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Cultural consumer and copyright: A case study of anime fansubbing

Dr Hye-Kyung Lee

Lecturer in Cultural and Creative Industries

Email hk.lee@kcl.ac.uk

Tel +44 (0)20 7848 1574

Culture, Media and Creative Industries

King's College London

4C Chesham Building

Strand Campus

London

WC2R 2LS

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Cultural consumer and copyright: A case study of anime fansubbing

Hye-Kyung Lee

Cultural, Media and Creative Industries (CMCI), School of Arts & Humanities, King's College London,
Strand, London WC2R 2LS, UK

Email: hk.lee@kcl.ac.uk

<http://www.kcl.ac.uk/artshums/depts/cmci/index.aspx>

Abstract

This article aims at discussing copyright and its infringement from the consumers' perspective by examining 'anime fansubbing'. Anime fansubbing refers to the practice in which avid anime (Japanese animation) fans copy anime, translate Japanese to another language, and subtitle and release a subtitled version on the Internet to share it with other fans, without permission from the copyright holder. The case study of English fansubbing of anime shows that this activity has been guided by fansubbers' own ethics that intend to support the US anime industry by respecting US publishers' licences and self-controlling fansubbed anime. However, the existing ethics have been increasingly challenged under the advancement of digital fansubbing and the rise of peer-to-peer distribution. The case study finds that the idea of copyright is contingent upon and open to cultural consumers' own understanding and interpretation.

Keywords

Anime; animation; fansubbing; copyright infringement; consumer ethics; cultural consumption

Introduction

Amid the rise of creative economy discourse, the issue of copyright is drawing increasing attention from cultural industries, policy-makers, civil societies and consumers. Simply put, ‘copyright’ is a series of exclusive rights to reproduce and distribute a work of artistic creation and the right to create derivative works based on the copyrighted work. It also includes rights to public performance and display and to communicating the copyright work to the public. As the UK government’s official definition of creative industries indicates, it is frequently assumed that the economic life of making and disseminating cultural content relies primarily upon generating and exploiting copyrights (Department for Culture, Media and Sport 1998).¹ However, it is in this area that we are witnessing strikingly varying views and conflicting practices. Policy-makers and the industries firmly hold the idea of copyright as an exclusive property right belonging to the author of cultural content (the right can be assigned or granted to a third person), but the everyday life of the cultural consumer often engages various forms of unauthorized reproduction and sharing of copyrighted works.

Acknowledging the overt divergence between the official discourse of copyright and the practice of cultural consumption, this article aims to reconceptualize copyright from the consumers’ perspective. It finds that consumption activities that involve copyright infringement for non-commercial purposes are guided by consumers’ alternative ethics, which are shaped by socio-economic and cultural factors, as well as the consumers’ relationship with cultural products and their producers. With a case study of anime fansubbing, this article discusses the anime fan community’s distinct ethics where the respect for copyright (local publishers’ licence to reproduce, translate and distribute

the anime) is perceived as a social arrangement, through which consumers can support the anime industry. ‘Anime fansubbing’ is the practice by which avid fans of anime (Japanese animation) copy anime, translate Japanese to another language, and subtitle and release the subtitled version on the Internet to share it with other fans, without asking for permission from the copyright holder. From its early years, English-language fansubbers based in the United States saw this activity as a means of pursuing their hobby, increasing anime’s accessibility beyond Japan and supporting the industry. Such a view is aptly reflected in the community’s revered rule ‘stop when the anime is licensed’, which aims to self-control the circulation of fansubbed anime. However, the advancement of digital fansubbing, the globalization of English fansubbing (fansubbing in English) production and consumption, and the rise of peer-to-peer distribution have all resulted in an intensifying conflict between the existing ethics and newly evolving consumption practices of fansubbing. The English fansubbers tend to view copyright as a mechanism that draws a line between what producers and consumers are entitled to do with cultural products, but the line seems flexible and open to modification. Here, the idea of copyright is negotiable, and is contingent upon and reconstructed by consumers’ own reasoning and rationale.

In order to study fansubbing practice and ethics, I examined website text by eighteen selected fansubbing groups active in release during two weeks in Autumn 2009 and the forum sections of five well-known anime news and listing websites. The focus of text analysis was on fansubbers’ and fansub users’ views of the copyright infringing aspects of their activity. In-depth e-mail interviews were conducted with a total of nine English fansubbers (see Table 1) and the editor of an anime news website between

October 2009 and April 2010. In addition, an anime historian and four industry commentators were interviewed. The interview questions were semi-constructed on the theme of fansubbing history and development, fansubbers' ethics, fansubbing's relationship with the anime industry, and the industry's response (all names of interviewees and fansubbing groups used here are pseudonyms). Some of the findings will be published elsewhere (Lee 2011).

