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Architecture and Morality

Transformative Works, Transforming Fans

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As the editors of this volume write in the Introduction, "nearly every community is deeply influenced by the physical and technological architecture in which it is situated." Online fandom communities, which have been a focus of my research, offer excellent illustrations of this principle. Fans have created spaces where noncommercial creativity can thrive, as participants in online communities create new stories, videos, artwork, and other artifacts based on existing works, from the Avengers to Zorro and everything in between.

Creative fandoms are particularly attractive to groups underrepresented in American mass culture: women; lesbian, gay, bisexual, transgender, and queer people; and racial minorities of all sexes and orientations. "Talking back" to dominant culture using its own audiovisual forms can be particularly attractive to disempowered speakers. Rewriting a popular text to show the alternative paths it might have taken readily permits critique of existing structures—by creating possibilities and alternatives, such remixes demonstrate that there is no single, necessary story. Fanworks cover every imaginable topic, from alternate universes in which the characters from the *Avengers* films are ordinary high school students to stories exploring what might have happened after the final scene on *Mad Men*. Not all fanworks are critical, but all of them involve the addition of new thoughts to existing characters and situations, and therefore represent someone's creative expression.

Media fans were among the first to see the liberatory possibilities of the Internet, and much, though not all, of media fandom has moved online. Fans regularly take technologies not made for them and adapt them for fannish purposes, such as the writing platform Wattpad, the image-

heavy blogging platform Tumblr, and the visual art site DeviantArt. Vidders, who make new works by combining video clips from TV shows and films with songs in order to use the songs to tell a new story about the visuals, often put their fanvids up on YouTube, where they sit alongside many other types of video. Vidders therefore encounter groups of people with different norms about what kinds of appropriation are acceptable.[1] Fans also create their own sites, such as Fanfiction.net and AnimeMusicVideos.org; however, because fans are people, that doesn't prevent conflicts over norms and boundaries from breaking out.

The diversity of transformative work-creating fandoms is so great, it can't be encompassed in any one chapter, and there will be counterexamples of everything I say here. Thus, I will simply attempt to sketch out some current trends and matters of debate in areas of fandom with which I am familiar, which largely come from Western media fandom. However, scholars of media fandom have identified similarities among Western media fandoms, non-Western fandoms, and other fannish creative endeavors such as cosplay (short for "costume play," creating costumes to emulate existing characters or altered versions of them), including the use of norms to bring new members into fan communities; internal policing of specific types of commercial activity to keep the fandom "noncommercial" on its own terms; and the use of pseudonyms to create identities within fannish communities and protect fans from ridicule from the outside.[2] So, while my perspective is necessarily limited, there are some general features of creative fandoms that can offer larger lessons about "low-IP" spaces.

In search of some larger lessons, this chapter will discuss the role of individual identity in online fandom communities; the role of community itself in shaping the content of creative works, and of helping to form individual identities; the idea of *transformativeness* as a unifying idea justifying fannish creation; and the competing idea of noncommerciality, which has never been pure but is now under new pressures as the formal economy intervenes into fandom in new ways. Fans have complex and often contradictory relations with commercial productions; the most widely shared fan value regarding intellectual property, that of attribution, is flexible in implementation and of substantially less interest to the commercial entities now engaging with fandom than fans' economic potential. As I will discuss, there is in fact significant variation

in what fans consider acceptable in the intersection of money and fandom. Like most communities, fandom is divided; and yet communities survive without complete consensus and without eternally fixed norms.

Though a noncommercial ethos is an important part of many fandoms, what *noncommercial* means is up for debate in a world that does not in fact have separate spheres for the market and the private. As with many subcultures, the prospect of monetizing the love and productivity of fandom spurs outsiders (and some insiders) to attempt to separate fans from their dollars. Partially in response, some fans created the Archive of Our Own to host fanworks, run by the nonprofit Organization for Transformative Works (disclosure: I was a co-founder of the OTW). Other specifically fannish spaces are free to use, but ad-supported, such as Fanfiction.net. These spaces prioritize the concerns of fans: sharing, crediting fannish creativity, and offering feedback, but they also have servers to run, and servers cost money.

Copyright law gives copyright owners control over derivative works—works based on or adapted from the copyright owner's initial work, such as the movie version of a book. If fanworks aren't fair use or otherwise protected, fanworks may infringe the derivative works right. Although moral rights don't exist in the United States, except in limited circumstances not relevant here, some authors also assert moral claims to control how their works are interpreted and reinterpreted. But fandom has almost the opposite norm: change in the form of adding new creative expression produces a separate work that the copyright owner should not control, at least when that new work circulates only within fandom.

The expressed preferences of original creators don't matter to a large number of the fans who create fanworks—after all, one reason they create is that the original text left them dissatisfied in some way. The largest general fan fiction site on the Internet, Fanfiction.net, doesn't allow fan fiction where authors object, but that choice is probably more understandable as a function of legal risk aversion than an implementation of internally felt norms, and it would be a mistake to confuse the two.[3] The Archive of Our Own, by contrast, explicitly does not consider whether an author objects to fan fiction, instead taking a blanket position that noncommercial fanworks are fair use. Attribution, however, does remain a constant, with plagiarism off-limits and credit to fan authors vital because credit is the only recognition most fans receive. The Ar-

chive of Our Own has very few limits on the fan-related content it will
accept, but a fundamental rule is still attribution, whether explicit or
implicit. No one needs to footnote "Use the Force, Luke!"

At this point, the legal status of fan fiction is unlikely to be contested
in the United States. It's now common for fan fiction to be part of the
"test suite" for a theory of copyright; that is, a theory that doesn't allow
noncommercial fan fiction is prima facie not a good theory. Moreover,
the U.S. Copyright Office has recognized that fan videos may well be fair
use, accepting the arguments of fan video makers that using short clips
from existing works deserves an exemption from the Digital Millen-
nium Copyright Act's prohibition on circumventing technologies that
prevent copying from DVDs and digital downloads and streams. It's true
that we don't have a court case opining on the fair use status of online
fanworks, but one reason for that absence is that, when fans have se-
cured legal representation in response to rare copyright owner cease and
desist letters, the copyright owners have declined to press their claims.
I believe this pattern represents a sensible recognition that they're likely
to make fair use precedent rather than to win their cases.

Thus, bolstered by fair use claims where necessary, media fandom
offers an example of a functioning creative ecosystem embedded in, but
not fully absorbed by, late capitalism. Media fandom is low-IP in that
there are few interactions with lawyers or courts. But concepts of right
and wrong still both structure communities and are subjects of debate
within those communities. Ultimately, creative fandom is not about pu-
rity in any sense, but rather constitutes itself from the play of individual
self-definition and community norms. It's in the hybridity and messi-
ness of fandom structures that we can get a better sense of what creative
practices look like.

Identity

Even under a legal regime without much in the way of attribution rights,
authors regularly seek and receive credit, with exceptions requiring some
explanation—for example, the need for political responsibility that sub-
merges the authorship of politicians' speechwriters and judges' clerks.
Fan authors are no different: Identifiability is important, especially since

fannish endeavors usually pay off only in reputation, if that. Most profit-seeking creative works are similar in that regard, of course.

