (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

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<sup>44</sup> Copyright Act of 1976, 17 U.S.C. § 107 (2000).

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Dr. Seuss Enters., L.P. v. Penguin Books USA, Inc.*, 109 F.3d 1394, 1403 (9th Cir.), *cert. dismissed*, 521 U.S. 1146 (1997).

<sup>48</sup> *See id.*; *L.A. Times v. Free Republic*, No. CV 98-7840 MMM (AJWx), 2000 U.S. Dist. LEXIS 5669, at \*21 (C.D. Cal. Mar. 31, 2000).

<sup>49</sup> Copyright Act of 1976, 17 U.S.C. § 107 (2000).

- (4) the effect of the use upon the potential market for or value of the copyrighted work.<sup>50</sup>

Fan site owners charged with copyright infringement will likely argue that they are entitled to the fair use exception based on the nonprofit nature of their sites and the lack of significant effect on the entertainment company's market.<sup>51</sup> Each factor must be analyzed separately, and the balance of all factors must weigh in favor of the fan site owner for the site owner to establish fair use.<sup>52</sup>

*Factor one: purpose and character*

The first factor weighs whether the use was for commercial or nonprofit educational purposes<sup>53</sup> and also takes into consideration the transformative nature of the infringing work.<sup>54</sup> Although noncommercial purposes often are a strong indication of fair use, some courts have found infringement in nonprofit uses of copyrighted material. The defendant in *Marobie-FL, Inc. v. National Association of Fire Equipment Distributors* infringed the plaintiff's copyright by using clip art on its website without permission.<sup>55</sup> Although the defendant was a nonprofit organization, the court held that they profited indirectly because the clip art enhanced the website, generated advertising revenue

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<sup>50</sup> *Id.*

<sup>51</sup> See Virginia Postrel, *The Shortsighted Site Busters*, FORBES, July 24, 2000, at 132.

<sup>52</sup> See 17 U.S.C. § 107.

<sup>53</sup> *Id.*

<sup>54</sup> See *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569, 579 (1995).

<sup>55</sup> See *Marobie-FL, Inc. v. Nat'l Assoc. of Fire Equip. Distribs.*, 983 F. Supp. 1167, 1173 (N.D. Ill. 1997).

and helped promote the association which had due-paying members.<sup>56</sup>

A work would be transformative if something new is added, "with a further purpose or different character" than the copyrighted work.<sup>57</sup> A transformative work would lessen the impact of other factors such as commercialism.<sup>58</sup> In *Twin Peaks Productions v. Publications International, Ltd.*, the court determined that a brief description of plot was sufficiently transformative to weigh in favor of fair use for criticism or comment purposes, but that a detailed summary of plot constitutes an abridgment that exceeds what is required to serve any legitimate purpose.<sup>59</sup> In *Los Angeles Times v. Free Republic*, the defendant was a bulletin board Internet site whose members posted exact copies of current newspaper articles followed by commentary and criticism that could be added to by other members.<sup>60</sup> The court held that works that have been copied verbatim are not transformative merely by the addition of commentary.<sup>61</sup>

Generally, fan sites are noncommercial.<sup>62</sup> However, a fan site might profit indirectly through the use of copyrighted materials

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<sup>56</sup> See *id.* at 1175.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Twin Peaks Prods., Inc. v. Publ'ns. Int'l, Ltd.*, 996 F.2d 1366, 1375-76 (2d Cir. 1993) (finding that pop culture works such as television shows are as entitled to the fair use defense for comment and criticism as scholarly works and holding that detailed plot summaries exceed the bounds of fair use).

<sup>60</sup> *L.A. Times v. Free Republic*, No. CV 98-7840 MMM (AJWx), 2000 U.S. Dist. LEXIS 5669, at \*1 (C.D. Cal. Mar. 31, 2000).

<sup>61</sup> *Id.* at \*12.

