

Of Otaku and Fansubs: A Critical Look at Anime Online in Light of Current Issues in Copyright Law

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Abstract

The advent of digital technology and increased global connectivity has, to put it mildly, caused some ripples for the entertainment industry specifically, and copyright law generally. The many conflicts, studies, debates, and court cases over peer-to-peer (p2p) file sharing exemplify this problem. In the digital aftermath, many are searching for new ways to incorporate the benefits of digital copies (infinite copies without degradation of quality) and the internet (low cost, on-demand, fast distribution) while minimising the harms.

To some, the anime industry and its fans offer examples of how an industry can benefit and even grow from allowing copyright infringement. Die-hard fans of Japanese animation, or *anime*, rip (copy) Japanese television broadcasts, encode these broadcasts into formats and file sizes suitable for downloading, and then translate, subtitle, and distribute the resulting product to a wide base of fans from around the world via such programs as BitTorrent. The final fan-produced product is known as a *fansub*. In contrast to other copyright industries, licensed distributors have, at least in the past, intentionally turned a blind eye to fansubs and their creators. Indeed, the licensed distributor industry, at least in the US, directly owes its origins to fansubbers who 'went legit'.

This article examines the anime industry in-depth by exploring the relationship between those who in other areas might be referred to as 'pirates' and the rightsholders. This relationship contrasts greatly with the approach taken by US motion picture and recording industry, who have responded litigiously to online distribution and user enhanced content. The example of fansubs is then situated among current copyright policy debates over user rights and the boundaries of copyright law, such as those suggested by Lawrence Lessig.

Scholars, such as Lessig, have been propelled into celebrity for their work discussing the perceived excess and illogic of certain aspects of modern copyright law. Under the term *Free Culture*, Lessig states that the re-working of culture—remix—is necessary to cultural growth, and that a healthy public domain and freedom from burdensome copyright restrictions facilitates this process. He points to the hindrances in a digital world that copyright laws pose for creative works that, while technically infringing, should perhaps be valued and allowed. Certain features of digital technologies and the internet, according to Lessig, can permit greater restrictions on remix than were allowed in the past. He puts forth the theory that by rigidly applying our copyright laws to the new digital environment we increase the restrictions on remix and thus threaten this Free Culture.

Fansubs as a cultural product sit at an interesting boundary—between Free Culture and the massive online file trading so vilified by the recording and motion picture industries. This article situates fansubs along this boundary, and critically analyzes some of the differences between the anime industry and the litigious response of the recording and motion picture industries.