Fannish identities are often pseudonymous, but that doesn't mean they don't matter. At the most basic level, a popular pseudonymous author will have a wider platform for her next endeavor.[4] Even for less popular creators, pseudonyms serve important functions. Pseudonymous members of a community can play particular versions of themselves, disclosing personal information while still feeling safe because of the pseudonym's distance from a legal identity. This safety then allows a fan to express herself in ways she might not have elsewhere, including taking some risks in creating new works.

Pseudonymity's shielding functions can therefore be tightly linked to its creative functions. Many fans even choose names related to their fandoms, signaling membership in fannish groups and openness to interactions with other fans. Kirklovesspock may find kirklovesmccoy's opinions misguided, but they share a certain kind of public signal. Pseudonymity is so common in fannish spaces that even people otherwise willing to use their legal names may choose pseudonyms, just to fit in. The pseudonymous norm is enforced against other community members: People who publicly connect a fan's pseudonym with her legal or "wallet" name face social sanctions from other fans.[5] The fannish community thus collaborates in the fan's production of a separate identity, enabling her to play more freely.

Choosing a name is only the beginning of a fan's journey. People find out who they are by making things, including fanworks. *Making* thus involves creative productions but also the production of the creative self, which emerges in the course of doing the work. Jessica Silbey's qualitative interviews with professional creators of various types reveal the importance of *process* in creation: a creative end product is the result, but it's not the thing on which creators focus, which is instead the value they find in doing the work itself.[6] *Work* is a noun in copyright, but a verb in the everyday practice of creativity.

One of the implications of the centrality of process is that valuable acts of creativity occur even when the results are similar to those that have come before, because work furthers the creative development of the *individual*. As explained by theorist Tisha Turk:

> The value of an undergraduate student paper seldom lies in its originality. (Anyone who thinks it does has never read eighty papers explaining the significance of the title of *Pride and Prejudice*.) Those papers are valuable not because they make original, innovative scholarly arguments but because they are a mode of learning; what matters is the practice, the process. . . . For the most part, undergraduate papers are not practice for anything in particular; their value is in the habits of mind that they encourage. The practice is the point.

This, for me, is part of why it's valuable to address fannish processes, not just fannish artifacts. Even a celebratory vid—a vid that doesn't transform the story, or re-read it, or whatever—does require work; it requires ripping, clipping, converting, editing, tweaking, lots of different kinds of decision-making, even if those decisions feel completely intuitive and easy in the moment. . . . Looking at process gives us a way of explaining why reproduction, in a fannish sense, is never simply mechanical: The practice is (at least part of) the point.[7]

As the similarity between Silbey's and Turk's accounts indicates, commercially motivated authors and fans are not all that far apart in their needs and concerns. One might say: But professional authors produce work that is, on average, of higher quality than undergraduate papers or fanworks. There's no doubt that low barriers to entry lead to works of low quality, but so what? As the influential science fiction writer Theodore Sturgeon pointed out, 90 percent of science fiction is crud, but 90 percent of *everything* is crud. Even if we only cared about quality, no culture produces a Shakespeare without also producing a great number of prosaic and easily forgotten playwrights. It is from the vast numbers of people experimenting that we get the peaks of human achievement. Even indifferent fanworks should thus be understood as products of the freedom that also produces artistic triumphs.

It is also notable that very few other low-IP creative communities are routinely subject to judgment based on the quality of their *average* creative work. And it's hard to shake the feeling that media fandom associated with women, and particularly with young women, faces an often gendered distaste. A lot of chefs' new creations disappear without notice; a lot of tattoo artists do at best indifferent work; a lot of stand-up comics perform painfully unfunny routines; and so on. But somehow, we don't

spend a lot of time worrying that most of those creators aren't very good, and very few accounts of these groups in popular media feel the need to nod at how bad most participants are, whereas a sentence of this sort is common in articles about fan fiction.

Copyright's nondiscrimination principle is on to something here. Creative work deserves recognition as the production of an author, even if it's not "good." The process, and the people who engage in it, deserve our respect. At the very least, fans' deep commitment should lead others to ask why fandom is so important to many people. The OTW collected fans' stories as part of its mission to promote the legitimacy of fanworks, and the following two are typical. Chelsea S. explained how it was the importance of seeing a *rewriting* that enabled her to understand herself:

> [F]anfiction gave me a small segue into some insight about myself. I am bisexual. If I think hard, my first crush on a girl was probably in the first grade. Not that I could ever admit it to myself. Growing up in east Texas, one just didn't do that. Even my own brother coming out of the closet couldn't assist me in what should have been a comparatively small step. It wasn't until I was older and stumbled upon the infamous "slash fiction" that I saw one of my favorite television characters, one with whom I identified deeply, recast as a bisexual man. His character was not significantly altered, he didn't suddenly become something unrecognizable. The stories I read featured him having more or less the same adventures he always had. It was the first step to greater tolerance and greater self acceptance for me.[8]

Balun S. used fandom to help herself and others:

> I was an engineer, or at least I had been, I had lost my job and was dealing with the hopelessness and depression that are part and parcel of long-term unemployment and dwindling savings. . . . I turned yellow and racked up two years' gross wages in debt in just a few days in medical bills. I was beyond low. I was in the dark place were staying alive was no longer a priority and death would have been a release, a kindness. However, we received gift[] cards for dinner and a movie. We saw Disney's *Tangled*. It was fun, but they skipped over some obvious things to get to the happily ever after in a reasonable amount of time.

It bothered me, and there was no way Disney would ever do that part of the story, so I did. . . . I posted to FanFiction.net and people liked what I wrote. For the first time in years I received validation that I was a worthwhile human being! Something a job had never given me. Life was worth living again!

Through my fanfiction, I worked through my emotional pain. Then I found that others shared that pain. People would read and re-read my stories to help them out of depression and suicidal thoughts. We would communicate and I helped lead them through their own dark places. I have had several people tell me that they are alive now and wanting to stay alive because of my stories and our interactions, all because we are able to connect through the shared love of a movie. . . .

I would like to help people, but the only way I know to find some of these people in trouble is through the love that is shared with a movie or other story.[9]

Sometimes, seeing yourself reflected in a work of art can be vital to your own survival. Sometimes, making art can be the same. And because inspiration regularly comes from the world around us, fanworks are one way that people can perform this necessary, sustaining work of living.

Community and Change

As Balun's story indicates, many of the individual benefits of creating fanworks come from the experience of community. Fandom as creative practice is communal because it is inherently iterative. As one commenter wrote, "Fanfic is all about asking 'what if' and the answer is always yes."[10] A classic rule of improv theater is that participants are not allowed to refuse another participant's gesture, though they may reinterpret it, add to it, or otherwise send it in a new direction. Fandom is very much like improv: Many fannish creations exist in a web of other creations, and an individual work may be difficult to understand without knowing about its connection to the larger community and about the debates or tropes to which the individual work is a response or contribution. Should I write this story? Should I draw this picture? In fandom, the answer is always yes. This ethos leads to

weird and wonderful results. And it also supports immense experimentation, diversity, and plenitude.

