



**Forum: Challenges & Duels**

**Topic: Cover Flip**

**Subject: Re: Cover Flip**

Posted by: B

Posted on: 2012/8/27 2:45:45

I maybe shouldn't bother with a reply if Chilly's gone, but for anyone else who's paying attention, I do feel obliged to point out that I believe he's wrong on a couple points.

Again: not a lawyer. I've read enough on the subject to be reasonably confident but if we have any actual lawyers around, I'd be glad for any corrections.

For a start, bringing up trademark infringement is muddying the water. It's fan art, of course it's trademark infringement. What we were discussing is cover flips and manip both being COPYRIGHT infringement (of the copyrights on individual pieces of art, ie comics covers and photographs). And they patently are breaking the law, no doubt about it. Chilly's right about that, certainly. But...

Quote:

chillyplasma wrote:

Fair use is like when you buy a CD and copy it to tape for your own use in your car. Fair dealing is when you buy something, e.g. a comic for personal use, and are allowed to sell it.

Not exactly. Fair use is a doctrine that provides for exceptions to copyright (such as, say, the copyrights on comics covers and photographs). Fair dealing is the British name for this. Copying a CD for your own personal use is indeed an example. Quoting the US Copyright Office:

'Four factors [are] considered in determining whether or not a particular use is fair.

1. The purpose and character of the use, including whether such use is of 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.
4. The effect of the use upon the potential market for, or value of, the copyrighted work.'

My argument is that while manips are indeed copyright infringement, their being nonprofit, substantially altered, and clearly distinguished from the original work means they arguably fall under fair use. Cover flips also arguably qualify, as clear parodies. Now, note the 'arguably'. Fair use is decided on a case-by-case basis, so we can't say with certainty... but if we were forced to defend ourselves against copyright (NOT trademark) infringement, I suspect we'd be able to put forth a decent defence.

...and all that is mostly just background for my further argument that what we do is morally defensible on the same grounds that qualify it for fair use. They're what make it art rather than Photoshop hackwork.

Quote:

chillyplasma wrote:

?The Heromorph Rules.

A line was drawn saying you can?t use another artist?s work without permission. If you can?t get permission, you don?t use it. Simple, that?s the rule, it?s reminded every time you upload an image.

The Heromorph rule has nothing to do with the law."

Not exactly. If it were that straightforward, we couldn't do cover flips either without getting the cover artist's permission. It's a bit more complex: I just looked at the FAQ, and it says that you cannot POST others' artwork as your own. What it says about USING others' artwork in your own images is:

'If you [use] images ... from another artist, you must give credit to that artist in your image description.... If you are using an image from an artist on this site, you Must ask permission... If you can not contact the artist then you are not allowed to post.... If in the images you are borrowing from are just random images from the web ... provide links to your sources.'

I don't believe the Ms Marvel Darque used is from this site, which means he needs to give credit rather than get permission. Except that he couldn't identify the artist. I suppose he could have linked to where he found it (though no one here does that), but I believe using it does not break the site rules.

...and I can't see a reminder of those rules anywhere during the submission process, btw.

I suppose Chilly would say that regardless of these minutiae, Darque's post breaks the spirit of the rules, if not necessarily their letter... but it's not his call to make. It's up to Darque and his conscience, and of course the mods. If they think he's played fair by the original artist and changed enough to post it as his own work, then so be it.