<sup>62</sup> Erika S. Koster and Jim Shatz-Akin, *Set Phasers on Stun: Handling Internet Fan Sites*, Oppenheimer, Wolff & Donnelly, at [http://oppenheimer.com/intprop/news/fan\\_sites.shtml](http://oppenheimer.com/intprop/news/fan_sites.shtml) (last visited Mar. 7, 2002)

from banner revenue paid to the site owner based on the number of visitors to the site.<sup>63</sup> An entertainment company might rely on *Marobie* to argue that the copyrighted material enhanced the site and therefore increased site traffic resulting in banner profits for the fan site owner. Such an argument fails in regard to sites that do not utilize banner advertising. Additionally, sites that receive banner profits generally do not also generate member dues, unlike in *Marobie* where the defendants garnered member dues in addition to advertising revenue. The *Marobie* court cited the combined sources of income as the basis for finding the site to be commercial.<sup>64</sup>

Site owners might also contend that their sites serve a useful purpose by offering editorial comment or explanation of the copyrighted works and that this addition of comment or criticism is something new that effectively transforms the original work.<sup>65</sup> This contention is weakened by the fact that fan site owners often replicate the copyrighted work for discussion or summarize plots in exacting detail prior to comment or criticism.<sup>66</sup> As discussed,

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(on file with the North Carolina Journal of Law & Technology); Ann Powers, *Fan Sites Face the Heat* (Oct. 21, 2000), Sydney Morning Herald Online, at <http://www.smh.com.au/icon/0010/21/review6.html> (on file with the North Carolina Journal of Law & Technology).

<sup>63</sup> See Silberman, *supra* note 4. Some *Star Trek* fan sites that were issued cease-and-desist letters had permitted banner displays and were compensated according to the number of "hit counts."

<sup>64</sup> *Marobie-FL, Inc. v. Nat'l Assoc. of Fire Equip. Distribs.*, 983 F.Supp. 1167, 1175 (N.D. Ill.1997).

<sup>65</sup> See Johnson, *supra* note 2.

<sup>66</sup> See *id.*

courts have determined that extensive copying is not necessary to provide useful comment or criticism.<sup>67</sup>

Although the nonprofit or minimally commercial nature of fan sites weighs in favor of fair use, using verbatim copies of another's work for comment or criticism is not transformative enough to be fair use. For most unauthorized uses on fan sites, the purpose and character factor would likely be found in favor of entertainment companies.

*Factor two: nature of the copyrighted work*

Courts consider whether the original work was creative or informational.<sup>68</sup> The Supreme Court recognized that creative works come closer to the protection intended by copyright law than do factual, informational works.<sup>69</sup> "The more creative a work, the more protection it should be accorded from copying . . . ."<sup>70</sup> The converse is true for informational works.<sup>71</sup> Therefore, the copying of creative works makes establishing fair use a more difficult task.<sup>72</sup>

Fan sites seek to memorialize works such as television shows, movies and other fictional works. Because the copyrighted

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<sup>67</sup> See *Twin Peaks Prods., Inc. v. Publ'ns. Int'l, Ltd.*, 996 F.2d 1366, 1377 (1993); *Toho Co., Ltd. v. William Morrow & Co., Inc.*, 33 F. Supp. 2d 1206, 1217 (C.D. Cal. 1998).

<sup>68</sup> See *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569, 586 (1995).

<sup>69</sup> See *id.*

<sup>70</sup> 2 NIMMER & NIMMER, *supra* note 41, § 13.05[A][2][a], at 13-170.

<sup>71</sup> See *id.*

<sup>72</sup> *Campbell*, 510 U.S. at 586.

works are creative in nature, this second factor favors the copyright holders, the entertainment companies.<sup>73</sup>

*Factor three: amount and substantiality of portion used*

Courts also consider how much of the original work was used and the quality of the portion that was copied.<sup>74</sup> The courts that have analyzed this factor have not established bright lines defining the bounds of acceptable use.<sup>75</sup> It appears certain, with few exceptions, that works used in their entirety exceed the amount and substance limits for fair use.<sup>76</sup> A showing of substantial similarity between the unauthorized work and the copyrighted work as an element of the prima facie case also satisfies this third factor of fair use.<sup>77</sup> Theme songs, magazine cover images, and television episodes used in their entirety copy the essence of the original and therefore are likely not fair use by fan site owners.

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<sup>73</sup> See *Harper & Row Publishers, Inc. v. Nation Enters.*, 471 U.S. 539, 563 (1985); *A&M Records, Inc. v. Napster, Inc.*, 114 F. Supp. 2d 896, 913 (N.D. Cal. 2000); *Playboy Enters., Inc. v. Frena*, 839 F. Supp. 1552, 1558 (M.D. Fla. 1993) (citing *In re New Era Publ'ns. Int'l v. Carol Publ'g.*, 904 F.2d 152, 157-58 (2d Cir. 1990), *cert. denied*, 498 U.S. 921 (1990)).