Community is also where architecture becomes important. Communities need places, even virtual places, to be communal. Many times, fan communities make do with platforms not designed for them, adapting sites for their own purposes and existing in the interstices. Karen Hellekson describes fans' use of various sites, some of which can be actively hostile to fanworks, as "making use of" whatever comes to hand. When the answer to "should I make this?" is always yes, then "why not throw some fan fiction up [on the general publishing site Scribd] and see how it does?"[11] is also a plausible conclusion.

Fans will often experiment with different sites and functions to see how they can be adapted. For example, the blogging site Tumblr provided "tags" for posts in order to allow users to search and categorize content with short descriptions of post content. Tags were meant to guide topic-based searches, like Dewey Decimal numbers or Library of Congress categories. But fans now use Tumblr tags for commentary, humor, and indecipherable-to-outsiders argot, sometimes conducting entire discussions in tags. Top-down expectations from the site's creators were overwhelmed by actual practice.

Worries about suppression of fannish content and fears that commercial motives would lead to exploitation or control of fanworks have also led fans to develop their own sites, primarily archives of collected works from numerous authors. This practice is furthest entrenched with fan fiction, though there are also sites for fan video and art. The OTW's Archive of Our Own (popularly known as AO3), with a name deliberately referencing Virginia Woolf's discussion of a female author's need for her own private space in order to write, was specifically designed to support fan communities. Potential users participated in focus groups on the AO3's terms of service, which were written in an attempt to make them understandable to ordinary fans, though there's still no way to make them read the terms of service in the first place.[12] The AO3 has minimal restrictions on content and takes the position that fans have broad fair use rights. One reason for its creation was to make sure that fan creators would have a place to go if commercial motives led to their ouster from other spaces—something that happened when, for example, Fanfiction.net banned sexually explicit fan

fiction, apparently because advertisers worried about having their ads placed next to erotica.

Even with fair use considered as settled, there are still other issues in fandom about what kind of content is acceptable. For example, many fan communities historically considered "real person fiction" (RPF)—pretty much what it sounds like—far more ethically dubious than "fictional person fiction," even though RPF poses no copyright problems and very few other legal issues when the stories are, as they almost inevitably are, plainly fictional. Changes in celebrity culture and fan practice, however, have made RPF much more broadly accepted than it once was in Western media fandom, highlighting one difference between norms and laws: norms' greater susceptibility to evolution. By accepting RPF in pari materia with other fanworks, the AO3 consolidated this emerging norm in its sector of fandom. The beliefs of the particular group of fans who participated in discussions about the AO3's terms of service became the rules of one of the first sites many new fans are likely to encounter, teaching about acceptable boundaries by example.

Other recent changes include changing aesthetic conventions in fiction (a wave of third-person present-tense stories, and then a backlash) and fan video (moving to heavier editing to take advantage of new capabilities in editing software), as well as changes in how feedback is solicited and delivered. Fandom's growth and increasing reliance on audiovisual modes have led to changes in platforms and wider dispersion. As the text-heavy blogging site LiveJournal has declined, the image-friendly Tumblr has risen. Tumblr's structure makes it easier for "strangers" to encounter each other—although not always in friendly fashion—because they follow the same topics. LiveJournal allows users to "lock" entries to limited audiences, as Facebook does for those who understand the settings, but Tumblr does not.[13] As a result, Tumblr users more easily encounter other users who don't share common backgrounds or assumptions and who are willing to disagree vigorously. But Tumblr is not a pleasant place to post long texts; fans who write fan fiction often post to AO3 and/or Fanfiction.net and then solicit readers on Tumblr and other sites, from Instagram to LiveJournal. In this way, fans continue to piece together an ever-more-scattered existence, using whatever tools seem to be most useful at the time.

The AO3 has implemented a "kudos" button that functions similarly to a "like" or "thumbs up," but unlike, for example, YouTube or Reddit, it does not offer a "thumbs down" option. This feature cements a fannish norm that the threshold for saying something negative ought to be higher than the threshold for saying something nice. Before the kudos button, email or publicly posted comments were the only way to offer feedback, and still are the only ways to offer criticism. The architectural choice to include it arguably changed the balance between fan creator and fan audience. Some people appreciate the ability to give kudos as a quick acknowledgment and believe it increases the willingness of users to interact with authors, while others fear that it supplants more detailed feedback. Probably both addition and displacement occur, changing the shape of the community in ways whose long-term effects are hard to predict.

Likewise, Mel Stanfill identifies some recent changes in the balance between individual and community: "Posting fiction that has not been beta read and is thus riddled with errors relating to both show canon and to writing is now routine. Leora Hadas has described this attitude in the context of *Doctor Who* fandom as the sense of a 'basic right' to create and post fic, and it points to prioritizing individual desire to create over any sense of obligation to produce something others will find worth reading."[14] Older archives sometimes required works to be "beta read"— checked for grammar, spelling, and even plot and characterization—but AO3 and Fanfiction.net do not. A beta reading requirement does not scale, so large fan sites don't use prescreening measures any more than large non-fan sites do.

Yet fan spaces aren't just subject-specific versions of the broader Internet. For example, a common feature of commons-based production is that norms can distinguish between the appropriate treatment of insiders and outsiders, and fandom is no different. Creating unauthorized new stories based on the work of profit-seeking copyright owners isn't just accepted, it's *constitutive* of creative fandom. However, doing the same thing to a work of fan fiction—creating a fanwork of a fanwork— without the original fan creator's permission is highly controversial. A major debate erupted some years back when one *Stargate Atlantis*[15] fan community ran a challenge asking people to rewrite existing fan stories

(with credit to the originals). One argument for treating fanworks differently than the commercial sources was that fan authors only have a story, not cultural acceptance as creators or financial reward. Thus, the argument went, it was more important to grant fan authors moral rights of control over their works than to allow commercial copyright owners to control fanworks. Other fans found this position hypocritical or at least misguided, since a story once told is in the hands and minds of the audience, and reactions—including creative reactions—are inevitable. Similarly, there have been vigorous debates about whether a fan who records herself reading a story out loud (known as podficcing) requires the original author's permission.

The AO3 attempts to moderate these different positions by the practice of reciprocal links: For a podfic, for example, the podfic creator can indicate that it is a "related work" to a written text. If the text is also hosted on the Archive, the writer can decide whether to accept the link, in which case the podfic will be easily available to readers of the written text, or to decline the link. The concept of related works allows creators some control over the visibility of works based on their own fanworks. This design feature of course does not solve the moral problem, but it may well help to shape norms on an ongoing basis.

Medium also matters. A person who, without asking first, draws a picture illustrating another fan's story is likely to be praised and considered to be offering the highest form of flattery because she is contributing her own artistic talents to realize the fan-author's world. Fan art is routinely sold, but "filing off the serial numbers" and "pulling to publish"—removing fan fiction from online distribution and rewriting it so that it can be sold as a separate work—is controversial, perhaps precisely because it seems to be withdrawing a gift that has been reciprocated with gifts of feedback and praise.[16] These differing norms by medium are an example of the kind of context sensitivity, and lack of fully settled rules, that communities routinely produce and that generic legal regimes find hard to replicate.

