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# Scanlations: Copyright Infringement for Literature and Art Fans Brought to You by the Internet

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# Scanlations: Copyright Infringement for Literature and Art Fans Brought to You by the Internet

Posted on **February 1, 2010** by **Editor**



**By Nicole Nowlin**

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We've all heard the cries of pain from artists and record labels as dollars are bled from the music industry via illegal downloading and file sharing. We've seen the lawsuits [1] and the evolution of Napster [2] and iTunes. We've more recently seen the news about the multi-million dollar lawsuit against the four biggest members of the Canadian Recording Industry Association for not paying for the rights to music they used — and from which they profited — on compilation CDs [3].

But do you hear writers and publishers bemoaning their loss of revenue? No. Why writers, you ask? Aside from the plagiarism that is severely punished in our educational system, written works don't have the appearance of dealing with the same pressures of illegal sharing and reduced royalties. Stephanie Meyer's *Midnight Sun* (Twilight Series) [4] was illegally distributed while unfinished and she shut down the project — that may be the only thing that comes to mind when people think of books and file sharing, and that is over a year old. It doesn't get much attention, because really... how much work is it to remove the pages from a book and scan them into a PDF or image file? How much work is it to retype a novel? Too much work!

However, it's not too much work for everyone, especially when there are shorter books that are mostly images to be scanned, not manuscripts to be retyped. This is where scanlations come into play. According to Wikipedia,

***Scanlation*** (also ***scanslation***) is the unauthorized scanning, translation, editing and distribution of comics from a foreign language into the language of the distributors. The term is most often used for Japanese (manga), and rarely for Korean (manhwa) and Chinese (manhua) comics. Scanlations are generally distributed for free via the Internet, either by

*direct download, BitTorrent or IRC. The word scanlation is a portmanteau of scan and translation.* [5]

For an example of scanlations before and after, check out Dan in Japan's blog post [here](#) [6].

If it weren't for the internet, we wouldn't have a lot of things — including so much piracy! The Internet has created a forum through which the world shares everything, legally and illegally. It is a place where one can find anything, and that commonly touted phrase is becoming truer every day. As a Generation-Y 'net fanatic, I can safely say I rarely can't find something for which I am looking... and that includes music downloads, manga scanlations, or artwork. It's very easy, found in archives and repositories growing in volume every day.

The scanlators (those actually doing the scanning and translating) are aware they walk a fine line. In their *Frequently Asked Questions* section, Mangascreener writes, "Technically it's illegal, but if the series is not licensed, it is normally overlooked. In some ways, scanlations are beneficial: many series get popular through scanlations" [7]. Anime News Network includes the illegality and reality of the copyright infringement in their definition, stating "...scanlations are technically illegal copyright infringement, but are a tolerated fan practice so long as distribution of the scanlation ceases when the manga is licensed or the original copyright holder requests it" [8].

From a purely legal standpoint, illegal is the right description. Just as music is illegally downloaded, printed materials like manga — turned into scanlations — that are scanned, copied, or downloaded, are subject to copyright infringement. Online repository MangaFox places a disclaimer at the bottom of their site stating, "Copyrights and trademarks for the manga, and other promotional materials are held by their respective owners and their use is allowed under the fair use clause of the Copyright Law." At first blush, this looks kosher — they're aware of copyright and apparently are able to use the materials posted on their site under the aforementioned fair use clause.

Frankly, it's not that simple. Mark Hubert, a copyright lawyer in Portland, OR, explained, "Scanlations, assuming they are unauthorized, would not qualify as 'Fair Use' according to the Copyright Act of 1976, the reproduction of authored works for the purpose of 'criticism, comment, news reporting, teaching, scholarship, or research'." Hubert went on to quote the tests used to determine if the fair use clause is applicable, according to the code: "(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 (4) the effect of the use upon the potential market for, or value of, the copyrighted work" [9] [10]. From this, two things are clear — the materials posted, while generally without profit are not for educational purposes, and most works are posted in their entirety.