<sup>74</sup> Copyright Act of 1976, 17 U.S.C. § 107(3) (2000).

<sup>75</sup> See *Campbell*, 510 U.S. at 587.

<sup>76</sup> See *Napster*, 114 F. Supp. 2d at 913; see also *Sony v. Universal City Studios*, 464 U.S. 417, 456 (1984) (holding that Sony's Betamax videotape recorder does not infringe copyright owner's works by allowing private viewers to record entire broadcasts for later home viewing).

<sup>77</sup> See *Dr. Seuss Enters., L.P. v. Penguin Books USA, Inc.*, 109 F.3d 1394, 1402 (9th Cir. 1997); *Twin Peaks Prods., Inc. v. Publ'ns. Int'l, Ltd.*, 996 F.2d 1366, 1377 (2d Cir. 1993).



The use of portions of copyrighted works must be analyzed in context.<sup>78</sup> Courts will consider the purpose intended by such use and how much the original works are transformed.<sup>79</sup> A song parody that sufficiently transforms the original work can justify the use of a good portion of the original melody and lyrics.<sup>80</sup> A book about the O.J. Simpson trial that borrowed heavily from the Dr. Seuss book *The Cat In the Hat* was also a parody, but it was not considered transformed enough to be deemed fair use.<sup>81</sup>

Parody is not usually the intention of fan site owners; instead, the copyrighted works are intended merely to enhance the sites or to serve the useful purposes of comment, criticism, or news reporting.<sup>82</sup> A short synopsis of plot or small video segment followed by comment or criticism might be entitled to a finding of fair use only if a reasonable amount of copyrighted material is used to achieve this purpose.<sup>83</sup> It follows that when a portion of another's work is used for no useful purpose other than to enhance a fan site, a finding of fair use cannot be justified. For most unauthorized uses of copyrighted works by fan site owners, the third factor of amount and substantiality would likely favor entertainment companies.

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<sup>78</sup> 17 U.S.C. § 107(3) (2000).

<sup>79</sup> See *Campbell*, 510 U.S. at 589 (remanding case for evaluation of amount taken in light of infringing song's purpose, transformative nature, and impact as a market substitute).

<sup>80</sup> See *id.* at 589.

<sup>81</sup> See *Dr. Seuss Enters.*, 109 F.3d at 1401.

<sup>82</sup> See Powers, *supra* note 62.

<sup>83</sup> See *Campbell*, 510 U.S. at 586-87.

*Factor four: effect of use upon potential market or value of work*

To properly evaluate the fourth factor, courts must look at harmful effects the infringing use has specifically caused the market.<sup>84</sup> In addition, courts question whether a substantial negative impact would harm potential markets if such infringing conduct were to continue in an “unrestricted and widespread”<sup>85</sup> manner.

In *Toho Co., Ltd. v. William Morrow and Company, Inc.*, the defendant was enjoined from publishing a compendium book about the plaintiff’s character, Godzilla, that utilized multiple photos and detailed plot summaries from copyrighted motion pictures.<sup>86</sup> The court held that the defendant’s book would harm the potential market for a similar book by the plaintiff.<sup>87</sup>

Like the compendium books at issue in *Toho*, fan sites and entertainment companies’ official sites often use the same or similar materials.<sup>88</sup> Official websites create a marketing opportunity for many companies to promote their properties as well as offer merchandise for sale.<sup>89</sup> It may be argued that popular fan sites using unauthorized images to enhance their sites lure traffic away from official sites, thus reducing potential consumer spending on merchandise that features the same copyrighted

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<sup>84</sup> See *id.* at 590.

<sup>85</sup> *Id.*

<sup>86</sup> *Toho Co., Ltd., v. William Morrow & Co., Inc.*, 33 F. Supp. 2d 1206, 1218 (C.D. Cal. 1998).

<sup>87</sup> *Id.* at 1217-18.

<sup>88</sup> See Marcus Errico, *Fox Fights “Millennium” Fan Sites* (Nov. 16, 1996), E! Online, at <http://www.eonline.com/News/Items/0,1,379,00.html> (on file with the North Carolina Journal of Law & Technology).