Likewise, there is a general fannish norm against making a creator's works publicly available without permission, though that norm is not universal and even people who generally adhere to it may also recognize exceptions. However, interpreting that norm creates some interesting questions as time passes and archives change hands or threaten to disap-

pear from the Internet for want of maintenance. If a fan put her works on Geocities, a now-defunct website, and then died, may her friends preserve her works on a new site if they sincerely believe she would have wanted them to remain accessible? The correct answer is not obvious.

Another OTW project, Open Doors, works to preserve at-risk archives, usually by importing them into the AO3. As long as the archivist wants the archive to be preserved as a collection, the OTW has generally taken a creator's original choice to deposit a work in an archive as a continuing desire to keep it online, even if the archive moves domains. However, Open Doors also allows individual creators to remove or "orphan" their works from an imported collection. "Orphaning" is a concept borrowed from copyright's "orphan works" debates: A creator may choose to leave a work available, but to remove all identifying information so that the work is no longer associated with even a pseudonym. The new code was deliberately designed to allow individual opt-out and deletion or orphaning of works, even though older archive software generally didn't allow easy changes once a work had been added to an archive. Orphaning preserves access to the work but means that the creator no longer gets the credit—or the blame—and stays truly anonymous. Coding the AO3 to allow orphaning is a deliberate choice and may have long-term effects on preservation if creators use it to preserve access to their works even when they no longer wish to be known as fans. This is a different kind of balance between audiences' interests in access and authors' interests in economic control than that attempted by formal copyright law; where formal law has resort to detailed legal codes and limited exemptions for libraries to engage in preservation work, the AO3 has only programming code designed to break the attributional link between an author who doesn't want to be known as an author anymore and her works.

All of these norms about preservation and alteration are at least related to IP concepts, but they're far from the only relevant norms. Fans recognize other specific ethical duties to others in fandom. Some content is disturbing to some users, or even "triggering"—it may force them into flashbacks of trauma. Or users may simply want to avoid content they know they don't like. While warnings are not an intellectual property issue, they are very much an information issue. As a result, fans have developed extensive systems of warnings and content tags that

allow users to screen out works with content they want to avoid, from sexual assault to violent death to characters behaving "out of character." Volunteers have even coded extensions that can be used on the AO3 and Tumblr so that works containing a user's blacklisted terms won't appear in search results.

At the same time, warnings can be highly controversial, and some creators don't want to use them; they consider warnings to interfere with artistic freedom or to spoil the outcome of a narrative.[17] As a result, the AO3 does require a creator to choose from a menu of major warnings—but one of the choices is "Choose Not to Warn." Under the archive's policies, creators who use Choose Not to Warn have satisfied their warning duties, and users proceed at their own risk. In order to implement the major warnings, the AO3 uses Choose Not to Warn as the default; this choice has consequences of its own as a signal about appropriate behavior (and may be misunderstood by some users). The possibility of adding as many varied "Additional tags" as the creator desires allows creators to customize their signals to audiences considering whether to access their works. The very availability of the additional tags field helps support a custom of active tagging and content disclosure, in a way unavailable in previous archives. Code can't make norms, but it can make some practices easier to implement. The rapid adoption of extensive content tags, often even by authors who choose not to "warn" as a matter of principle, suggests that the ability to tag using the neutral term "additional" is of great value to creators and audiences alike. Although the concept of "trigger warnings" has been debated and often derided in the academic context, this grassroots invention has value outside fandom. Users of book review sites such as Goodreads often adopt similar tagging practices, and some professional authors and publishers—especially those connected to media fandom—have begun using similar "advisories" and tags.[18]

When we talk about architecture shaping behavior in this way, it's worth noting that architecture requires architects, not to mention construction engineers, janitors, and the occasional security guard. The Archive of Our Own relies on huge amounts of volunteer labor to make all these systems work. In order to allow users to navigate more easily, it uses a curated "folksonomy," in which creators are allowed to tag their works in almost any conceivable way, and then "tag wranglers" associate

tags with the same meanings. Thus, one creator can use "Harry Potter/ Severus Snape" to designate the relationship explored in her fanwork, and another creator can use "Severus Snape/The Boy Who Lived," and both will turn up in a search for "Severus Snape/Harry Potter." Maintaining this curated folksonomy requires the efforts of 500 tag wranglers, not to mention numerous others on the Support and Abuse teams, as well as the system engineers and coders who help make up the largest female-majority open source project on the Internet. The AO3 thus has a complicated governance system. Mailing list administrators and archive administrators have similar roles within other communities. These volunteers are vital to the survival of the systems that bring fans together. As David Fagundes has written: "shared infrastructure and altruistic motivations lie at the heart of, rather than as a mere sidelight to, the story of IP production. Much IP production would not be possible without infrastructure resources that are best managed as commons."[19]

In other words, community doesn't just happen. It takes work. And not everyone will agree with the choices of would-be community-makers. When the OTW was founded, a number of fans expressed concerns that it would wrongly attempt to speak for all fans or make creative fandoms so visible that copyright owners would backlash and suppress us. The fear of excessive visibility, at least, has faded as other events, such as the popularity of *Fifty Shades of Grey*—an international bestseller that began its creative life as *Twilight* fan fiction—have brought fans into mainstream visibility regardless of anyone's efforts to hide. While the OTW can't speak for all fans, it does contribute to the development of fannish norms. As the next section will detail, one significant part of this contribution comes from the legal concept of "transformativeness," embedded in the OTW's very name.

Transformativeness and Activism

"Transformativeness" as a copyright concept refers to the extent to which a new work or use adds new meaning or message to an original work. The more transformative a use is, the more likely it is to be fair use. By identifying fanworks as transformative, the OTW lays claim to a powerful narrative of fair use. The term also evokes the contribution of the user's own labor, entitling her to an authorial claim of her own,

and also indicating that she isn't interfering with the legitimate scope of rights in the initial, untransformed work. The OTW helped introduce this legal concept into fannish discourse, and it is now common for non-lawyer fans to label their works "transformative" as part of ethical and legal defenses of fandom. Law thus shaped at least part of the community's self-concept in relation to its mainstream legitimacy.

Transformativeness also operates on fans directly: The transformations that fans themselves undergo in discovering themselves as creative actors help them assert their own claims for legitimacy. While lawyers, policymakers, and ordinary citizens are increasingly aware of fan activity—fan fiction even recently entered the *Oxford English Dictionary*—fans have also begun to engage in deliberate activism around copyright reform. *New York Times* best-selling author Naomi Novik, a fan writer and vidder who helped found the OTW, testified before Congress at hearings on fair use. The OTW participated in hearings on the Patent and Trademark Office/National Telecommunications and Information Administration's Green Paper on copyright reform, and submitted comments to the European Commission in its inquiry as to whether current European exceptions and limitations were sufficient. And the OTW is now in its third round of DMCA hearings before the Copyright Office, seeking to renew and expand existing exemptions to §1201's prohibition on circumventing digital rights management technologies in order to make remix videos. Fan video makers provided the bulk of the evidence used to secure the previous remix exemptions, and are on track to continue to do so.