Table 1: List of interviewed fansubbers.

Fansubbers (pseudonym)	Residency	Role	Genres	When started
James	United States/United Kingdom	Project manager and encoder of an old group	Old anime	2000
Daniel	United States	Group leader and translator	Dedicated to an old anime series	2005
Kate	United States	Leader of a speed group	Ongoing series	2005
Tony	United States	Leader of an old group	Old anime	Early 1990s
Jim	United States	Translator and timer of a speed group, bilingual (English/Chinese)	Ongoing series	
Kay	United States	Translator of a few	Ongoing series	

		groups		
Gerry	United States	Various	Various	1999
Andy	United States	Editor of a quality group	Anime for boys; diverse repertory	1999
Adam	United States	Native Japanese translator	Various	2002

Copyright and cultural consumers

At the heart of copyright disputes today exists cultural consumers' unauthorized copying and distributing of mass-produced cultural commodities. This is an obvious observation, but it is still important to note considering that conflicts in other areas of intellectual properties such as patent and trademark are generally confined to those among businesses. This might imply that the tensions around copyright have much to do with the inherent nature of cultural consumption. Nonetheless, copyright discourse in cultural policy is concerned more with cultural producers than with consumers. Copyright is framed as a natural right belonging to the 'creator' of cultural content and treated as an incentive or reward for his or her creativity (e.g. the UK government's *Digital Britain* report, 2009 and the subsequent law *Digital Economy Act*, 2010). As Liu (2003) argues from the US context, copyright law itself is a well-developed theory of author but does not hold its equivalent of consumer.² The UK copyright law³ shows the same trait. The consumer in these laws appears to be primarily either authors, who are using existing copyright works to create their own, or passive consumers, who use copyrighted works in

a rather inactive and simple way. As for the latter type of consumers, the laws mostly see their activities as being economic and occurring in the marketplace in an individual manner. The laws' clauses on limitations of copyright protection indicate some potential identities of consumers – student, researcher, critic, teacher, news reporter, educational establishment, library, archive and so on – and legitimize certain types of non-commercial, private, educational and public uses of copyright works. Nevertheless, there is little recognition of the varied cultural and social circumstances of the use of copyright works and the significant changes digital technologies are bringing to the nature of cultural consumption.

Findings from consumer and media research provide rich accounts of cultural consumers and their practices, although this seems not to be feeding into the policy discourse of copyright. One of the findings is the active and creative aspect of cultural consumption, i.e., cultural text is unfixed and open, and thus its final interpretation and understanding depend on meanings newly generated by the act of consumption (Firat and Dholakia 2006; Kozinets 1997). It is implied that cultural consumption practices are neither prescribed nor predicted by the producers (Gabriel and Lang 2006; Ritzer and Jurgenson 2010). This aspect of consumption is more visible in consumers' own making of cultural text based on copyright works or by altering them, e.g. fan fiction, fan art, parody, video game modification, user-generated contents, and various types of forum and discussion online (Deuze 2007; Green and Jenkins 2009; Jenkins 2006; Kawashima 2010). Active consumers are sometimes seen as a key source of value creation: by working together with consumers who are well informed, knowledgeable, connected and participatory, producers can co-create value in their product and production process

(Cova and Dalli 2009; Prahalad and Ramaswamy 2004). The understanding of consumption as ‘recreation’ of cultural text and ‘co-creation’ of value fundamentally questions copyright laws’ static perception of creation, i.e. making and fixing original ideas in the form of text, recording or film. Consumption of culture is situated in social contexts where consumers build up social relationships with others through consumption practices, and this closely relates to the formation and strengthening of their personal and community identities (Marshall 2004). Collective consumption via sharing plays a crucial role in this process (Condry 2004). Sharing takes place in many different forms, from offline lending and borrowing, to online communications such as e-mail and instant message, to peer-to-peer file sharing.

