

Fanwork as a test case for open source cultural goods

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1. Introduction

Many researchers have recently tackled the question of how unauthorized derivative cultural goods, such as amateur-created remixes of music, movies, or other media, could be commodified in a legal way. In this article, I want to consider that question for one particular kind of unauthorized derivative work: fanwork, meaning works based on existing cultural products that are created by fans of those products.

My focus will be on exploring if it is possible to commodify these fanworks in a way that is practically and ethically acceptable for the fans that produce them. I will pay less attention in this article to the concerns of media companies and other copyright holders. There are many different communities of fans around the world, and their circumstances are so different that I could not possibly make generalizations that apply to all fanworks. For that reason, I will focus only on those fanworks that are distributed in online fan communities that communicate in English. The circumstances of these fan communities are also not identical across the board, but unfortunately, the space of this article does not allow for acknowledging every difference.

Up to now and in most parts of the world, fanworks have been exchanged largely in gift economies that operated separately from the commercial cultural economy. This has been the case mostly (though not entirely) because most fans prefer to exchange their works in such gift economies. However, technological advances such as the internet have significantly narrowed the gap that exists between creators of fanworks and the owners of the commercial, copyrighted

media on which they are based. As a result, there has increasingly intense cooperation between fans and the media industry, a phenomenon that is often referred to as terms such as “convergence culture” (Jenkins 2008).

This cooperation tends to be described in terms of how it empowers fans to take part in the shaping of the media they create fan communities around. However, several recent critiques have noted that the practical strategies for cooperation that media companies employ may be more geared towards co-opting fannish labor for marketing purposes than towards acknowledging fans as active participants in the creation of commercial media. While perhaps unsurprising, these company strategies are said to be potentially harmful for fannish gift economies (Scott 2011; Hampton 2010; Pearson 2010). Regardless of what fans themselves prefer, it seems that pressure is increasing to commodify fanworks and let them play a role in the commercial economy as well.

The issues related to industrial encroachment that fannish gift economies appear to be facing are not unique. The resistance that fans put up against that industrial encroachment has often been likened to the activities of other groups in the context of a broader “open” movement that aims to promote the rights and encourage active participation of individual consumers in various areas of life and culture, such as open access, open hardware, open knowledge creation projects such as Wikipedia, and most famously open source software. In this article, I will explore the possibilities inherent in framing fanwork as an “open source cultural good”.

I will begin by describing why “open source” is said to be a concept that can inspire a variety of systems in which “amateurs” from gift economies can play in the commercial sandbox without getting their efforts co-opted by companies. After that, I will consider how thinking of fanworks in specific as an “open source cultural good” can help focus discussions about the commodification of unauthorized derivative works to be more oriented on the needs of real-world creators of these works, instead of on economic models that simply examine how the works could be commodified. Then, I will briefly describe how framing fanworks as “open source cultural goods” offers suggested solutions for several real-world issues that fan communities face as they begin to tackle industrial encroachment. In this way, I hope to show that considering fanworks as a possible real-world test case for the still mostly hypothetical concept of “open source goods” can be beneficial for fans, researchers, and media companies who have an interest in how unauthorized derivative works might be commodified.

2. The potential of open source goods in a hybrid economy

Many other goods and services besides cultural products are provided both by a commercial economy and by a gift economy, and these two economies have tended to operate separately. With the move of many commercial and gift economies into the common space of the internet, possibilities for interaction between those two different systems of production with their different goals have grown steadily. This has led to much experimentation and research about how commercial and gift economies could potentially work together in a so-called “hybrid” economy.¹ In the case of the media industry and the fan communities that are creating new cultural goods based on that industry's intellectual property, the question is, what system would be workable and advantageous for both fan creators and the media industry?

Hybrid economies are only beginning to emerge, so there is little definite that can be said about the effects they have on the commercial and gift economies that they bridge, how those effects might be negative or positive, and how avoidable any negative effects are. There is one hybrid economy, that surrounding open source software production, that has been operating long enough and successfully enough to be held up as a model for other hybrid economies that try to strike a balance between the rights of gift economy participants and the rights of commercial economy actors (Berdou 2011; Weber 2004; Lessig 2008; Hughes et al. 2007).

What is open source software production, and what are the essential characteristics of open source software production that make it such a popular model for creating alternative systems for the exchange of goods created largely in a gift economy? “Open source” is a production process, best known for being employed in the creation of open source software. The open source production process involves organizing a group of coders on a (mostly) volunteer basis to complete a project together, typically software. The Linux operating system, the Firefox browser, and the OpenOffice/LibreOffice office suite are examples of open source projects. The open source software that these groups create is software that distributes its source code along with the software in a readable fashion. That means anyone can access the inner workings of the software and also has permission to change and improve the code, on the condition that all improvements are fed back into the open source community so that others can use them freely. Anyone is allowed to change the software to their needs, but may not lock away their improvements.