There are other examples of directly fannish activism. The Harry Potter Alliance has promoted explicitly political campaigns to carry out the themes of justice and fairness that fans see in the *Harry Potter* books. The Alliance engaged in both charitable fundraising—a traditional fannish endeavor—and a campaign to pressure Warner Brothers to source the chocolate used for *Harry Potter*–themed candy in ethical ways. Similarly, fans of a boy band in Korea organized around their fandom in protesting U.S. beef imports, resulting in the largest protests in Korea in twenty years.[20]

I find the move from fannish analysis to activism unsurprising. (However, given the stigma often associated with female media fandom, it's been important for people like Novik and me, with economic secu-

rity and no realistic possibility of being fired for weirdness, to take the lead in speaking up.) Fandom is a training ground that teaches people that they can speak creatively, and that their speech is often welcome. And it's a place where communities of like-minded people meet up and do things together. Political possibility is thus inherent in participatory fandom:

> Scratch an activist and you're apt to find a fan. It's no mystery why: fandom provides a space to explore fabricated worlds that operate according to different norms, laws, and structures than those we experience in our "real" lives. Fandom also necessitates relationships with others: fellow fans with whom to share interests, develop networks and institutions, and create a common culture. This ability to imagine alternatives and build community, not coincidentally, is a basic prerequisite for political activism.[21]

The grassroots aren't just a dead metaphor—they're places where things grow, even if those growing things spend some time underground. For example, Limor Shifman's study of online participation found that videos that generated lots of responses were likely to be user-generated rather than professionally produced.[22] He argues that works by ordinary people inspire others to think that creativity is achievable for them as well and create the feeling of communicating with peers. In addition, repetition in particular is generative: A meme "itself includes a persuasive demonstration of its own replicability and therefore contains encrypted instructions for others' replications," much as fanworks do.[23]

My own fannish engagement happened much as Shifman describes: I discovered fan fiction online, read obsessively for a few weeks, and then thought, 'well, I can write at least as well as some of these folks'— the barriers to entry were low enough that I was willing to take some risks. I'm not unusual in reaching that conclusion. And the great news is that people who intervene in a conversation by making a creative work that comments on the world, or on one part of it, regularly come to understand themselves as creators and actors more generally. Political remix artist Jonathan McIntosh observes of his experiences teaching others to remix, "[a]fter engaging in remix culture, people young and old find it nearly impossible to experience media in a passive or un-

critical way. As members of that remix culture even if we never make a remix video ourselves, we can't help but make imaginary mash-ups in our heads when watching television or movies."[24] In the context of student video editing, Professor Christina Spiesel and her colleagues likewise noted that "[a]ll it takes is the experience of lifting a sound track from one clip and attaching it to another for students to know with certainty that everything on film is constructed and that they can be builders in this medium."[25]

Despite these liberating tendencies, the OTW's use of transformativeness as a specifically legal and legitimizing concept implicates us in more than a legal system. It endorses a certain kind of creativity. Louisa Stein and Kristina Busse challenge the OTW's investment in "transformation," while also acknowledging its merits:

> OTW's emphasis on the transformative properties of fan creativity is strategic: the transformative dimensions of fan works enable them to be included in [the] fair use exemption against copyright violations. OTW's valuation of transformation (and implicitly originality) reflects a legal culture that upholds values of originality, linking originality with idea ownership. However, no matter how strategic the rationale, this turn to language of transformation (and implicitly originality) suggests that even in its cultural embrace of repetition and limitation, media fandom (or at least the parts of it represented by OTW) still remains at least tenuously invested in more traditional notions of originality, transformation, uniqueness, and progress.[26]

This criticism is not unfounded, but I believe the OTW exists in productive tension with more radical elements who would reject concepts of ownership and authorship altogether. Some fans pay very little attention to intellectual property, or argue that widespread unauthorized copying of entire movies and books is a way that powerless people can access both knowledge and pleasure.[27] But within fandom's own anti-plagiarism norms and respect for variations are the foundations of a more measured approach, recognizing the interests of both authors and audiences. As Tisha Turk says, "it would be a serious mistake to downplay the legal importance of the language of transformation; it is still a strategy that matters. . . . I'd love to see the legal culture change, but until

(or even while) it does, I am disinclined to give up the legal protection and recognition that the language of transformation allows."[28]

We should also pay attention to the interactions between deliberate lawbreaking and operating within the law. Sonia Katyal and Eduardo Peñalver have written persuasively about the role of large-scale and visible violation of property laws as an impetus for law reform: a particular kind of civil disobedience. The OTW's fair use claims offer a middle ground between IP anarchy and IP maximalism; the threat of anarchy doubtless contributes to the appeal of the middle ground (which would otherwise appear to be the extreme of minimalism).

Transgressiveness can also be a value in itself. Theorist Alexis Lothian argues that "fans' appropriative art is not necessarily complicit with legal and economic structures as they stand. It is worth determining who defines the use as fair, and what it might mean to place a value on unfair uses. . . . [M]ashups, vids, and similar arts of juxtaposition challenge the idea that creative legitimacy relies on original ideas that belong only to those who initiate them."[29] For at least some fans, the defiance of cultural and even legal boundaries is part of the thrill of fandom.

Fans are far from unique in their practices of boundary-crossing, going from outlaws to speakers insisting on their free speech rights and back again. For example, Eden Sarid's work on the low-IP world of drag queens notes that operating extralegally has its own value, and that being legalized or governed by laws rather than norms would remove some of the meaning of drag for its current practitioners.[30] Communities examined elsewhere in this volume, such as tattoo artists and graffiti artists, often perceive involvement with the legal system as incompatible with their interests even as owners. Mixing and matching legal compliance is everywhere. People who download full copies of music and movies without authorization are also the most likely to be paying for media.[31] "Hybrid practices (of consuming the same product both illegally and then legally) are not the thoughtless result of rampant criminals, but a considered response to the free market for media users responding to neoliberal discourses of consumer-citizenship, a reaction to its central notion of choice and the call to be a discerning consumer, especially in economically straitened times."[32]

According to fans' self-reports, participating in creative fandom is actually likely to make participants more cognizant of the value of creative

labor, and thus more willing to invest financially in creators who are seeking to profit than fans who don't produce their own works. But if creative fans are also "good," paying fans, is that an unqualified positive? Is noncommercial fandom just another way in which ordinary people can be disempowered by elites who reserve all profit for themselves? As the next section explores, subcultures that become visible can be drawn into uncomfortable relationships with capitalism, or even out-and-out exploited, and both have happened to some extent with transformative fandoms.

Noncommercial Creativity and the Market: Not Either/Or But Both/And

The experiments found in fandom can be the source of important and economically significant innovations. Eric von Hippel has tracked the process of user customization in various physical products such as sports equipment, and has found it to be an important source of innovation that ultimately feeds back into the commercial economy.[33] So too with expressive works. As Anne Jamison pointed out, fanworks grow out of desires for variations on what mainstream culture has produced:

> Experimental writing in fanfiction is found and enjoyed by people who share at least one popular taste, a taste that *has* been catered to by mass culture. Many of these readers, however, also have tastes mass culture does *not* satisfy, tastes they may first discover by reading fic. Persuaded by the presence of favorite characters, even the least adventurous readers sometimes embrace stories featuring alternative sexualities and genders or enjoy more stylistically and thematically challenging material than they would otherwise have turned to.[34]

Fifty Shades of Gray almost perfectly fits the pattern von Hippel identifies: A "user" who did not professionally produce the text at issue customized it for her own particular interests (rewriting *Twilight* without supernatural elements and with a lot of explicit sex); the customized version proved popular with other users; and this altered version was then commercialized (during which process some of the rougher edges were smoothed over, as with the innovations von Hippel tracks, although

views differ on the value of the result). The example of *Fifty Shades* has led other commercial publishers to seek to satisfy a previously unrecognized market for written erotica that appeals to women, a market they had been unable even to see before a revised fanwork illuminated the demand.