Importantly, consumers’ unauthorized copying and circulating of digitized cultural contents is inseparable from the social production of collective knowledge (Benkler 2006). The last decade has witnessed a wide range of knowledge – from software, technology, information, news and criticism to skillsets – voluntarily generated, accumulated and shared freely among consumers themselves. The rapid expansion of consumers’ free knowledge and its effortless accessibility make it increasingly difficult for copyrighted works to be distinguished as ‘separate’ knowledge that cannot be offered free of charge. Online connectivity allows cultural consumers today to easily access and share *both* free and copyrighted cultural contents across national borders. Utilizing their own skills, available digital technologies and free software, consumers are capable of carrying out even ‘mediated copying and sharing’ of foreign cultural products: consumers translate and edit foreign films, TV shows, anime, novels and comic books and release the translated version on the Internet in order to share it with others (Barra 2009; Lee

2009, 2011). Frequently this is almost synchronized – with a time difference of a few hours at its most speedy – with the release of the original. The costs involved are decentralized among and internalized by the consumers themselves in the form of their expenditure on PCs and Internet connections, the provision (uploading) of cultural contents they own and their voluntary labor (Bank and Deuze 2009; Ku 2002). The existence of an escalating amount of free knowledge online is posing a fundamental challenge to copyright as a policy. It now regulates an increasingly small part of the production, distribution and consumption of cultural contents, and thus its legitimacy and efficacy are likely to be continuously enfeebled.

Consumers' alternative ethics of copyright infringement

There exists a discernable disagreement between the rules imposed on cultural consumers by the official discourse of copyright and the consumers' own ethics. Consumer ethics are a set of moral principles that guide and influence consumers' reasoning and behavior and function as unspoken norms and rules of consumer communities. While consumer ethics and ethical consumption are increasingly recognized as an important research area (Belk et al. 2005), there is a lack of research on the ethics of cultural consumption, particularly involving unauthorized uses of copyright works. The majority of the available literature generally focuses on analysis of demographics and motives of infringers, their willingness to pay for legitimate and illegitimate products, and their potential responses to punishment (e.g. Chiang and Assane 2002; Hinduja 2003; LaRose 2003; Maffioletti and Ramello 2004). Meanwhile there is a small volume of writings that attempt to socially, economically and culturally contextualize consumers' attitudes

towards copyright infringement such as file sharing (e.g. Cenite et al. 2009; Condry 2004; García-Álvarez et al. 2009; Giesler 2006; Giesler and Pohlmann 2003). According to them, consumer ethics are informed not only by consumers' intuition and their view of the product, the producer, the industry and the role of the consumer, but also by the sociocultural and economic context within which consumption takes place. It has been found that cultural consumers apparently hold a strong normative belief that copying for non-commercial, personal use fundamentally differs from the theft of physical goods. Industry reports show that a majority of consumers regard unauthorized copying for personal use as illegal but morally acceptable (Office of Communications 2009; The Leading Question and Music Ally 2009). Such an attitude has also been observed by consumer ethics researchers (e.g. Muncy and Vitell 1992; Vitell 2003; Vitell et al. 2001). At the core of consumers' alternative ethics seems to be their intuitive uneasiness and confusion with the existence of intangible properties as exclusive rights. This uneasiness and confusion seemingly intensifies with their experience of digital copying as a new method of endless reproduction of the original with no harm to it and at almost zero cost.

Cultural consumers' rationales for unauthorized accessing and sharing of copyright works are wide-ranging. First, there is a view that sees such activity as an essential part of consumption practice, where consumers find pleasure and get a sense of alternative consumption and liberation. The second rationale is the community building and participation: sharing of cultural contents is perceived as gift exchange between members of the online consumer community, in which the norm of reciprocity operates and those who contribute more to the community are likely to gain more acknowledge and respect (Giesler 2006; Giesler and Pohlmann 2003). Third, consumers' copyright

infringement can be seen as a reaction to the problematic business ethics of cultural industries (Belk et al. 2005): the image of multimedia companies monopolizing and dominating the film and music industries and the current copyright regime prioritizing the industries' interest seems to provide a strong justification for consumers' copyright infringement as a challenge to corporate greed and commercialism (Condry 2004; Garon 2002–2003; Giesler and Pohlmann 2003). Fourth, the high price of legitimate products such as CDs and digital albums is also mentioned as a trigger for music copying and sharing (The Leading Question and Music Ally 2009), implying that currently consumers do not benefit as much as the industries from the lowered production and distribution costs resulting from digitalization. Fifth, consumers also use online file sharing in order to test and access new contents that are not available elsewhere (Cenite et al. 2009; Leonard 2005). Finally, some infringing consumers tend to associate their action with higher humanitarian and cultural values such as democracy and freedom (Cohn and Vaccaro 2006; Giesler and Pohlmann 2003; Harris and Dumas 2009; Hinduja 2003).