The open source community uses this open source production process for both practical and ethical reasons. Practical, because the community believes this is the most effective way to create great code and great software, and ethical, because the community believes software is a good that should be exchanged freely, as it was in the early days of computer programming. There must always be a free copy of open source software available for anyone who knows what to do with it, and anyone has the right to re-distribute free copies (Weber 2004, location 236–37).

However, open source software is also commodified in various ways, for instance by selling associated support services. It has turned out to be an exceptionally successful hybrid economy, with a community of volunteer coders and companies that commodify open source software supporting each other.² It has also been called the “paradigm” hybrid economy because it was one of the first peer production-based gift economies to create a somewhat even balance between itself and its commercial counterpart, allowing for the commodification of its creations without its gift economy and volunteer community being harmed or taken over by commercial interests.

Open source has proven to be a very popular model for creating hybrid economies in areas unrelated to software production, because it inspires alternatives to established systems. Possibly, it could also inspire alternatives to the established system for the production of cultural goods. Although the influence of open source philosophy has now spread far beyond the area of software creation (Weber 2004, 2929–31), cultural goods remain a conspicuous blank in many long lists of various “open” movements (Focus Editors 2010), not in the least because legal concerns about copyrights make the creation of an “open source cultural good” difficult. However, scholars from a remarkable variety of fields have linked the production systems of unauthorized derivative cultural goods to open source-based practices and proposed that a system for cultural production inspired by open source software production could pose a workable and beneficial alternative to the current system for cultural production.

The current system is said to be problematic and untenable because it specifically excludes many unauthorized derivative works from commodification (Hughes et al. 2007, 17), preventing most creators of these works from moving outside of their gift economies if they wish. At the same time, the current system does not prevent actors from the commercial economy from trying to engage with and reap the benefits of their gift economy equivalents. There is a clear power imbalance there that only seems likely to increase as commercial actors gain more power and possibilities to co-opt gift economies (see later). Also, as we will see, the current system is not just imbalanced but also inefficient. It gives commercial actors much power to co-opt gift

economies, but it also prevents them from fully taking advantage of all the benefits that a gift economy could bring them.

In this article, I make a specific attempt to interpret and frame fanwork as a possible “open source cultural good” that may potentially be exchanged in a hybrid economy that balances gift and commercial economies, benefiting both while harming or disempowering neither. Many characteristics of the fannish production practices are already highly comparable to those of open source, and fannish production practices have a history and practicing community that is a good basis for supporting an open source-like system of cultural production. Scholars have linked fannish production practices to open source production practices, noting that open source and fan creators appear to have similar motivations for creating and similar attitudes towards the importance of volunteer work in a vibrant gift economy. They have also noted that it may very well be possible for creators of unauthorized derivative works to build a mutually beneficial relationship with their commercial counterpart, the media industry, in the same way as open source creators have struck a tentative but seemingly viable balance with commercial software companies.³ Fanworks exchange may have the potential to become “the model for the reconfigured industry-consumer relationship of the digital era as a negotiated sharing of productive power” (Pearson 2010, 91).

3. Fanwork as a test case for open source cultural goods

What are fanworks exactly, and what makes them such an interesting “test case” for the concept of the “open source cultural good”? Fanworks can include anything from stories to videos to handicrafts. They are a category of unauthorized derivative works, since fanworks are created based on existing, generally copyrighted, media without the permission of the copyright holders. Fanworks are produced online and offline in all parts of the world, by large numbers of participants from all walks of life, and are mostly distributed for free on the internet.⁴

Although it is impossible to quantify how many unauthorized derivative works are fanworks, we can safely say that fanworks probably comprise a very large percentage of all unauthorized derivative works that are created today. That is why I believe that when talking about unauthorized derivative works, their properties, and their commodification, it is crucial that we keep in mind the often highly specific properties of fanworks and the communities in which they are created -an aspect of unauthorized derivative works creation that is often ignored.

Creators of fanworks generally consider themselves amateurs⁵ and create works with the intent to distribute them at no cost among other fans. Most fanworks are made with the objective of exchanging them with other fans in the context of a community, not of monetizing them. In other words, fanworks are made to function within a gift economy. Fanworks are mostly exchanged online today, but they were an important part of cultural production long before the internet offered amateur creators a better platform for creation and exchange. Many of the habits and ethics that are connected with this particular kind of unauthorized derivative work existed before there was any talk of media digitization. That means that the motivations and activities of fan creators cannot simply be explained by considering how recent technological changes may have shaped the motivations of creators of derivative works. Up to now, however, fanworks and their creators have remained relatively unknown to many researchers, policymakers, and others concerned with the cultural economy.

