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Piracy or productivity: unlawful practices in anime fansubbing

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Abstract

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Over a short period of time, Japanese animation or anime has grown explosively in popularity worldwide. In the United States this growth has been based on copyright infringement, where fans have subtitled anime series and released them as fansubs. In the absence of official releases fansubs have created the current popularity of anime, which companies can now benefit from. From the beginning the companies have tolerated and even encouraged the fan activity, partly because the fans have followed their own rules, intended to stop the distribution of fansubs after official licensing. The work explores the history and current situation of fansubs, and seeks to explain how these practices adopted by fans have arisen, why both fans and companies accept them and act according to them, and whether the situation is sustainable.

Keywords: Japanese animation, anime, fansub, copyright, piracy

Tiivistelmä

Piratismia vai tuottavuutta: laittomat toimintatavat animen fanikäännöksissä

Japanilaisen animaation eli animen suosio maailmalla on lyhyessä ajassa kasvanut räjähdysmäisesti. Tämä kasvu on Yhdysvalloissa perustunut tekijänoikeuksien rikkomiseen, missä fanit ovat tekstittäneet animesarjoja itse ja julkaisseet ne fanikäännöksinä. Virallisten julkaisujen puutteessa fanikäännökset ovat luoneet animen nykyisen suosion, jota yhtiöt voivat nyt hyödyntää. Yhtiöt ovat alusta asti sietäneet ja jopa kannustaneet fanien toimia, osaksi koska fanit ovat noudattaneet omia sääntöjään, joiden on tarkoitus estää fanikäännösten levitys virallisen lisensoinnin jälkeen. Työ selvittää fanikäännösten historiaa ja nykytilannetta, ja pyrkii selittämään, miten fanien omaksumat säännöt ovat syntyneet, miksi sekä fanit että yhtiöt hyväksyvät ne ja toimivat niiden mukaan, ja voiko tilanne jatkua tällaisena.

Asiasanat: Japanilainen animaatio, anime, fanikäännös, tekijänoikeus, piratismi

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1. Introduction

During the past twenty years, the expansion of Japanese animation to the global market has been nothing short of explosive, while Western animation has been in decline. This is all the more remarkable since the way for this growth was paved by organized copyright infringement in the United States, which the Japanese animation studios had once abandoned in the belief they could not succeed on that market. This allowed fan organizations to develop and build their own distribution networks for subtitled anime shows, creating an audience and opening the way to commercial success where the Japanese studios had seen none.

Today fan organizations continue to be an integral part of the anime community, and fansubs are distributed throughout the world. Animation studios and distributors, on the whole, continue to have a working relationship with the fan community, including the people producing and downloading fansubs. How did this situation arise? Why do both fans and the companies accept it? And most importantly, can this last?

The purpose of this work is to document and analyze cases within anime and related industries, where fans have adopted practices that violate copyright law, but the copyright holders accept and even encourage this. Answers and reasonings to the above questions are discussed, but there probably are no definite or final answers to be found. The focus is to be on the technological dimension and the practices followed by the fans, with an overview of the legal side of the issues. In these cases after all the letter of the law is not a decisive factor, but the unwritten rules followed by companies and fans alike are based on what is considered mutually beneficial or at least acceptable. The companies may have the law on their side, but tolerating illegal activity is often the wiser choice - and perhaps copyright law could learn from these cases and adapt to new technology, rather than defend the slowly dying business model based on physical records.

2. Methods

Fansubs have been the subject of very few scientific writings. Possibly the most significant of them was published in 2004 by Sean Leonard, then a student at MIT, containing a historical and legal analysis of fansubs. This work has been commented and extended by other writers, but being academics of law, their interest has been in the legal side of the matter. What is more, the analysis by Leonard ends in the year 1993, and thus excludes modern digital fansubs in their entirety.

In this situation, there are no existing works where one could look for cases that would highlight the current situation of fansubs, and the relationship between fansubbers and the anime industry. Thus to answer the questions asked, one has to resort to original research. To properly explain why fansubs came to be, and why the anime movement began from the United States, requires that the history of anime in Europe and the rest of the world be documented also. The reasons why the anime industry tolerated fansubs twenty years ago are interesting, but one should ask whether those reasons remain valid today. Likewise, given the massive growth of anime fandom over the past two decades, it would be surprising if the sentiment of the fans had remained unchanged. These matters seem not to have been sufficiently covered by past studies, and finding answers means having to explore new territory.

In this work, the background and early history of fansubs is mostly paraphrased from Leonard, with details and comments added when deemed relevant. The history of anime in Europe and the analysis of modern digisubs and manga scanlations consist mostly of independent research. References and case examples are included from web mining, but the context comes from personal experiences and observations over ten years as a member of the fansub and scanlation communities. Wikipedia articles are used as sources of details, since part of the information is esoteric and not available elsewhere. The legal overview depends on Leonard and other writers.