However, taking a homogeneous view of the ethics of copyright infringement is problematic, as the consumers show a wide spectrum of attitudes. For example, García-Álvarez et al. (2009) find the availability of public cultural resources such as public libraries' music collections a key variable that influences consumer ethics. That is, consumers from countries in which public cultural resources are scarce and the price of legitimate CDs is high appear to take a tolerant view of accessing cultural contents via unauthorized means, including buying pirated CDs that are likely to be produced by poor families. Some research indicates that consumers who download and share files are still keen on supporting the relevant industry, for instance through going to live music

performances and buying albums by their favorite artists, purchasing legitimate products after testing them via downloading, or purchasing legitimate products when they are available in the local market (Cenite et al. 2009; The Leading Question and Music Ally 2009). In this case, consumers' respect for copyright is either replaced by alternative means to support the industry/artists or temporarily suspended until they find a decent offering of lawful products. In addition, unauthorized uses of copyright works that have strong fandom elements demonstrate a distinct culture. For example, the communities of anime, manga (Japanese comics) and TV drama fan-translators see their activity as illegal, but inevitable for these cultural products to reach a wider audience across linguistic borders, which would eventually benefit the industry (Lee 2009, 2011; Leonard 2005). In this context, striking a good balance between broadening the products' accessibility to overseas consumers and helping the industries to prosper is likely to be the nexus of their ethics. These communities have also developed their own norms and rules that govern and coordinate the collective, voluntary labor of those who are involved.

In spite of the difficulty in generalizing consumers' alternative ethics, we can note from the existing findings that consumers' copyright infringement is not an unambiguous manifestation of the absence of ethics. Nor can it be framed simply as unpaid access to cultural contents, since it is informed and guided by the consumers' own beliefs and rationales that are contextualized by various factors such as those mentioned above. The following case study will focus on the anime fansubbing community's distinct ethics and view of copyright, with reference to the community's eagerness to support the anime industry and the new dynamics in the community, which has been brought about by its

recent expansion and the prevalence of peer-to-peer file sharing as main means of distributing fansubbed anime.

A case study of anime fansubbing

Context of anime fansubbing

Anime fansubbing has constituted a pivotal part of anime fandom in the United States. Its primary objective was to introduce anime to US viewers who could not access them otherwise. Although the 1980s saw US anime fandom emerging and fans' desire for anime surging, its official distribution was seriously limited. In the early 1990s, fans had already begun DIY translating and subtitling of anime that they could obtain in the form of TV recordings or original videotapes published in Japan (Leonard 2005). The fansubbed anime on VHS tape was copied multiple times and circulated among anime clubs across the United States. It was closely linked to other fan activities such as anime screenings and fora (my interview with James and Tony).

Around the beginning of the new millennium, analogue fansubbing was replaced by digital means. This meant a drastic transformation in terms of fansubbing production, distribution and consumption as digital technologies made the production process easier and allowed its finished products to be copied and downloaded endlessly without quality loss. The rise of digital fansubbing corresponded with the growth of the anime industry in the United States. An increasing number of popular anime series have been licensed and published, but the industry's offerings still do not satisfy fans' demand for diverse titles. The anime industry's global distribution is fragmented, as it is based on licence deals

between its production center (Japan) and local publishers (JETRO 2008). This model of multiple center-local networks has a number of disadvantages: the time gap between publication of the original and local versions and also between local production in different language territories; limited visual quality (the quality of local-version DVDs cannot compete with that of the original's HD broadcast or its Blu-ray DVD version); and the shortage of local catalogues and the consequent neglect of local fans' niche demands. Fansubbers have dramatically transformed the process and structure of anime distribution outside Japan by mobilizing resources and organizing their labor on a global scale in order to make and disseminate their own version of translated anime (Denison 2011 in this issue). Easy access to related technologies, skills and software (e.g. free software for subtitling and encoding) and seamless online communications help them to produce fansubbed anime with high-quality visuals and circulate it widely.