The most eye-catching and problematic example of this is that one of the core characteristics of the fan community, the fact that its participants are mostly women, is not usually considered by researchers outside of the field of fan studies. The vast majority of all fanwork creators appear to be female (Hellekson and Busse 2006), and this is a relevant fact to consider because the female fan community has a particular history, ethics, and habits with regard to their creations that is simply not the same as the ethics and habits of male fan creators. Male and female fans both create fanworks, but they often create for very different reasons, use different media, and prioritize different sorts of content.⁶ Female fan communities generally desire less contact with or recognition by the media industry, and they are often actively opposed to the idea of commodifying fanworks, because they have experienced a history of corporate attempts at co-opting their labor for monetary gain. Some researchers who have discussed possibilities for commodifying unauthorized derivative works do mention fanworks, but do not realize that they are actually talking about the male fan community and its specific modes of creation.⁷ That causes significant inaccuracies in those researchers' interpretations of fannish activities and how fans may approach possible commodification of their works.

This failure to consider gender-related particularities may considerably jeopardize the models for hybrid economies for unauthorized derivative works that these researchers propose. Female fans may very well end up rejecting these proposals if they feel that, because there is a history of commercial actors trying to co-opt and monetize the labor of mostly female fans⁸, and because many female fan communities are specifically and deliberately constructed as safe

havens from a masculinized commercial culture that has often excluded female creators. Any non-fannish “outsider” who tries to build a model for the commodification of unauthorized derivative works, however well-meaning, is very likely to run into severe problems with the (mostly female) fan community if their model does not consider the gender concerns that have historically characterized the community's relationship with commodity culture. If the creators of the largest proportion of unauthorized derivative works refuse to cooperate, any hybrid economy for cultural goods will be off to a bad start.

There are not just practical, but also ethical risks involved in letting a new economic system for the exchange of unauthorized derivative works develop without any sort of input from female creators. Female creators have often ended up working within a gift economy because they were specifically excluded from participating in a commercial economy for cultural works. A hybrid economy for unauthorized derivative works could end up disadvantaging female creators all over again, simply by being tailored to the needs and preferences of male researchers and creators.

The way in which the media industry is currently starting to engage with fan communities and fanworks would seem to support that hypothesis. Male and female creators of fanworks do not just have different motivations and different attitudes towards company involvement in their communities. The way the media industry engages with them is also different. The kind of increasingly entwined and mutually beneficial relationships between fans and companies that Henry Jenkins described in “Convergence Culture” are fairly strongly gendered. The media industry extends mutually beneficial relationships mostly to male creators of fanworks that are more directly useful as marketing materials. The industry is much more reluctant to engage with a lot of material typically produced by female fans, like fanworks that explore boundaries of sexuality or contain erotic content (Busse 2010). For example, when companies build their own “fan sites” or hold contests for fanworks, they often explicitly exclude the erotic or character-focused work that are considered typical of female fanwork creators (Pearson 2010, 89; Scott 2011, 153)

The somewhat celebratory and hopeful tone of much current research on the integration of unauthorized derivative works in the commercial cultural economy is not unwarranted. However, much of this research does not seem to be considering that creators of unauthorized derivative works and creators of fanworks are not a uniform group with similar objectives. They operate in different communities that have different standards and very different attitudes towards the idea of commodification. Creators who have historically been prevented from commercializing their

works have managed to obtain a measure of control over their works and create safe spaces for themselves by deliberately staying outside of the commercial cultural economy. Very many creators of unauthorized derivative works are fannish creators with no professional aspirations who have no interest in having a closer relationship with media companies, and who are actively opposed to the idea of commodifying fanworks (Hellekson 2009).

Unfortunately for them, it's become quite impossible for fan communities to hide from or keep themselves completely separate from media companies. Fans and companies are now in a common space on the internet, and companies now have many new technological and legal means of controlling what amateur creators do (Tsiavos 2011, location 1087, 1107). Digital rights management technology, new licensing systems such as those for distributing digital movie or music files that only let consumers lease but not purchase products, and the erosion of the right of second sale are all examples of the ways in which companies, in completely legal fashion, are re-establishing the rights and the possibilities that amateur creators have available to them.

In other words, what we are observing now could be interpreted as a push towards a hybrid economy for fanworks, but with the rules of engagement being written by the industry. Creating this kind of company-controlled system is the opposite of what many researchers who talk about the commodification of unauthorized derivative works apparently hope to achieve. The fact that companies are already targeting a large subset of fanwork creators and creating facts on the ground is not always acknowledged in research about the possibilities of equal fan-industry interaction. However, if we consider the current situation of fanworks, this fact does become immediately obvious. This is another reason why I believe it's beneficial for research into the commodification of unauthorized derivative works to pay more attention to fanworks.