<sup>89</sup> See Powers, *supra* note 62. Merchandise is available on many entertainment websites such as Disney.com, Warnerbros.com, and Marvel.com.

images. Additionally, some entertainment companies have indicated that the unauthorized use of works by fan sites interferes with exclusive licensing agreements between the companies and product licensees.<sup>90</sup> Certain unauthorized uses may breach contractual provisions for royalties to be paid to actors and actresses appearing in copyrighted properties.<sup>91</sup> This could result in costly fines imposed on entertainment companies.<sup>92</sup>

For works that are not part of an exclusive arrangement, it is more difficult to prove market harm. In *Sony Corporation of America v. Universal City Studios, Inc.*, the Supreme Court reasoned that wholesale copying of television shows onto videotape for personal use did not have a significant impact on the market because consumers were merely copying that which they had been entitled to view for free in the first place.<sup>93</sup>

This analysis does not neatly apply to infringement on the Internet. First, unauthorized images posted on fan sites often come from sources such as books and CDs that are not free to the public. Second, unlike the personal home use for which videotapes are made, images posted on Internet fan sites are made available to the public and are not solely for one's personal home use. Despite these arguments, some entertainment executives have defended fan sites and pronounced that they do not affect a company's bottom line at all.<sup>94</sup> For sites that use works owned by companies that do

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<sup>90</sup> See *id.*

<sup>91</sup> See *id.*

<sup>92</sup> See *id.* (paraphrasing Screen Actors Guild executive director, Leonard Chassman, who reportedly said studios will be held liable for SAG members' works found on fan sites).

<sup>93</sup> *Sony Corp. of Am. v. Universal City Studios, Inc.*, 464 U.S. 417, 449 (1984).

<sup>94</sup> Fan sites argue that use not only does their use not injure a company's potential market, but it actually increases it by providing free advertising and

not share these pro-fan site sentiments, the fourth factor could very well favor entertainment companies. It cannot be denied that the technology of the Internet creates the flexibility for others to use works displayed in this medium in a variety of ways not intended by the copyright owner.<sup>95</sup> The owner's right to profit from these secondary markets may be impeded by Internet infringement.<sup>96</sup>

Analyzing the success of a fair use defense for a fan site's use of unauthorized materials is not an easy task. Each infringing use on a fan site must be considered individually. In balancing the four fair use factors as applied to fan sites, each factor could very well be found to favor entertainment companies, thus leading a court to conclude the fan site owner's use is not fair. Although a successful case could be made for copyright infringement against fan site owners, entertainment companies must carefully decide whether litigation serves their best interests or whether another approach to enforcement is more appropriate.

### **Traditional Approach to Enforcement of Copyrights**

Once a copyright owner becomes aware of an unauthorized use of the protected work, action may be taken to enforce one's exclusive rights. Typically, a first course of action is to send a cease-and-desist letter via certified mail or personal delivery to the

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exposure for the company's products. *See Parks, supra* note 2. *But see* A&M Records, Inc. v. Napster, Inc., 114 F.Supp.2d 896, 914 (N.D. Cal. 2000) (rejecting a "substantial impact on the market" theory).

<sup>95</sup> *See* CARTER, *supra* note 29, at 64-65.

<sup>96</sup> *See id.* at 65; Yamamoto, *supra* note 4, at 114 (concluding that derivative markets may be harmed by fan sites even if the copyright owner's primary market is uninjured).

infringing party.<sup>97</sup> In the letter, the owner firmly requests immediate discontinued use of the copyrighted work and reasonable compensation for the use made.<sup>98</sup> A deadline for compliance and a request for written assurance of compliance with the letter are standard inclusions.<sup>99</sup>

If the infringer does not comply with the terms of the letter and continues use of the material, the letter is proof of notice to the defendant and may lead to a finding of willful infringement.<sup>100</sup> A showing of willful infringement increases the amount of available statutory damages for the plaintiff to a maximum of \$150,000 per infringement.<sup>101</sup>

For Internet infringement, it may be more effective to send a letter to the infringer's Internet Service Provider (ISP), because it is often difficult to locate a particular website's owner.<sup>102</sup> ISPs have a strong incentive to cooperate with copyright owners' requests; by doing so, they may avoid liability for online copyright infringements.<sup>103</sup>

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<sup>97</sup> See FISHMAN, *supra* note 29, at 12/11. Utilizing a method in which receipt of the letter can be verified may be useful later if the infringing party continues to make unauthorized use of the work. Proof of receipt is documentation that the infringer received notice from the copyright owner and provides the date of notice.