Legitimacies for unauthorized use of anime

Fansubbing is an unauthorized use of copyrighted anime. Nevertheless, fansubbers are very keen on discussing the 'illegality' of fansubs. Comments on the illegality of fansubbing and downloading fansubs are easily found on various fan fora and the Q&A section of fansubbing groups' websites. It is also frequently recognized by anime news websites and websites devoted to distribute fansubs. For instance, AnimeSuki, the well-established anime fansubbing torrent site, states that 'We have to admit it: the distribution of fansubs is technically a violation of copyright under the WTO TRIPS agreement' (http://wiki.animesuki.com/wiki/Licensed_anime. Accessed 5 August 2010). In spite of almost unanimous acknowledgement of the illegal status of their activity, fansubbers

think that it does not necessarily conflict with the interests of the anime industry. They pinpoint the limited accessibility of anime in the United States and other non-Japanese-speaking countries and the consequent gaps between consumer demand and the supplies of anime via market mechanisms. According to them, fansubbing has been seen as a solution to correct the market through temporarily offering fan-translated and subtitled anime, ideally until legitimate products are available.

Similarly, fansubbing has been regarded as an equivalent for TV. In the anime industry context, the role of TV is crucial in nurturing consumer demand for DVDs. For example, the Japanese anime industry witnesses fans normally testing the anime via TV viewing and then deciding on their purchase of DVDs and Blu-ray DVDs (my interview with two commentators from the Japanese anime industry). Hence, Japanese anime producers have traditionally treated TV broadcasting as a form of advertising. While lamenting the lack of TV coverage of anime in the United States, English fansubbers see their activity as serving as free promotion. Interestingly, this aspect of fansubbing was widely acknowledged by the US anime industry. Until recently, the industry was generally nonchalant towards fansubbing but tended to agree on its viral marketing and market tester aspects. For example, Jason DeMarco, a then creative director for Cartoon Network, said,

If the fans are putting out a bunch of Naruto fansubs and talking about the show, even the casual fans are going to say, ‘What’s this Naruto that all these crazy guys are talking about?’ Eventually it’s going to filter to us because they really are a

quality indicator. (Jason DeMarco, a creative director for Cartoon Network, cited in Roth 2005)

Anecdotes also indicate that US anime publishers sometimes browse fansubs for market research purposes and have conversations with fansubbers. There are instances of fansubbers' direct collaboration with the industry: a fansubbing group provided Tokyopop, one of the largest anime publishers in the United States, with a translation of *Initial D* (2002) (Anime News Network 2002, my interview with Tony). Moreover, fansubbing covers a broad range of anime including unknown, obscure anime, which will never be introduced into the United States. In this case, the net effect of fansubbing would be to promote anime culture and nurture consumer demand.

Fansubbing ethics and copyright

Fansubbing is an active consumption of anime and a fun activity in which anime fans find personal pleasure through their labor of love and participation in the community (my interviews with Adam, Daniel, Gerry, Kay and Tony). Evidently it is a form of expression and a way to demonstrate their skills. Fansubbers have developed their own rules and norms, which surely manifest their love for anime, their desire to share it with other fans and their support for the anime industry. The premises of the rules and norms are noticeably different from the official discourse of copyright, but they have effectively shaped fans' behavior. Since the very beginning, anime fansubbing has been a strictly non-commercial activity. The only exception was charges for distribution. In the early days, distribution of fansubbed anime required VHS tapes and shipping, and fansubbers

charged their viewers for related costs. Meanwhile, costs for setting up, obtaining anime videos and labor were borne by fansubbers themselves. As fansubbing is a voluntary activity, those involved are supposed to willingly invest their time, money and energy to produce fansubs and to maintain their operation. Today some groups seek voluntary donations to keep the server operating, but others try to be totally non-commercial by banning donations.

Fansubbers have a double-sided understanding of copyright where authorship and ownership can exist more or less separately. They affectionately acknowledge the moral right of the creator of the original anime and recognize its broadcaster and publisher but freely borrow the product without seeking permission from anyone. In addition, they have shown themselves inclined to respect US licensees' ownership of exclusive rights to reproduce and translate the original anime and to distribute its English subtitled/dubbed version in the United States (or North America). Their rationale is that the US publishers' licenses should be protected for the local anime industry to grow and thus fans can eventually be offered an increased number of lawful products. Fansubbers' respect for US licensees' exclusive rights and their desire to support the industry are succinctly reflected in the long-standing rule that fansubbing and its distribution should stop when the anime is licensed in the United States (or North America). This was an indisputable norm in the VHS days and is still valued by many groups, particularly old ones. Many fansub distribution websites comply with the rule. This rule has been used effectively for the fansubbing community to control the spread of fansubs and thus to prevent them from eroding future demand for the legitimate version. The community's attempt to self-

regulate its ethics was vividly demonstrated by ‘A New Ethical Code for Digital Fansubbing’ proposed by the Anime News Network (2003):