As stated earlier, this article contains an attempt interpret and frame fanwork as a possible "open source cultural good" that may potentially be exchanged in a hybrid economy that balances gift and commercial economies, benefiting both while harming or disempowering neither. In this section, I have made a case for why fanworks in particular are an interesting case study for the possible commodification of unauthorized derivative works. In the next section, I will briefly describe how framing fanworks as "open source cultural goods" offers suggested solutions for several real-world issues that fan communities face as they begin to experience industrial encroachment. The issues I focus on are fanworks' need for an explicitly legal status, the need for legitimization as well as legalization (in other words, the need for PR), and the need

for fan communities to guard themselves against industrial attempts at co-optation. For each issue, I will consider how the experiences of the open source software community may offer practically useful insights for fan communities.

4. Issues for fanworks as open source cultural goods

4.1 The need for legalization

Creators of unauthorized derivative works can't begin to assert real control over how their works are distributed and handled until what they do is very obviously and incontestably legal. Unless the law is very clear on the ways in which it is permissible to create, distribute, and monetize unauthorized derivative works, the mere idea of litigation will have a chilling effect on individual fan creators who may be interested in exploring a hybrid economy for their works.

The thorny matter of copyright regulations is perhaps the most obvious area in which open source can provide inspiration to fanworks. For instance, open source production has led to a number of innovative licensing schemes that offer legal protection to peer-produced products so that they can be commodified in some form or another, and some of these licensing schemes may be applicable to fanworks. Open source has also inspired other licensing schemes that are specifically geared towards cultural goods, such as Creative commons. I will describe three different open source or open source-inspired licensing schemes and consider their usability in the case of fanworks.

First of all, we might consider innovative and widely-used open source software licenses such as the General Public License (GPL for short) and its derivatives.⁹ These licenses play a very important example role because they show that it is feasible to create licenses that are built on a completely different concept of ownership than traditional “all rights reserved” licenses, and because they show that licenses based on very radical access and distribution rights can work in a real-world context, both in gift and in commercial economies. However, these licenses cannot simply be slapped onto cultural goods such as fanworks, which differ from software in a number of obvious and non-obvious ways. For instance, although most open source software projects are created by very small teams rather than large volunteer communities, software is still very likely to be a collaborative work (Berdou 2011, location 744). Cultural goods are much more likely to be created by individuals alone. This means that these goods and the rights to them are less

complex to manage, but it can pose serious problems when the time comes to share a cultural good as openly and radically as most open source software is shared. (Hughes et al. 2007, 23–24) If a cultural good is re-used or altered by someone else without the express consent of its creator, that creator is much more likely to experience a personal feeling that their work has been used in an unintended or inappropriate way. Creators may even feel, perhaps justifiably, that they have been exploited, especially if the re-use involves some form of commercialization. In the case of fanwork, these concerns are particularly relevant. Many creators simply feel uncomfortable with the idea and are unlikely to accept it. Redistributing or adapting fanworks without the consent of their creator runs counter to the accepted norms of many (though not all) fan communities. Also, giving anyone free reign to redistribute or adapt fanworks may end up benefiting commercial actors more than fans themselves. While there is undeniable value in the idea of radically opening up cultural products for free distribution and adaptation (Fisher 2007, location 3438), in the same fashion as open source software, proposing that distribution and adaptation of fanworks should be as free as that of open source software may be more counterproductive than helpful, at least at this point in time.

Secondly, some researchers have suggested that a system in which creators of unauthorized derivative works pay a modest licensing fee to copyright holders may be a good and workable model to allow for legal creation and possibly commercialization of unauthorized derivative works (De Kosnik 2009, 121; Hughes et al. 2007; K. R. Lang, Shang, and Zicklin 2007, 290) However, applied to fanworks, this model loses a great deal of attraction. Even for fans who have the financial means to pay small licensing fees, the mental transaction costs (Anderson 2009, location 970) of having to consider whether or not to pay would lead many to not create or create “illegally”. If fans had to pay even a small amount of money to be able to legally create a work based on another work, most would probably either not create at all, or create their works outside of the new “legal” system -which could leave them even more marginalized than before. A system for the exchange of fanworks, legal or not, could never involve even the smallest financial transaction costs for either creation or distribution.

Finally, there have been several attempts at organizing the legal creation and distribution of unauthorized derivative works through innovative licensing inspired by open source licenses. The most well-known of these is probably Creative Commons. Some fanwork creators already tag their works with Creative Commons licenses for this reason. However, the possibilities for commodification that these licenses ultimately allow is probably too limited to actually let these

fanworks play along in a hybrid economy, since they are ultimately still based on a media product that was released under a much more restrictive license. This uncertainty and these limitations may not get resolved unless media companies agree to distribute their products under licenses that are less restrictive than the currently prevalent “all rights reserved” license. An additional problem that has been raised with regard to Creative Commons is that while it may empower users to create a license suitable to their needs, it also encourages users to think of cultural goods in terms of ownership, a mindset that may ultimately not promote real changes in public perception of the purpose of copyrights (Tsiavos 2011, location 844).