The ability to move into the formal economy is an important part of the innovation cycle. To deem the experimental process infringing, or to force all activity into the formal economy, risks shutting down that generative flow. Just as Uber, Airbnb, and other startups are trying to turn once limited, often freely offered personal interactions into monetized transactions in which a third-party intermediary makes most of the profit, copyright owners dream of monetizing every creative expression related to their works. But to do so would be both futile and potentially deadly to creativity.

True respect for creative variation means accepting the inevitability of an economy that is a hybrid of distanced, market-based interactions and individualized, non-monetary relations.[35] Fanworks were never completely noncommercial. Before the Internet, print zines and fan art sold in small, offline markets. Though fanzines are less visible now in the flood of content online, some fan art continues to be sold in the broader new markets enabled by aggregator sites such as Etsy (crafts and art) and DeviantArt (visual art).[36] The pre-Internet fanzine and fan art economy was largely run within fandom, by people who were fans themselves. By contrast, Etsy, DeviantArt, Wattpad, and Amazon's Write On and Kindle Worlds (specifically for authorized derivative works set within certain fictional "worlds") are all at least in part attempting to use fanworks to build a larger business. Kindle Worlds in particular attempts to harness the energies of fandom by promoting Amazon's platform as a way for fan authors to write non-canonical stories in their favorite "worlds," such as the late lamented show *Gossip Girl* or the ongoing show *Pretty Little Liars*, and to get a share of the revenue generated from selling those stories. Amazon does minimal pre-screening of submissions, and passes a large percentage of sales revenue to the original copyright owners and a smaller share to the fan authors. This development may pose a greater threat to the dynamics of fandom than previous commercial endeavors, insofar as non-fannish businesses may seek to drain fandom of possible economic value rather than letting it thrive on its own.

Along with exploitation, suppression of experiments with content and form is also a substantial risk when economically motivated entities are involved. Amazon's Kindle Worlds, as noted above, has content restrictions foreign to most fandom spaces. Among other things, Amazon bans the popular "crossover" genre, in which characters or settings from one world intersect with another. Although Amazon is coy about the limits of its ban on sexually explicit content—it wouldn't want to lose out on the next *Fifty Shades of Grey*—Amazon retains broad discretion to police the appropriateness of content. It appears that, in light of Amazon's history of suppressing gay and lesbian content and "kinky" content, explicit sexuality is more likely to survive if it is otherwise conventionally heterosexual. Bans on "erotica" and "offensive content" are standard in Kindle Worlds, along with world-specific restrictions, such as a vague requirement that characters be "in-character," along with bans on "profane language," graphic violence, "references to acquiring, using, or being under the influence of illegal drugs," and "wanton disregard for scientific and historical accuracy." In *G.I. Joe* works, the popular character Snake Eyes can't be portrayed as a Yankees fan, possibly because *G.I. Joe*'s corporate owner, Hasbro, comes from the heart of Red Sox country.

Kindle Worlds additionally requires works to be of a certain length, which is understandable for a commercial enterprise but deadly for social practices that thrive on spontaneity, experimentation, and flexibility. Although fannish poetry has a long history, there will be no *Vampire Diaries* sonnets on Amazon celebrating the characters in the popular teen supernatural book series (and later TV show). The formal innovations of noncommercial remix are unlikely to take root in such sanitized soil.

In addition, Amazon requires writers to be at least eighteen years old, excluding the many young people who discover, and benefit so much from, creative fandom. While much fannish energy comes from young people who have a lot of time and not much money of their own, and are therefore an underserved group in the commercial market, Amazon's understandable worries about contracting with minors prevents them from participating in "authorized" fan creativity.

With all these limitations, it's not surprising that Kindle Worlds doesn't seem to be making a big impact in terms of sales or numbers of works available. The main concerns raised by its presence are twofold: (1) newcomers might believe that authorized platforms are the only ac-

ceptable spaces in which to create as fans, deterring them from going beyond what is allowed in these walled gardens; or (2) copyright owners might seek to use the existence of authorized spaces as reasons why unauthorized fanworks shouldn't count as transformative or should be deemed to harm the market for authorized works. Given the current easy accessibility of other fannish spaces, the first concern is not yet a problem—though if Amazon manages to control search results sufficiently, it could become so. The second is a doctrinal issue that requires legal analysis.

In other work, I have explored the dangers of assuming that commercial endeavors can replace noncommercial fandom, because of the substantial constraints on content that professional publishers and licensors impose; the dangers of concentrated, monopolized creative industries; and the risks to privacy involved.[37] Commercialization can only be acceptable if it's additive, not subtractive. Moreover, there are other models than that of the outsider intermediary-exploiter. Some new small presses, often run by fans themselves, try to find fan writers and have them publish works that don't qualify as derivative works for copyright purposes. The most famous of these is surely *Fifty Shades of Gray*, discussed above, which was published by a fan-run imprint before being picked up by a major publisher. While many authors have honed their talents in fan fiction communities, rarely have they been as open about it as E. L. James—another sign of fannish visibility and integration into the larger creative economy. But the existence of such monetization plans should not be used to argue that there is no further need for transformative fair use.

Even in a world with easy licensing, creative fandom should still be free. Fandom benefits its participants—it makes them happy—and does not inflict the kinds of harms on others that would justify the regulation of creative speech. But pleasure can be hard to defend in legal terms, even among progressives, who often surrender to the lure of technocracy. "Courts are squeamish about pleasure. Despite the American emphasis on 'life, liberty, and the pursuit of happiness,' you will rarely see a court acknowledge that seeking pleasure can be an important part of pursuing happiness."[38] Moreover, courts have proven largely unwilling to hear free speech arguments for limiting copyright, at least not without a specific political message. Because pleasure and speech are the true drivers of fandom, fans have often sought other ways to explain the good

that fannish communities do, and this leads to another way in which noncommercial fannish endeavors interact with commercial economies: fandom as a training ground.

As a strategic move, defenders of fandom often tout fandom's benefits in teaching useful skills in writing, video editing, coding, and other economically significant endeavors.[39] Henry Jenkins called his popular article on *Harry Potter* fandom *Why Heather Can Write*.[40] Rather than simply accepting the pleasure of creating and engaging fannishly, a BBC One documentary on fandom justified it in terms of skill-building: "Through their fandom, fans are developing skills that will make them more employable in the future. . . . Even to build these fanpages and have thousands of followers is learning to market something and build something . . . they can go work for a company and build their social media profile because they know what they're doing and how to do it well."[41] An official UK government report took the same tack, emphasizing twenty-first-century skills acquired because remix made them fun.[42] It's nice not to pathologize fans, but this rather instrumental attitude toward fandom also has its limits, suppressing a lot of what makes fandom pleasurable in the first place. When I'm not trying to convince policymakers of the utilitarian benefits of fandom, I prefer the more artistic terms used above: fanworks, like other forms of copying, are wonderful ways for people to find their own voices.