[...] only the first 4 or 5 episodes should be fansubbed in order to give a taste of the anime [...]. Fansubs are not to be considered a substitute for owning a legal, English-language copy [...]. Distribution must stop the instant a license is announced [...]. Fansubs are not meant to compete with a professional product [...]. [thus] the audio/visual quality of a fansub should not attempt to match or better the quality of a professional DVD [...]. Fansubbers should operate in a manner which minimizes impact on the commercial interests of anime-producing companies as it is in the best interests of anime fandom that these companies be healthy and create more anime [...]. The fansubbers should promote fansub ethics by displaying the code of conduct expected of the viewers somewhere in the anime [...].

Anime publishers in the United States are aware of the ‘stop when licensed’ rule. When they license a series, their normal practice is to contact the groups working on it and ask them to stop, sometimes using a Cease and Desist letter. They also ask fansub distribution sites to take down the licensed items.

When it comes to rights in their own creation, the fansubbers’ stance is loose. They take their reputation seriously and are keen on being credited for their efforts. Nevertheless, there exists tolerance towards the work’s reuses by other fansubbers – e.g. retranslation to other languages or re-release of their subtitles with a better video: ‘It’s not like we can actually stop you’ (Group X); ‘[...] if you want your subs magically

protected, you shouldn't be releasing in the first place' (my interview with Kate); and 'Feel free to do a re-release with better video...[when it] becomes available' (Group Y). A few years ago, there was a moment when fansubbers became conscious of the ownership of copyrights in their work. It started with Crunchyroll, a website that collected fansubbed anime and streamed it, imposing a 'compulsory' donation on viewers who wanted to access high-quality versions of fansubbed anime. Fansubbers condemned this as a breach of the non-commercial principle, and some of them asked the website to take down their works. When Crunchyroll became legal and began offering popular anime series under deals with Japanese producers, it was still streaming fansubbed anime. This sparked heated debates about who 'owns' fansubbed anime and whether fansubbers could take legal action against the website. In the United States, fansubbers are not likely to claim for any ownership of copyrights in their work. According to the United States Copyright Office (2010), a derivative work is copyrightable when it includes original elements and it is those original elements that are receiving copyright protection. It is questionable whether fans' unauthorized translation of the anime could be seen as the 'original work of author'. The tension eventually resolved as Crunchyroll took down all fansubs. In a nutshell, fansubbers' asserting the ownership of copyrights was their reaction to fansubbing's commercial exploitation rather than preventing others from using their works.

Dynamics of fansubbing ethics

During the last few years English fansubbing of anime has expanded dramatically. Its production, distribution and consumption have been globalized, and have attracted new –

younger – generations of fansubbers and viewers. This makes it increasingly difficult to maintain the community’s existing ethics (my interviews with James, Gerry and Andy). Fierce debates around fansubbing ethics have been ongoing, but there is no sign of a convergence of ideas. Older-generation fans try to conform rigorously to the existing ethics – in particular, the rule of stopping when licensed – and also believe that fansubbing should be limited to a supplementary role by focusing on unknown, non-mainstream anime to the wider fans. Nevertheless, this is seen as an ideal rather than a reality. Currently, there are many who challenge the rule. First, some see fansubbing as a form of protest against the poor value of the legitimate products (e.g. heavy localization, high price, poor translation and visual quality, and lack of cultural references). They would continue fansubbing until they could find legitimate products good enough to satisfy their own criteria. Second, nowadays many groups are working on the latest series and/or latest episodes of popular series that are already licensed. The demand for ‘speed subbing’ is growing as facile access to the abundant information of new and ongoing series strengthens viewers’ wish to watch them immediately. The older generation is prone to despise speed groups’ ambiguous ethics, but these groups dominate today’s fansubbing scene. Third, globalization trends in fansubbing have brought out other powerful alternative reasoning: the production and consumption of English fansubbing today is an international project, and thus stopping fansubbing when the anime is licensed in the United States is anachronistic and US-centric. In addition, there are groups who simply ignore the issue of licensing.