<sup>98</sup> See *id.* at 12/10.

<sup>99</sup> See *id.* at 12/11.

<sup>100</sup> Cf. *Playboy Enters., Inc. v. Webbworld, Inc.*, 991 F. Supp. 543, 553 (N.D. Tex. 1997) (finding that defendants were on notice due to earlier issuance of a temporary restraining order against infringing material on their site).

<sup>101</sup> Copyright Act of 1976, 17 U.S.C. § 504(c)(2) (2000).

<sup>102</sup> See FISHMAN, *supra* note 29, at 14/14.

<sup>103</sup> See *id.*

The Digital Millennium Copyright Act (DMCA)<sup>104</sup> was enacted to protect ISPs from the threat of liability for vicarious copyright infringement by a user of the provider's services.<sup>105</sup> Providers are given "safe harbor" from liability if they comply with the requirements of the Act.<sup>106</sup> Among the requirements, providers must name an agent to whom copyright owners may send claims of infringement, impose and inform subscribers of a policy that copyright infringers' accounts will be terminated, and take action to remove or block access to infringing materials when knowledge of the infringement occurs.<sup>107</sup>

Entertainment companies with knowledge of infringement of their materials need only notify the appropriate ISP of the site. The ISP's copyright agent will likely remove or block access to the site. An ISP who chooses not to respond to a letter risks liability if the entertainment company litigates the matter.<sup>108</sup>

Cease-and-desist letters may be the only action required by a copyright owner. Often, the infringing party will simply stop using the material upon receipt of a letter. Also, measures taken by

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<sup>104</sup> 17 U.S.C. § 101 (2000) (providing short titles for 1998 amendments).

<sup>105</sup> 17 U.S.C. § 512(a) (2000). Prior to the enactment of the DMCA, courts had been repeatedly faced with infringement claims against service providers and were reluctant to hold them liable. *See Religious Tech. Ctr. v. Netcom On-Line Communication Servs., Inc.*, 907 F. Supp. 1361, 1372 (N.D. Cal. 1995) (summarizing reluctance to hold service providers liable by concluding "it does not make sense to adopt a rule that could lead to liability of countless parties whose role in the infringement is nothing more than setting up and operating a system that is necessary for the functioning of the Internet").

<sup>106</sup> *See* § 512(c)(1) (2000).

<sup>107</sup> § 512(c)(1)(C), (c)(2), (i)(1)(A) (2000). It is not necessary for the provider to actively search for instances of infringement. It is sufficient for an agent to act only upon awareness of infringement.

<sup>108</sup> *See FISHMAN, supra* note 29, at 14/21.

an ISP in response to a copyright owner's letter may be enough to prevent repeat offenses by the infringer.

A cease-and-desist letter is swift and may achieve the desired effect of halting copyright infringement, but the public nature of the Internet should make entertainment companies carefully consider whether this is the best option available.<sup>109</sup> "'Traditional' methods of handling intellectual property disputes could create negative publicity for the rights-owner and possibly damage the owner's reputation, at least in the cyberworld."<sup>110</sup> Cease-and-desist letters are often posted on the Internet and openly criticized in chat rooms.<sup>111</sup> In the past, communications between a copyright owner and an infringer largely had been private affairs, but the Internet has made it simple for an infringer to air his grievance quickly to a vast audience from which moral support can be obtained.<sup>112</sup>

When all else fails and an infringer persists, a copyright owner must fully evaluate the cost of legal action in terms of time, money and reputation before initiating such an action. Legal action against fan site owners may be a particularly dissatisfying choice for entertainment companies. First, the site owners are often individuals with limited resources.<sup>113</sup> A sizable judgment in

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<sup>109</sup> Eliseeva, *supra* note 6.

<sup>110</sup> *See id.*

<sup>111</sup> *Id.* The author recounts Toys-R-Us' battle against a web page that made unauthorized use of its intellectual property. The site creatively kept visitors up to date on every detail of the legal battle and Toys-R-Us' public ridicule gained recognition in newspapers of several states.