The definition of the fair use clause and infringement is further expanded under the Digital Millennium Copyright Act of 1998 [11] to adapt to the increasing use of the Internet. Hubert

described it as defending “copyright owners from infringement or infringement through the transfer of digital copies of their protected works.” With it came some protections for Internet Service Providers and websites from lawsuits based on user-generated content. It is most likely under the addition of the DMCA that scanlation sharing sites are absolved of wrongdoing, as their content is provided by users, like YouTube videos. In the Terms of Service, these sites claim no responsibility for liability or damages due to user content, explicitly stating:

*You shall be solely responsible for your own User Submissions and the consequences of posting or publishing them. In connection with User Submissions, you affirm, represent, and/or warrant that: (i) you own or have the necessary licenses, rights, consents, and permissions to use and authorize to use all patent, trademark, trade secret, copyright or other proprietary rights in and to any and all User Submissions to enable inclusion and use of the User Submissions in the manner contemplated by the Website and these Terms of Use; and (ii) you have the written consent, release, and/or permission of each and every identifiable individual person in the User Submission to use the name or likeness of each and every such identifiable individual person to enable inclusion and use of the User Submissions in the manner contemplated by the Website and these Terms of Use. **For clarity, you retain all of your ownership rights in your User Submissions** [12].*

When considering that the materials are not posted by the authors, publishers, or anyone else licensed to own the materials, it puts into perspective the fact that the entirety of the manga content on these websites is both illegal and completely accessible. “A lot of the file sharing websites seem to maintain servers in random countries that don’t enforce intellectual property rights, but whenever someone in the ol’ USA downloads the music, manga, whatever to his/her computer you run the risk that the copyright holder might come looking for you,” wrote Hubert via email. “This has just become a huge issue for artists. Due to technology the ability to swap data has completely altered artists’ ability to enforce their copyrights.”

In an article in *The Comic Journal*, Dirk Depey interviewed several amateur scanlators. “Scanlation isn’t simple piracy — not always, anyway,” he wrote. One of his interviewees gave an excellent comment to lighten the dark view on the legality of this issue, a suitable closing to this examination of the copyright infringement on the manga industry. Jill Schlicher, former scanlator, explained to Depey the positive side of scanlations – essentially, what the scanlators and fans are attempting to do. “There are many great series that are not commercially available in the States, but if somewhere some small group of fans really love it, it can become accessible to others who may not be able to read Japanese and may not even have ready access to Japanese bookstores where the raw comics could be bought. It may be illegal and offensive to some companies, but I do think it’s actually more likely to be beneficial to them in the end by promoting an interest in comics and related merchandise. And for big companies and small fans alike, that really is a lovely thing for everyone” [13].

See PART II [here!](#)

## Glossary of Terms

- Manga – Japanese comics or graphic novels
- Manhwa – Korean comics or graphic novels
- Manhua – Chinese comics or graphic novels
- Scanlation (scanslation) – a scanned translation of a work originally published in another language
- Scanlator – the person(s) who scan and translate the works
- IRC, BitTorrent – downloading and file sharing services

## Endnotes

[1] Straziuso, Jason. "Download lawsuits scare some, but song trading still popular." *USA Today*. 20 Feb. 2004. Web. 10 Jan. 2010. .

[2] Gil, Paul. "Understanding Music Downloading: P2P File Sharing." *About.com*. Web. 14 Jan. 2010. .

[3] Geist, Michael. "Record industry faces liability over 'infringement.'" *Toronto Star*. 7 Jan. 2010. Web. 7 Jan. 2010. .

[4] Meyer, Stephenie. "Midnight Sun: Edward's Version of Twilight." *StephenieMeyer.com*. 28 Aug. 2008. Web. 15 Jan. 2010. .

[5] "Scanlation." *Wikipedia*. Web. 11 Jan. 2010. .

[6] Johnston, Dan. "Scanlation attempt." Web log post. *Dan in Japan*. 12 Oct. 2009. Web. 21 Jan. 2010. .

[7] "FAQ (Frequently Asked Questions)." *Mangascreener.Com*. Web. 15 Jan. 2010. .

[8] "Scanlation." Lexicon. Anime News Network. Web. 15 Jan. 2010. .

[9] Hubert, Mark. E-mail interview. 14 Jan. 2010.

[10] 17 USC 107. 1976.

[11] H.R. 2281, 105th Cong. (1998) (enacted). Print.

[12] MangaFox. "Terms of Service." Web. 12 Jan. 2010. .

[13] Deppey, Dirk. "Scanlation Nation: Amateur Manga Translators Tell Their Stories." *The Comics Journal* #269 (2005). Web. 14 Jan. 2010. .

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ONE THOUGHT ON “SCANLATIONS: COPYRIGHT INFRINGEMENT FOR LITERATURE AND ART FANS BROUGHT TO YOU BY THE INTERNET”

**cork board ideas**

on **February 5, 2014 at 11:40 AM** said:

Very good article. I am experiencing some of these issues as well..