Creative Commons does not seem to be an end solution to the problem of how fanworks could be licensed to let them function in a legal hybrid economy for unauthorized derivative works. However, the Creative Commons project itself is not intended to be an end solution. It began as a tool to support the rights of individual creators of mostly online derivative works, to encourage those creators to take charge of the ownership of their creations, to encourage debate about the social norms surrounding ownership, and to promote sharing and re-use (Tsiavos 2011, location 381, 762). Whatever the problems inherent in the idea of using Creative Commons licenses to help fans commodify their works without being co-opted by the media industry, the values behind Creative Commons only seem to support fanworks. Creative Commons licenses are also quite widely known, even if they may seem somewhat complex to many people. I would tentatively suggest that it may be beneficial for fanwork creators if they could ally themselves with the Creative Commons movement.

4.2 The need for legitimacy

Still, it may not be easy to justify to companies, policymakers, or the general public why fanworks actually deserve to be explicitly legalized. There exists a lot of confusion about the precise goals of copyright legislation (Fisher 2007, 62; Tsiavos 2011, 650; Lee 2011, 238) and about the value of so-called “original” works in comparison with remixes or derivative works. This confusion makes it hard to put into words why fanworks are valuable contributions to culture in general that deserve legal recognition.

Open source software may offer suggestions as to how fan creators could explain why their “open source cultural good” is a normal part of cultural production that is worthy of legal protection and options for commodification. Open source software is one of the most successful

hybrid economies so far, and it has “played a critical role in the recognition of peer production” (Benkler 2007, location 883). Casting fanwork as part of a broader “open” movement and drawing comparisons with open source may go a long way towards explaining to non-fans how and why an integration of fanwork in the broader cultural economy could be both socially and economically desirable.

The example of the hybrid economy surrounding open source software shows that hybrid economies can and do work, in a business sense, not only for participants who are situated more on the “sharing economy” side of the hybrid but also for participants from the commercial economy. Hybrid economies for cultural production can also provide economic benefits to all participants, and there are many indications that allowing fans to sell their works would only benefit the media industry. Although much research into a possibly hybrid for cultural goods is still theoretical, it suggests that industry actors would actually reap considerable economic benefit from some form of a hybrid economy that empowers individual creators more (K. R. Lang, Shang, and Zicklin 2007, 291; Arai and Kinukawa 2010, 17). There are good reasons to believe that legalizing fanwork and opening it up to commodification by its creators would not just not harm the profits of copyright holders; it may well increase profits.

For example, fanworks have an important marketing function, regardless of whether or not companies actively attempt to use them for marketing. More active fans does not just translate into more free marketing and buzz, however; it also broadens the talent pool from which companies can recruit new artists who want to create in a more professional capacity.¹⁰ Most media companies are also a long way from truly leveraging the innovations in content and format that are fostered in amateur communities such as fandom (Mehra 2002, 55). The way most media companies take advantage of fannish creativity appears to be very inefficient for companies themselves, often because the strict separation between “professional” company creators and fan creators prevents innovations and talent from fan communities from enriching companies' offerings.¹¹

The benefits of enabling a nourishing environment for fanworks go beyond increasing business and nurturing new artists and innovative content. Establishing fanworks as autonomous works would also be a boon to copyright holders who are concerned that derivative works could “cause damage to (their) reputation, whether perceived or real, through distortion, misrepresentation, or distaste or inept use of borrowed works” (Hughes et al. 2007, 43). Whether or not fanworks are illegal, they are certainly unauthorized, and the fact that these works exist in

a legal gray area makes it look like copyright holders are responsible for policing works with possibly problematic content (Lessig 2008, location 3902–9). If there existed a clear and simple legal category of “derivative works” that the public would recognize as not the companies’ responsibility, it would be much easier to assign both credit and blame for particular works where it belongs. It would be much more comfortable for companies if their reputations were not connected with the whims of every individual fan creator in existence.

Not to mention that the additional financial benefits that would come from less need for costly litigation and costly development of technologies like digital rights management. Dedicated fans are generally media companies’ best customers, and not having pointless fights with them would save the industry a lot of time, money, and goodwill.

Framing fanwork as a product whose properties are comparable to open source software can not just be beneficial to explain its potential economic benefits. Comparisons to open source could also be helpful in articulating to non-fans what the broader cultural value of fanworks consists of. Like open source software, fanworks are peer-produced products that are considerably more accessible and diverse for both users and creators than works produced by the equivalent commercial economy (in the case of fanworks, the media industry). These products provide specialized content for users whose needs are not met by a commercial market. They also give a voice to creators who, for whatever reason, are unable to create for the commercial market. By encouraging participation and organization by “amateur” participants, both fanworks and open source software encourage radical innovation and have a significant democratizing function.