Facing the significant dilution of the ‘stop when licensed’ rule, many fansubbers agree that there is no longer a coherent set of ethics shared by members of the fansubbing

community. Each group's ethics are a product of constant negotiation between various factors such as its mission, the chosen anime series, the geographical location of group members and viewers, and its perception of licensed anime and the anime industry. This multiplicity of ethics can be aptly demonstrated by fansubbing groups' diverse attitudes towards licensing:

Drop the project when licensed

Drop the project when licensed and encourage other groups to 'vulture sub' the remaining episodes

Drop the project when licensed and complete the series internally as staff-only fansubs

Drop the project when licensed and complete translation, leaving open scripts behind

Drop the project when licensed and complete the series with a different spinoff name.

Continue when it's licensed and persist until a C&D letter is issued

Continue when it's licensed but complete the series with no bittorrent release (IRC only)

Continue when it's licensed and complete the series outright, C&D or not

Continue when it's licensed and complete the series, along with any related materials released thereafter. (my interview with Andy)

Fansubbing and distribution of anime

In the days of VHS subbing, there was no serious difficulty for fansubbers to support US licensees by self-regulating the circulation of their work. The fandom was domestic, and the quality of fansubbed anime was not comparable with legitimate products. Fans were willing to switch to and also collect legitimate anime when it was available in the US market. In the early period of digital fansubbing, its circulation was still confined to US fans, as the main means for distribution was Internet Relay Chat channels. However, recent years have witnessed a surge of peer-to-peer as a primary mechanism for online distribution. A poll by Baka-Updates, an anime fansubs listing site, of their users as early as 2005 on how they downloaded the majority of their anime showed that almost 80 per cent of the respondents used BitTorrent file sharing.⁴ Peer-to-peer file sharing programs dramatically speeded up the distribution process and broadened fansubs' reach. This means that it is becoming incredibly hard for fansubbing groups to control the distribution of their work:

In old days, it was easy to control but now we can find subs that are five years old even when the DVD is out. It is kind of sad. In theory, the project should stop if a licence's done but [...]. Once it is out there, it is out there. (my interview with James)

Witnessing the expansion of digital fansubbing and the ubiquity of fansubbed anime on the Internet, the industry has broken its silence and begun challenging fansubbing's legitimacy. It now defines fansubbing as piracy, and asks fans to stop making and using fansubs (Smith 2007). The US publishers have recently experienced a decline of anime

DVD sales – consequently a few publishers such as AVD have ceased to exist – and insist that fansubbing significantly shrinks the market for DVDs. However, it is hard to find an exact correlation between fansubbing and the drop in DVD sales as there are many other factors: e.g. economic environment at the macro level, annual yield of popular products, pricing, introduction of new technologies (e.g. format change from DVD to Blu-ray), consumer trends, etc. (also see Hesmondhalgh 2007; Oberholzer-Gee and Strumpf 2007). The fansubbing community's response to the crisis in the US anime industry has been mixed: many fans show serious sympathy towards the industry and often acknowledge the potentially negative impacts of fansubbing, and they tend to find the real cause of the crisis in the lack of quality repertoire, high-pricing policy, anime DVD's poor service and the time gap between broadcasting in Japan and US release. To compete with fansubbing, US anime publishers have begun launching online streaming services. In addition to Crunchyroll, many streaming sites are currently operating: e.g. YouTube, Hulu, Joost, Cartoon Network Video and Funimation Videos. The fansubbing community welcomes this development as a great leap forward for anime distribution, but its impacts on fansubbing and its ethics have been rather small. While there are groups that think fansubbing should be stopped when the anime is available on the above sites, many question the effectiveness of legal streaming by noting its shortcomings: although the streaming is called 'simulcasting', there is normally a time gap; some services are territorially bounded; and it is also noticeable that the visual quality of streaming services is far inferior to that of fansubbing, HD and Blu-ray fansubbing in particular.

Currently, the structure of fansubbing distribution is highly decentralized and difficult to coordinate. In peer-to-peer file sharing, there are no central organizations but

rather multiple – very transient – global networks among individual file sharers. With such a structure, it might be hard for fansubbers and their users to reach a new consensus on their ethics: many fansubbers even feel that the field is too decentralized and globalized to be called a ‘community’ (my interview with Gerry and James). With the absence of fansubbing centers and the lack of far-reaching ethics, the distribution of fansubs heavily relies on the popularity of individual titles. Fansubbed anime, as a semi-public good, is non-rivalrous and non-excludable, but its diffusion depends on online traffic, i.e., the number of uploaders/downloaders. The consequence is that unknown shows are difficult to download as there is less traffic. In order to overcome such limitation and minimize free riding, some fansubs users have created closed torrent groups. To take an example, Group Z not only imposes strict rules on its members about their upload/download ratio, but also functions as a gatekeeper. It reviews the quality of fansubbed anime and decides on whether it will add the item to its catalogue. Available versions of fansubs are ranked according to the group’s criteria. The group conforms to the old ethics: it takes down fansubs when licensees ask. Interestingly, unlike most peer-to-peer communities, its website is open to non-members, and thus they can have access to a wide range of fansubs and speedy downloading with few restrictions. The emergence of such groups perhaps indicates a trend in the territorialization of fan ethics and fansubbing distribution, but their inner dynamics and impacts on fansubbing are yet to be researched.