<sup>112</sup> *See id.*

<sup>113</sup> *See* Elizabeth Weise, 'Potter' is still the Muggles' domain, USA TODAY, June 19, 2001, at 3D. Warner Bros. discovered the hard way that many fan sites are created by minors. The company sent cease-and-desist letters threatening legal action if site owners did not comply with its demands to relinquish Harry

the copyright owner's favor may never be satisfied. Second, a legal battle in the federal courts could consume a great deal of time that might better be spent on more profitable corporate ventures. Third, public relations nightmares could develop as other fans publicly rally around one of their own whom they believe is being treated unfairly by "big business."<sup>114</sup>

For entertainment companies, using the traditional approach of copyright enforcement is effective but may be viewed as heavy-handed toward fan sites that are largely nonprofit and operated by individual fans who believe their efforts benefit the companies. Public sympathy may be strong for fan site owners even when the entertainment company is merely protecting its rights according to copyright law.

### **Alternate Method to Enforcement of Copyrights—Model Approach One**

One alternative approach is a program in which an entertainment company establishes a designated domain where fans can build their sites under the company's watchful eye. Site owners are rewarded with access to certain images that may be used to enhance their sites. Certain rules for socially acceptable conduct must be obeyed in order to allow the sites to remain. Such rules might include prohibiting pornography, profanity, or harassing material. The database should contain a large selection

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Potter movie intellectual property. The press had a heyday with the company's heavy-handed approach against children and the letters were discontinued.

<sup>114</sup> See Remington, *supra* note 6; see e.g., Errico, *supra* note 88; Powers, *supra* note 62; see *id.* Online new sources provide frequent reports of fan dissatisfaction over receipt of cease-and-desist letters.



of images to avoid visual repetition among sites. The images must be clear of restrictions on use from current licensing agreements.

Under this type of program, the entertainment company retains control of how their copyrighted material is being used. Monitoring sites for improper content is made easier by having all sites in one place. The entertainment company can first issue a letter of invitation to sites that continue to operate outside of the company's designated domain. Those that continue to post unauthorized material may then be subjected to a traditional cease-and-desist letter.

Warner Bros. advocates this model approach.<sup>115</sup> AOL Hometown is an online community where fans can build fan sites using clipart from a library of more than 5,000 images.<sup>116</sup> Originally called AcmeCity, AOL Hometown was established in part to attract fans from other providers who profited by hosting fan sites and selling advertising to companies targeting the fan market.<sup>117</sup> On establishing its own domain for hosting fan sites, Jim Moloshok, president of Warner Bros. Online stated, "[W]e decided that we were going to create a better experience for the fans."<sup>118</sup> Support for the program is evident in the numbers—1.5 million user pages were created in the first year.<sup>119</sup>

Warner Bros. takes advantage of its association with service provider America Online to provide a controlled

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<sup>115</sup> See Johnson, *supra* note 2.

<sup>116</sup> Screen Name Sign In, America Online, at [http://my.screenname.aol.com/\\_cqr/login/login.psp?siteId=wbhometown&authLev=1&mcState=initialized](http://my.screenname.aol.com/_cqr/login/login.psp?siteId=wbhometown&authLev=1&mcState=initialized) (last visited Mar. 7, 2002) (on file with the North Carolina Journal of Law & Technology).

<sup>117</sup> Johnson, *supra* note 2.

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

environment for the fan sites it hosts.<sup>120</sup> Fans who wish to create fan pages on AOL Hometown must obtain a free screen name and password and agree to abide by the terms of service.<sup>121</sup>

Essentially, a non-exclusive license is granted to each member and may be discontinued at any time for any reason at America Online's option.<sup>122</sup> The information on AOL Hometown is presented in clear language that carefully explains the rules in a non-threatening manner.<sup>123</sup> The "community" nature of the program is repeatedly stressed through characterizations such as a "safe and friendly place" and a "fun and carefree place for everyone."<sup>124</sup> Additionally, it is clear that users may express themselves freely within socially acceptable bounds.<sup>125</sup> "AOL Hometown is all about free expression . . . for the benefit of all, some limits are necessary."<sup>126</sup>

Like the Warner Bros. program, the official site for the "Star Wars" series made free Web space available for building "Star Wars" fan sites.<sup>127</sup> Other entertainment companies could

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<sup>120</sup> See Our Companies, AOL Time Warner, at <http://www.aoltimewarner.com/about/companies/> (last modified Jan. 31, 2001) (on file with the North Carolina Journal of Law & Technology). Both companies are owned by AOL Time Warner, a media conglomerate.