4.3 Protecting fan communities and preventing media companies from dictating the rules of a hybrid economy in their favor

I will briefly describe one more area where open source software’s experience might offer useful pointers to fans faced with an encroaching market economy: how fans might protect their communities against outsiders who have no stake in those communities and may only be interested in their own bottom line.

Legal recognition of fanworks may be necessary if fanworks are to be commodified in a hybrid economy. However, it could be argued that legal recognition may not be strictly necessary for the survival of the fannish gift economy alone. After all, fan communities have flourished in

spite of having to operate in a legal gray area (and perhaps partly because of it). Individual and collective meaning-making around stories is not a behavior that can be legislated away, and no company or law could “kill” fanworks. But it is important to keep in mind that fan communities may have been left alone up to now because they could not be regulated easily. Today, the same technological changes that allow massive numbers of individuals to create cultural works and distribute them on a large scale also make these ways of creating and distributing culture vulnerable to interference (Lessig 2008, 1563–67). Also important to remember is that while fans unarguably work within a gift economy out of choice, it was never a truly free choice, since there were never any other legal options available.

Arguably, fans might want to consider not just hunkering down and trying to protect the borders of their communities “against an encroaching industrial presence” (Scott 2011, 158), but also taking extra initiatives to empower themselves so that those borders become more easily defensible. The experiences of open source communities show that volunteer communities that get involved in hybrid economies need to exercise considerable vigilance and take proactive measures to shield their gift economy from commercial interference, because companies are often intent to grab or retain any amount of control that volunteers do not actively defend (Berdou 2011, location 3082).

Fans might also want to consider making those borders easier to cross for fans who may want to engage directly with commodity culture on the other side. As the example of open source software production shows, the mere presence of commodification does not necessarily invalidate the foundations of the gift economy:

“A moral economy is not simply about what limits are placed on how economic motivations encroach upon other social motivations, but about what kind of motives guide the process and outcome. It is about developing an understanding of how the wealth and the opportunities created through the process of peer production can be employed to address the limits of markets and promote the values of mutual empowerment.” (Berdou 2011, location 3173)

5. Conclusion

If framing fanwork as the “open source cultural good” to be commodified shows one thing, it is that the most important question may not be how unauthorized derivative works can be monetized efficiently, but how creators of these works can be given the authority and the means to control how they create and what they can do with their works. If creators of unauthorized derivative works don't have the authority or the means to resist unwanted attempts at commodification efforts by other fans, companies, or intermediaries, no truly innovative hybrid economy for unauthorized derivative works will emerge, and works such as fanworks would not be legitimized except as glorified marketing materials for media companies. Such a system would not give any added benefits to most creators of fanworks, such as the many who write about sexuality or other topics that are not convenient in marketing terms. Indeed, such a system would only marginalize and complicate their activities even further. It would also stop companies from taking full advantage of all the benefits that a legal market for fanworks could offer. I propose that research into the possible commodification of unauthorized derivative works pay more attention the very varied circumstances and needs of the creators of those works, and thereby focus on empowering individual creators rather than accommodating current commercial business models that may be simply unsuited to cultural production on the internet.