One can also explain fandom in terms of the labor its production involves, which may be a middle ground between the market and the "frivolous." Terms such as fanworks and the Organization for Transformative Works emphasize the outputs and not the processes (or the pleasures) of fandom. There are benefits to this reframing:

> Calling this work "work" opens up appreciation for the skills involved, much as with feminist insistence on care work as labor. The labor framework provides a powerful way to value what fans are doing, in contrast to the dismissals that have long attended fandom. If industry has not framed fan action as work to avoid payment, then the pleasure framework sells fans short vis-à-vis what they do for each other.[43]

However, we still need to insist on hybrid justifications for legal protection for noncommercial creativity. These justifications do not conflict,

but overlap and interact. The instrumental benefits of fandom do exist; the work of making fanworks is real work; *and* pleasure and play are valuable in and of themselves.

Without valorizing play, it is hard to defend creative freedom or to preserve the spaces of experimentation and collision from where new works come. Or to understand why it's a good thing that people see movies and listen to music rather than, say, buy new toasters. If creativity lacks meaning in itself, why would experiencing the output of someone else's creativity matter? Play enriches our lives, even if it doesn't produce anything else. Respect for play can also connect intellectual property with the more progressive aspects of real property law in which, as Carol Rose has explained, there is a history of providing access rights to otherwise privately owned land to the public specifically for pleasure and recreation.[44]

Conclusion

Creative fandom offers a clear illustration of the ways in which there can never be a full separation between gift and market economies, despite rhetorics of separatism. This is another way in which fandom's "answer is always yes"—yes, we are a gift economy; yes, we participate in the market. Creativity emerges from complex, overlapping interactions that are poorly described by abstract "incentive" theories. Intellectual property theory can't just be a theory of law; it needs to engage with practice. Fandom challenges the separation between commercial and noncommercial found in much intellectual property law—not just in copyright's fair use doctrine but in trademark and the right of publicity's willingness to regulate any expression sold for money. Intellectual property law could benefit from greater attention to degrees and types of commerciality, and recognize that the presence of money isn't always a reason for law to intervene—not just because of external First Amendment limits on intellectual property law, but because extending rights can disrupt the very creative endeavors the law hopes to nurture.

One damaging way in which the failure to respect both commercial and noncommercial aspects of work has played out in the past is the devaluation of women's work. There are serious risks of replicating this expropriation in monetization of fandom:

In recent years, media producers have explicitly sought to solicit fan participation as labor for their profits in the form of user-generated content that helps build their brand. Many fans perceive these developments as a desirable legitimation of fan work, but they can also be understood as an inversion in the direction of fannish theft. Rather than fans stealing commodified culture to make works for their own purposes, capital steals their labor—as, we might consider, it stole ideas from the cultural commons and fenced them off in the first place—to add to its surplus.[45]

Fans therefore also need to talk about the way that our pleasures are mobilized in order to keep us providing uncompensated value to copyright owners: After all, we like it. One ongoing goal is therefore to make economic hybridity less repressive and exploitative than the cooptation offered by initiatives such as Kindle Worlds. Many markets are, as Sal Humphreys says, "hybrid market environments where there is no such clear distinction between the social and commercial economies—where instead they co-exist in the same space, and where some people occupy different positions over time within the same markets."[46] Moreover, there are prospects for healthy integration. The question is how to honor the noncommercial elements and preserve their freedom without trying to create (impossibly) separate spheres, and without calcifying a reward scheme structurally biased against women, sexual minorities, people of color, and others who find in fandom a corrective to mainstream productions that ignore or misrepresent them.

Defending hybrid spaces, where relationships matter but commerce is not banned, is important because full marketization represents a loss of freedom and potential.[47] Commercial attempts to muscle out noncommercial spaces will likely pose the biggest challenge, legal and nonlegal, to fans in coming years. As commercial entities move from suppression to cooptation, our legal and practical strategies must change as well. In particular, we should always recognize that the individual and the community, along with the market and the private/gift economy, are often opposed, but they are not (just) opposites. They also interpenetrate. We make our systems, and then our systems make us. Creative fandoms demonstrate this interdependence in the context of modern copyright law, which both shapes and then (through the efforts of activists and advocates) is shaped by fandom. A healthy creative ecosystem, like a

well-functioning intellectual property regime, needs this kind of play in the joints. I have faith that fandom can resist the totalizing narrative of full commercialization as it previously resisted IP maximalism.

NOTES

1   Peter Decherney, *Hollywood's Copyright Wars: From Edison to the Internet* (2013), 225.

2   Nele Noppe, *Fandom unbound: Otaku culture in a connected world*, Mizuko Ito, Daisuke Okabe, and Izumi Tsuji, eds. (book review), http://journal.transformativeworks.org.

3   James Gibson, "Risk Aversion and Rights Accretion in Intellectual Property Law," 116 *Yale Law Journal* 882 (2007).

4   Laura A. Heymann, "Naming, Identity, and Trademark Law," 86 *Indiana Law Journal* (2011): 437–442.

5   Kristina Busse and Karen Hellekson, "Identity, Ethics, and Fan Privacy," in *Fan Culture: Theory/Practice*, Katherine Larsen and Lynn Zubernis, eds. (Newcastle: Cambridge Scholars Publishing, 2012), 38.

6   Jessica Silbey, *The Eureka Myth: Creators, Innovators, and Everyday Intellectual Property* (2014).

7   Tisha Turk, "Originality, transformation, repetition" (Mar. 28, 2013), http://tishaturk.dreamwidth.org; see also Larry Lessig, *Remix* 63–64 (arguing that one benefit of remix comes "not so much [from] the quality of the speech it produces, but [from] the effect it has upon the person producing the speech").

8   National Telecommunications and Information Administration, "Request for Comments on Department of Commerce Green Paper, Copyright Policy, Creativity, and Innovation in the Digital Economy, Comments of Organization for Transformative Works ("OTW")" (Nov. 13, 2013), 25, http://www.ntia.doc.gov.

9   Ibid., 34.

10 http://thegeekiary.com.

11 Karen Hellekson, "Making Use Of: The Gift, Commerce, and Fans," 56 *Cinema Journal* 125 (2015): 130–131.

12 Casey Fiesler's dissertation research shows that, of 30 user-generated content sites surveyed including YouTube, Facebook, and Twitter, the AO3's Terms of Service relating to copyright were among the clearest—the AO3 was among the most readable, and survey participants were more accurate in answering questions about its terms than about any other site's terms, though accuracy was still only 85%. Casey Fiesler, *The Role of Copyright on Online Creative Communities: Law, Norms, and Policy*. https://smartech.gatech.edu/bitstream/handle/1853/53937/FIESLER-DISSERTATION-2015.pdf . PhD dissertation, Georgia Institute of Technology, 2015, 88, 97.