Conclusion

This case study of anime fansubbing has explored the roles of consumers' own ethics in shaping their practice of borrowing and sharing copyrighted cultural products. The study demonstrates that fansubbers' attitude towards copyright is rather contingent. At the heart of their ethics have been strong elements of media fandom and enthusiasm to help the industry to grow. The issue of copyright has also been understood within the context of fans' dedication to support for the industry: fansubbers have embraced US publishers' licences as exclusive economic rights that should be protected to nurture the local anime industry while treating original producers' copyrights as moral rights. Recently, their respect for US licences has been increasingly weakening, and consequently the fansubbing community shows rather incoherent approaches to licensed anime. While many members of the community are anxious about the fact that copyright, as a social arrangement with which fans can assist the industry, is losing its efficacy, no consensus seems to have been reached on what would be the best possible new arrangement. The findings of anime fansubbing cannot be generalized as alternative ethics of infringing consumers as a whole but they are seen as a unique example in which we can observe how the consumer community's ethics of copyright (infringement) emerge, are maintained and change. However, it should be noted that this case study is specific to the practice and ethics of English fansubbing that has evolved primarily in the United States and Europe. In order to obtain a more comprehensive view, cross-cultural analysis is needed. Another area on which to shed further light is the role of the consumer community (community members' strong sense of belonging and participating) in shaping and maintaining consumers' alternative ethics. This article has indicated that the

rapid expansion and globalization of fansubbing has led to the decentralization of the fan community, posing a challenge to its existing ethics. Further research is required on the dynamics in consumer communities and their impacts on consumer ethics.

This article finds the official discourse of copyright deeply disembodied in the everyday practice of cultural consumers, and proposes that our discussion of copyright needs to pay more attention to consumers' own perspective. Cultural consumers are active, social beings who constitute a dynamic part of the field of cultural production and distribution today. Copyright-infringing consumers are not simply ignorant of copyright, but base their actions on their own reasoning and rationale. Consumers' unauthorized uses of copyright works for non-commercial purposes can be seen as a part of their constant navigation of morally permissible behaviors of accessing and consuming cultural contents. This article questions the simplistic view of copyright as cultural producers' exclusive right that is evidenced by the law, by pointing out that copyright is not only a legal but also a social and cultural construct open to cultural consumers' own understanding and interpretation. It also problematizes the producer-centered conceptualization of creative industries, throwing light on the rise of consumer creativity and its effect on global distribution and consumption of cultural commodities.

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Contributor details:

Hye-Kyung Lee is Lecturer at the Centre for Cultural, Media and Creative Industries Research (CMCI), King's College London. She has published articles and a book chapter on cultural policy discourse, cultural marketing and cultural consumption. She has studied cultural consumers' own translation and distribution of cultural contents, focusing on scanlation of comics and fansubbing of animation. Her current project includes analyzing cultural policy in South Korea, as well as further investigation of the practices and ethics of active cultural consumption.

Contact:

Cultural, Media & Creative Industries (CMCI), School of Arts & Humanities, King's College London, Strand, London WC2R 2LS, UK.

E-mail: hk.lee@kcl.ac.uk

Notes

¹ According to the *Creative Industries Mapping Document* published by the UK government, creative industries are 'those industries that are based on individual creativity, skill and talent. They are also those that have the potential to create wealth and jobs through developing intellectual property' (Department for Culture, Media and Sport 1998). The industries include thirteen different sectors: advertising, film and video,

architecture, music, art and antique markets, performing arts, computer and video games, publishing, craft, software, design, TV and radio, and designer fashion.

² The text of the US copyright law is available at <http://www.copyright.gov/title17/>.

Accessed 10 September 2010.

³ The text of the UK copyright law is available at

http://www.opsi.gov.uk/acts/acts1988/ukpga_19880048_en_1. Accessed 25 June 2010.

⁴ <http://www.baka-updates.com/news/index/page/18>. Accessed 5 August 2010.