References

- Anderson, Chris. 2009. *Free: The Future of a Radical Price*. Hyperion. Kindle edition.
- Arai, Yasuhiro, and Shinya Kinukawa. 2010. "Copyright Infringement as User Innovation: An Economic Analysis of Dojinshi." *Hō to Keizai Gakkai 2010endo Zenkoku Taikai*.
- Benkler, Yochai. 2007. *The Wealth of Networks*. Yale University Press. Kindle edition.
- Berdou, Evangelia. 2011. *Organization in Open Source Communities: At the Crossroads of the Gift and Market Economies*. T & F Books UK. Kindle edition.
- Busse, Kristina. 2010. "Affect and the individual fan." *Textual Echoes: Fan Fiction and Sexualities*. Umea University.
- Coker, Catherine. 2011. *The Contraband Incident: The strange case of Marion Zimmer Bradley*. Transformative Works and Cultures, no. 6. doi:10.3983/twc.2011.0236. <http://journal.transformativeworks.org/index.php/twc/article/view/236/191>.
- Fisher, William. 2007. *Promises to Keep: Technology, Law, and the Future of Entertainment*. Stanford Law and Politics. Kindle edition.
- Focus Editors. 2010. Open Source Open World. <http://www.focus.com/fyi/information-technology/open-source-open-world/>.
- Hampton, Darlene Rose. 2010. "Beyond resistance: Gender, performance, and fannish practice in digital culture." University of Oregon.
- Hellekson, Karen. 2009. "A Fannish Field of Value: Online Fan Gift Culture." *Cinema Journal* 48, 4: 113-118.
- Hellekson, Karen, and Kristina Busse. 2006. *Fan fiction and fan communities in the age of the Internet: new essays*. McFarland.
- Hughes, Jerald, Karl Lang, Eric K. Clemons, and Robert J. Kauffman. 2007. "A unified interdisciplinary theory of open source culture and entertainment." <http://ssrn.com/abstract=1077909>
- Jenkins, Henry. 2008. *Convergence Culture: Where Old and New Media Collide*. NYU Press.
- Kawashima, Nobuko. 2010. "The Rise of 'User Creativity': Web 2.0 and a New Challenge for Copyright Law and Cultural Policy." *International Journal of Cultural Policy*.
- De Kosnik, Abigail. 2009. "Should Fan Fiction Be Free?" *Cinema Journal* 48 (4): 118–124.
- Lam, Fan-Yi. 2010. "Comic Market: How the World's Biggest Amateur Comic Fair Shaped Japanese Dōjinshi Culture." *Mechademia* 5: 232-248.
- Lang, Karl R., Di Shang, and Roumen Zicklin. 2007. "Designing markets for open source production of digital culture goods." In *Proceedings of the ninth international conference on Electronic commerce*, 283–292.
- Laurent, Andrew St. 2008. *Understanding Open Source and Free Software Licensing*. O'Reilly Media. Kindle edition.
- Lee, Hye-Kyung. 2011. "Cultural consumer and copyright: A case study of anime fansubbing." *Creative Industries Journal* 3: 237–252.
- Lessig, Lawrence. 2008. *Remix: Making Art and Commerce Thrive in the Hybrid Economy*. The Penguin Press. Kindle edition.
- Mehra, Salil. 2002. "Copyright and Comics in Japan: Does Law Explain Why All the Cartoons My Kid Watches Are Japanese Imports?" *SSRN eLibrary*. http://papers.ssrn.com/sol3/papers.cfm?abstract_id=347620.

- Pearson, Roberta. 2010. "Fandom in the Digital Era." *Popular Communication: The International Journal of Media and Culture* 8, no. 1: 84.
doi:10.1080/15405700903502346.
- Rose, Frank. 2011. *The Art of Immersion: How the Digital Generation is Remaking hollywood, Madison Avenue, and the Way we Tell Stories*. W. W. Norton & Company. Kindle edition.
- Scott, Suzanne. 2009. "Repackaging fan culture: The regifting economy of ancillary content models." *Transformative Works and Cultures*, no. 3. doi:doi:10.3983/twc.2009.0150.
<http://journal.transformativeworks.org/index.php/twc/article/viewArticle/150/122>.
- . 2011. "Revenge of the Fanboy: Convergence Culture and the Politics of Incorporation." University of Southern California.
- Tsiavos, Prodromos. 2011. *Cultivating Creative Commons: From Creative Regulations to Regulatory Commons*. ReadCycle. Kindle Edition.
- Weber, Steven. 2004. *The Success of Open Source*. Harvard University Press. Kindle edition.
- Wu, Tim. 2011. *The Master Switch: The Rise and Fall of Information Empires*. Atlantic. Kindle edition.

- 1 Lawrence Lessig defines a “hybrid” economy as follows: “Commercial economies build value with money at their core. Sharing economies build value, ignoring money. (...) between these two economies, there is an increasingly important third economy: one that builds upon both the sharing and commercial economies, one that adds value to each. This third type -the hybrid- will dominate the architecture for commerce on the Web. It will also radically change the way sharing economies function. The hybrid is either a commercial entity that aims to leverage value from a sharing economy, or it is a sharing economy that builds a commercial entity to better support its sharing aims.” (Lessig 2008, 2680–86)
- 2 It should be noted that this is a significant oversimplification. Power relations in open source software are far more complex than a volunteer community on one side and companies on the other: many influential contributors to open source software projects are company employees who are to some degree paid for their work on open source projects, for example. For an in-depth analysis of these power relations, see Berdou, Evangelia. 2011. *Organization in Open Source Communities: At the Crossroads of the Gift and Market Economies*.
- 3 Cultural policy researcher Nobuko Kawashima, for instance, notes that the production practices of amateur creators “remind(s) us of the Open Software movement, where people believe in the value of idea exchange and build on each other’s work, in what Barbrook (1998) calls a gift economy” (Kawashima 2010, 349). Yasuhiro Arai and Shinya Kinukawa, in their research on the potential of unauthorized derivative works as commodity goods, state that while the production system of dōjinshi is “unique in the copyright world (...) there are many similar cases in technological innovation of manufacturing and software” (Arai and Kinukawa 2010, 2). Jerald Hughes et al. claim that insights from open source can be applied to cultural production systems to solve problems such as the fact that most of the exploding creativity seen in unauthorized derivative works is illegal and therefore excluded from the market for cultural goods. This leads them to propose that the unauthorized derivative works should be commodified through “an efficient process (...) that provides profit-oriented creators better access to cultural materials in a predictable and affordable manner.” (Hughes et al. 2007, 20) Karl R. Lang et al. build on the work of Hughes et al. and describe an experiment that assessed the benefits of two systems, “a market that offers products with content access and transmutation rights to consumers and lets them personalize products in the post-purchase environment” and “an open source production model where producers can trade content access rights that let other producer reuse their content in their own production process”. They conclude that both options offer significantly more value to consumers as well as to producers, without harming their profits (K. R. Lang, Shang, and Zicklin 2007, 291).
- 4 There are several notable systems of fanwork distribution that do involve money being exchanged for fanworks, such as the Japanese system of dojinshi production. For more details about this system, see Lam, Fan-Yi. 2010. “Comic Market: How the World’s Biggest Amateur Comic Fair Shaped Japanese Dōjinshi Culture.” *Mechademia* 5: 232-248.
- 5 The word amateur is used here not to indicate the profession of fanwork creators or the quality of their work, but to mean that fanwork is work that is not made in a professional capacity. There are creative professionals who also create fanwork, and so-called “amateur” fanwork creators are not rarely skilled artists.
- 6 Suzanne Scott explains the differences between the ways the media industry appraises fanworks made by male and female fans as follows: “Fanboys have historically been essentialized as desiring incorporation, being heavily invested in canon and authorial intent, and more likely to collect (trivia and merchandise) than create. When they do create it is with the presumed motivation to become a professional and enter the industry. Fan films and machinima, both of which are created predominantly by fanboys and have been embraced and adopted by the industry as “official” marketing materials, are two notable examples. Though not all fangirls are “resistant” in their reading practices, they have