<sup>121</sup> See Know the Guidelines: Community Guidelines, America Online, at <http://hometown.aol.com/flanker.adp?cid=10000&fType=tos&l=english&sessionId=1013193708%2e3886&fPage=tos2a> (last visited Mar. 7, 2002) (on file with the North Carolina Journal of Law & Technology).

<sup>122</sup> See *id.*

<sup>123</sup> See *id.*

<sup>124</sup> See Know the Guidelines: Welcome, America Online, at <http://hometown.aol.com/flanker.adp?fType=tos> (last visited Mar. 7, 2002) (on file with the North Carolina Journal of Law & Technology).

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> Powers, *supra* note 62.

obtain similar success with a program based on Model Approach One.

AOL Hometown works within the bounds of existing copyright law. The copyright owner exercises its exclusive right to distribute the copyrighted works to fans who create pages within its domain. Rather than punish fans for using copyrighted materials, the company positively rewards fans that choose to create pages within the company's guidelines by making certain images available for the fans' use.<sup>128</sup> As a marketing benefit, the company can direct this select audience to other sites and services with which America Online is associated.<sup>129</sup> More importantly, the company maintains continued fan support for their properties and control over which copyrighted materials are being used and the manner in which those materials are being used.

### **Alternate Method to Enforcement of Copyrights—Model Approach Two**

A second alternative plan for consideration would permit fan sites to be hosted by any ISP as long as the site owner becomes authorized through a fan site program established and controlled by the entertainment company. Like Model Approach One, a non-

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<sup>128</sup> See Warner Bros.: Build a Free Home Page, Warner Bros., at [http://www.2warnerbros.com/web/hometown/newjsp?fromtout=home\\_menu\\_community\\_item3](http://www.2warnerbros.com/web/hometown/newjsp?fromtout=home_menu_community_item3) (last visited Mar. 7, 2002) (on file with the North Carolina Journal of Law & Technology). Images made available to fans include popular Warner Bros. television shows such as "ER" and "Friends", animated characters from the Looney Tunes family such as "Bugs Bunny" and Daffy Duck," and motion pictures such as "The Matrix" and "Harry Potter."

<sup>129</sup> Privacy Policy, Warner Bros., at [http://www2.warnerbros.com/main/cmp/privacy\\_URD.html](http://www2.warnerbros.com/main/cmp/privacy_URD.html) (last visited Mar. 7, 2002) (on file with the North Carolina Journal of Law & Technology).

exclusive license to an image database is granted to members for free in exchange for compliance with the terms. Since the fan sites are not centrally located within one domain, the terms should require the fan site to provide a link to the entertainment company's primary site and to prominently display the company's logo and copyright notice.

The entertainment company should first direct letters to ISPs that currently host unauthorized sites to make the provider aware of the infringing activity without providing specific site information that would trigger action under the DMCA. In a follow-up call with the provider, the entertainment company can discuss the program and its plan to report to the provider the names of sites that refuse to join. An ISP will generally cooperate because the program does not compromise its position of safety from liability under the DMCA.<sup>130</sup> An e-mail is then sent to each infringing site that describes the program benefits and includes the agreement. A second e-mail to non-responsive fans may be necessary to reiterate the consequences of failure to join.

Marvel Enterprises implemented this type of program in 2001.<sup>131</sup> Member sites are promised access to Marvel's digital library of images, a free subscription to the company's weekly

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<sup>130</sup> See FISHMAN, *supra* note 29 at 14/21. The author explains that ISPs are sometimes on the receiving end of bad publicity for complying with the terms of the DMCA in disabling or removing infringing sites. Model Approach Two may eliminate some of the negative publicity by decreasing the number of infringements reported to ISPs.

<sup>131</sup> See Eric J. Moreels, *Marvel Cracking Down On Fan Sites?* (July 21, 2001), at cinescape.com, <http://www.cinescape.com/x-men> (on file with the North Carolina Journal of Law & Technology).

newsletter, and the possibility of being selected as the “fan site of the month.”<sup>132</sup>

Infringing sites are contacted via e-mail, and the program is explained in simple language that could be understood by a broad audience.<sup>133</sup> The value of the company’s fans and their websites is emphasized.<sup>134</sup> The letter clearly explains the consequences for fan sites that refuse to join the program. Such sites are at risk of being reported to Marvel’s legal department, and the site will be reported to the owner’s ISP.<sup>135</sup> The terms of the membership agreement are included in the e-mail, but the agreement is also available on the company website along with frequently asked questions and responses.<sup>136</sup>

This approach gives fans an incentive to join by rewarding them with perks. It also gives fans the freedom to maintain their sites in any location they choose. They are not limited to a designated domain as in Model Approach One. As a result, an entertainment company may avoid some criticism for making demands of the fans.