13 Interestingly, the operators were able to choose freely in designing site features of this sort because of laws protecting intermediaries from liability for user-posted

content, particularly the Digital Millennium Copyright Act's notice and take-down scheme and the absolute protection against site operator liability for non-intellectual property torts provided by the Communications Decency Act §230.

14 Mel Stanfill, "Fandom, Public, Commons," *Transformative Works and Cultures*, no. 14 (2013), http://dx.doi.org.

15 *Stargate: Atlantis* (2004–2009), a spinoff of the long-running *Stargate: SG1* (1997–2007) franchise, itself a reboot of the movie *Stargate* (1994), was a show on the Sci-Fi (now SyFy) cable channel. Though never a great hit, it had a premise that allowed fans to invent new "alien" cultures and a buddy dynamic between the two main leads that made it highly popular with American slash fans.

16 Mel Stanfill and Megan Condis, "Fandom and/as Labor," 15 *Transformative Works & Cultures* (2014), [4.10], http://journal.transformativeworks.org (suggesting that selling fannish crafts for profit still retains identification with fandom and rein-forces community, whereas "pulled-to-publish" fan fiction whose fannish origins have been hidden distances itself from fandom and "refut[es]" fannish spaces); see also ibid., [5.7] ("Fan fic is published and freely available online; to pull it only to republish it as original fiction suggests an element of dishonesty on the part of the author. In contrast, fan art—particularly in the form of jewelry or clothing—is rarely offered for free elsewhere first. . . . Although fan artists may post their pic-tures and ask for advice or feedback, this is much less common than fan fic writ-ers posting works in progress or using beta readers to review their work. For one person to profit from the work of a community . . . can be seen far more clearly as exploitation.").

17 "Warnings," http://fanlore.org.

18 Lilah Pace's *Asking for It* (2015), for example, contains a prominent "Reader Advi-sory" with further details on the back cover about the role of rape fantasies in the plot; Pace is the pseudonym of a *New York Times*–bestselling author and longtime media fan. Riptide Publishing, a small publisher focused on non-heterosexual science fiction and fantasy, uses a detailed tagging system for various features, including explicitness of sex and explicitness of violence.

19 David Fagundes, "Talk Derby to Me: Intellectual Property Norms Governing Roller Derby Pseudonyms," 90 *Texas Law Review* 1093 (2012): 1145 (footnote omit-ted).

20 Media Literacy and Social Action in a Post-Pokemon World, http://www.itofisher.com. ("[Y]ou should never underestimate the power of peer-to-peer social com-munication and the bonding force of popular culture. Although so much of what kids are doing online may look trivial and frivolous, what they are doing is build-ing the capacity to connect, to communicate, and ultimately, to mobilize.").

21 Henry Jenkins and Sangita Shresthova, "Up, up, and away! The power and poten-tial of fan activism," *Transformative Works and Cultures*, http://journal.transfor-mativeworks.org (quoting Steven Duncombe).

22 Limor Shifman, *Memes in Digital Culture* (2014), 75.

23 Ibid., 83.

24 Henry Jenkins, "DIY Media 2010: Fan Vids (Part Three), Confessions of an Aca-Fan" (Feb. 4, 2011), http://henryjenkins.org.

25 Christina O. Spiesel et al., "Law in the Age of Images: The Challenge of Visual Literacy," in *Contemporary Issues of the Semiotics of Law* 231, Anne Wagner et al., eds. (2005), 252–253.

26 Louisa Stein and Kristina Busse, "Limit Play: Fan Authorship between Source Text, Intertext, and Context," 7 *Popular Communication: The International Journal of Media and Culture*, 192 (2009): 205.

27 For a challenge to devaluation of pure "piracy," see Lawrence Liang, "Piracy, Creativity and Infrastructure: Rethinking Access to Culture," (July 20, 2009), http://papers.ssrn.com.

28 Tisha Turk, "Originality, transformation, repetition" (Mar. 28, 2013), http://tishaturk.dreamwidth.org.

29 Alexis Lothian, "Living in a Den of Thieves: Fan Video and Digital Challenges to Ownership," 48 *Cinema Journal* 130 (2009): 132–133.

30 Eden Sarid, "Don't Be a Drag, Just Be a Queen—How Drag Queens Protect their Intellectual Property without Law," 10 *FIU Law Review* 133 (2014).

31 See, e.g., Bart Cammaerts et al., "Copyright & Creation: A Case for Promoting Inclusive Online Sharing," (Sept. 2013), 10, http://www.lse.ac.uk/media@lse (noting that file sharers spend more on media than non-file sharers).

32 Lee Edwards et al., "'Isn't It Just a Way to Protect Walt Disney's Rights?': Media User Perspectives on Copyright," *New Media & Society* 1 (2013): 10 (citation omitted).

33 Eric von Hippel, *Democratizing Innovation* (2005).

34 Anne Jamison, *Fic: Why Fanfiction Is Taking over the World* (2013), 22.

35 See, e.g., Patryk Galuszka, "New Economy of Fandom," 31 *Popular Music and Society* 1 (2014) (discussing new hybrid economies using both gift and market exchange, including fans as sponsors, stakeholders, co-creators, investors, and filters to discover commercial opportunities).

36 Stanfill and Condis, "Fandom and/as Labor," [4.2] (discussing fannish sales of zines, artwork, and jewelry, as well as fannish sales through newer e-commerce sites that allow individuals to upload designs for production).

37 See ibid.

38 Susan Reid, "Sex, Drugs, and American Jurisprudence: The Medicalization of Pleasure, Gender & Sexuality Law Online," 1 (footnotes omitted), http://blogs.law.columbia.edu.

39 See OTW Submission to NTIA.

40 Henry Jenkins, "Why Heather Can Write," *MIT Technology Review* (Feb. 6, 2004), http://www.technologyreview.com.

41 Claudia Rebaza, "OTW Fannews: Storytelling Platforms" (March 9, 2014), http://transformativeworks.org (quoting documentary, http://www.bbc.co.uk).

42 Ian Hargreaves, "Digital Opportunity: A Review of Intellectual Property and Growth," *UKIPO* (2011): 50 ("Video parody is today becoming part and parcel of

the interactions of private citizens, often via social networking sites, and encourages literacy in multimedia expression in ways that are increasingly essential to the skills base of the economy.").

43 Stanfill and Condis, "Fandom and/as Labor," [3.4] (citations omitted).

44 Carol M. Rose, "The Comedy of the Commons: Commerce, Custom, and Inherently Public Property," 53 *University of Chicago Law Review* 711 (1986); see also Jennifer Rothman, "Copyright, Custom and Lessons from the Common Law," in *Intellectual Property and the Common Law*, Shyamkrishna Balganesh, ed., https://papers.ssrn.com (analogizing copyright limitations to public access rights to private land for recreational purposes such as dances, horse races, cricket games, and the like; such purposes are "preferred because they support social engagement and connections in a community").

45 Lothian, "Living in a Den of Thieves,"135.

46 Sal M. Humphreys, "The Challenges of Intellectual Property for Users of Social Networking Sites: A Case Study of Ravelry," *Proceedings Mind Trek* (2008), http://eprints.qut.edu.au.

47 Rebecca Tushnet, "All of This Has Happened Before and All of This Will Happen Again," 29 *Berkeley Technology Law Journal* 1447 (2014).