historically been more invested in subtext rather than text, and more attached to the “fanon” (texts produced by other fans) than the producer’s construction of the canon. Moreover, the forms of fan productivity that have been historically dominated by women, such as fanfiction and vidding, actively avoid monetization and industrial detection.” (Scott 2011, 81)

- 7 Examples include works by Hughes et al, Lang et al, Arai and Kinukawa, and Lessig, listed in the references section of this article.
- 8 Fans and fan scholars have documented numerous attempts by commodity culture to co-opt and monetize fannish labor Roberta Pearson describes, for instance, such attempts related to Battlestar Galactica and Star Trek, as well as the website FanLib, a failed attempt to monetize the exchange of fan fiction (Pearson 2010). Many attempts at commodification of fannish labour are simply never noticed, or never executed. From some of the more subtler ways in which commodity culture is increasing on fandom, it would appear that some industry incumbents are consciously or unconsciously “conditioning” large numbers of fans to participate in a hybrid economy for fanworks that gives economic benefits to the industry alone. Scott provides the example of authorized websites for fans that are created by the media industry form “a potential gateway to fandom for mainstream audiences” that offers “a warped version of fandom's gift economy that equates consumption and canonical mastery with community” (Scott 2009). These “planned communities” tend to be rejected on moral grounds by fans who are active in more grassroots fan communities, but they do attract many participants who have no experience with grassroots fandom. Others have echoed Scott's concern that these new fans have not been introduced to fannish production practices and community values (Pearson 2010, 87). In the grassroots fan community, attempts by the industry to make fans provide free labour are usually quickly spotted and meet with “intense backlash” (Hellekson 2009, 118). However, fans who only spend time in industry-created fan spaces may not be aware that the rules of these spaces often deny them control over their work and the possibility of financial compensation that a more fan-oriented hybrid economy for fanworks could allow.
- 9 For an extensive discussion of the GPL license and its properties, see Laurent, Andrew St. 2008. *Understanding Open Source and Free Software Licensing*. O’Reilly Media, July 14.
- 10 Manga publishers, for instance, openly look to markets for fanworks to find up-and-coming new talent. Importantly, they generally allow professional artists to continue publishing fanworks. Allowing professionals to stay embedded in the volunteering communities that fostered their talents has also turned out to work extremely well for companies that commercialize open source software: employees who are also genuine, functioning members of the gift economy that borders a firm’s commercial activities turns out to benefit both companies and volunteer communities, through their function as “bridges” between the two economies and the often more extensive time and resources they can devote to open source projects in comparison with volunteers. (Berdou 2011)
- 11 For instance, in the United States, professional novelists are often recommended not to look at fanwork of any kind because they may be accused of plagiarism if they later use something in their work that a fan had described earlier. This fear appears to stem mostly from a single case of a fan who may have threatened to sue a professional author (Marion Zimmer Bradley) over a dispute about the use of the fan's material in a novel (Coker 2011) Admonishments that professional creators should stay far away from fanwork sound like wry echoes of the way Microsoft used to forbid employees to go anywhere near open source software out of fear that they might (accidentally) bring elements from that software into their coding work for Microsoft and “infect” Microsoft software with the open source General Public License. (Anderson 2009, location 1768)