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<sup>132</sup> Authorized Fan Site Program, Marvel Enters., *at* <http://marvel.com/community/fansites/> (last visited Mar. 7, 2002) (on file with the North Carolina Journal of Law & Technology).

<sup>133</sup> *Id.*

<sup>134</sup> *Id.* The letter states, “Marvel’s fans and their websites are also very important to us.”

<sup>135</sup> *Id.*

<sup>136</sup> Authorized Fan Site Agreement, Marvel Enters., *at* <http://marvel.com/community/fansites/xtras/application.pdf> (last visited Mar. 7, 2002) (on file with the North Carolina Journal of Law & Technology); Marvel Entertainment – Community: Authorized Fansite F.A.Q., Marvel Enters., *at* <http://marvel.com/community/fansites/faq.htm> (last visited Mar. 7, 2002) (on file with the North Carolina Journal of Law & Technology).

Entertainment companies that opt for an approach like Marvel's can utilize a database containing links to each member site's URL to simplify the task of monitoring the sites. However, it is important to assure authorized members that the personal information they supply on the application will only be used in conjunction with the fan site program and will not be distributed to any other group.<sup>137</sup>

Other authorized fan programs are available through official movie sites in an effort to promote the films as well as maintain and improve corporate-fan relations. After registering at these official sites, site owners are free to build their fan sites with images not available to the public.<sup>138</sup> Fan sites are required to provide a link to the movie's official site.<sup>139</sup>

Authorized fan programs are sure to meet with some criticism (undue exertion of corporate power, limited image libraries will tend to make all sites look alike), but they are also praised as a reasonable alternative to being shut down. One fan summarizes his willingness to cooperate, "Hell, where do I sign up? I'm for it. Better than having it all shut down."<sup>140</sup>

On balance, the benefits of Model Approach Two outweigh the burdens. Besides regaining control of how their copyrighted material is used, entertainment companies that implement this type

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<sup>137</sup> See Authorized Fan Site Agreement, *supra* note 136, at para. 5(b). "Marvel will use Member's personal information . . . only for the purposes of administering this program. Marvel will NOT sell, rent or give a Member's personal information to any third party."

<sup>138</sup> Postrel, *supra* note 51.

<sup>139</sup> *Id.*

<sup>140</sup> Posting of Uncannybrandon, to <http://messageboard.cinescape.com/x-men/ubb/Forum7> (July 21, 2001) (on file with the North Carolina Journal of Law & Technology).

of program are benefited by its inexpensive nature. Most correspondence takes place by e-mail and all monitoring of sites is done online as well. A designated company agent may easily administer the program. In addition, traffic to the company's official website may be increased through links with licensed fan sites. Negative publicity is minimized because fans are recognized as valuable business affiliates that should be granted non-exclusive licenses to certain materials rather than being summarily shut down.

## **Conclusion**

Copyright law clearly provides entertainment companies exclusive rights in their copyrighted materials. The issue of whether fan sites have a fair use defense in response to copyright infringement claims may never be resolved since cases involving fan sites have not proceeded to court due to entertainment companies' financial and publicity concerns. Today, litigation may not be necessary to enforce copyrights against growing numbers of fan sites.

Copyright enforcement through the traditional use of cease-and-desist letters and threats of legal action may be appropriate in some circumstances, but the public nature of the Internet makes this a choice to consider carefully.

As entertainment companies increasingly seek to protect their copyrights from infringement on the Internet, fans will become more responsive to programs that acknowledge the value of fan sites and allow them to continue to operate in some form rather than the alternative of being shut down.

A company can vary the amount of control over fan sites through the use of a designated domain as in Model Approach One

or by permitting fan site owners to be hosted by any service they choose as in Model Approach Two. Both approaches result in control over one's copyrights and greater fan retention. The best part for entertainment companies is that it is no longer necessary to choose between fan support and copyright protection.