The question of whether the anime industry still uses fansubs to indicate which series are popular enough to license is difficult. Although the licensing of anime series is usually immediately announced at various anime websites, there are no download statistics of fansubs that could be used to determine whether their popularity affected the licensing decision. The next best thing are the public statistics on anidb.net, used by anime collectors to organize and keep track of what they have. With the large userbase of the site, these statistics give accurate information of the relative popularity of anime series, measured in people who have it in their collections. If the anime industry still uses fansubs to measure popularity, there should be a strong correlation between anime licenses and download amounts.

The aim here is to give a general picture of fansubbing and related activities up to date, to document and analyse case examples, and to seek answers to the proposed questions. Relevant issues and technologies are identified, but not described in depth, as this work is concerned with the fansub phenomenon as a whole. Given how little the subject has been researched before, there are few observations by other researchers to refer to, but they are included where appropriate.

3. Analysis

The analysis constitutes the bulk of the work. It is divided into nine parts, the first giving an overview of history and an introduction to fansubs. The remaining eight parts each deal with a specific field related to fansubs. There is one part for the C/FO anime club, which had significant dealings with anime studios and became the dominant force in American anime fandom prior to fansubs. Europe has its own part, ignored by most writers, where the aim is to explain why the anime movement began specifically in the United States, and what its effect was on Europe. The next part describes the technology related to fansubs, its development and implications to fansub distribution. The part after this delves into the relationship between fansubs and licensors, and how this relationship has changed. One part shows how some groups ignore licenses and continue to distribute anime despite them, as an example

of how difficult it is to control the spread of fansubs. The next part describes the only significant case where an anime distributor took legal action against anime downloaders, and seeks to explain why other companies have not forced the issue. The final two parts describe manga scanlations, a phenomenon closely related to fansubs, and give a legal overview of fansub-related issues.

3.1. History overview and development of fansubs

While cartoons are, more often than not, dismissed as being directed at children, Japanese animations have been a massive success story for the past decade and more, for audiences of all ages. When Japanese artists once adopted techniques and ideas from Disney, it is now Disney that is influenced by Japan. Anime has become an entertainment and a window to Japanese culture enjoyed by millions worldwide. Not only this, anime is also a huge business. In 2001, the value of Japan's content industry was over twice the value of their steel industry, rising to 100 billion US dollars.

Considering what anime is today, it is incredible to think that this international phenomenon has been created not in spite of copyright infringement, but by systematic and large scale copyright violation. Copyright laws exist to promote knowledge and as an incentive to the creators, by granting them exclusive rights to profit from their work. However, in the case of anime, copyright laws acted as a barrier, and rather than hurting the interests of the copyright holders their violation opened new markets they enjoy today.

Although the Japanese made animations decades earlier, the birth of modern anime is commonly dated to the 1960's, to the works of Osamu Tezuka¹, which defined anime as a distinctively Japanese animation style. However, this definition of anime is only valid outside Japan, while in Japan the term covers all animations from all countries. Also, anime covers numerous different styles and genres of wide variety. However, the word is commonly used as if anime was a genre in itself, and is useful when speaking of the phenomenon as a whole.

Already in the 1960's anime had a brief period of success in the US. The series were translated and heavily edited, changing not only names but also plotlines, to conform to the perceived tastes of the television viewers. However, increasing pressure from parent groups and other organizations in the late 1960's and early 1970's led to sanitization of cartoons on American television, while anime continued to be produced for domestic consumption in Japan. Consequently many anime that contained controversial subject matter permitted in Japan became unsuitable for US television. The result was that in Japan anime continued to develop, while in the US animations were cast as children's shows, alienating adult audiences and keeping away skilled artists and storywrights.

In 1975 the appearance of home videos became an important milestone in the development of the anime market. Although anime had disappeared from mainstream television in the US, it began to be shown with subtitles on Japanese community TV stations. Videos provided the possibility of recording these shows and sharing them, which is exactly what the pioneering fans did. At first videos were shown in small local gatherings and clubs, and with the realization that different shows were being shown in other parts of the country, these groups began to correspond and distribute copied tapes. Contacts were also established to Japan, and the early anime clubs began to trade American television shows for anime tapes. Thus fan distribution was born.

In addition to other fans, the fans also made contact with anime creators in Japan, who encouraged them to promote Japanese animation. Fan organizations were also approached by representatives of anime studios, and their members recruited to help in promoting anime. For a short time, Japanese studios interacted directly with the fan organizations in the US, providing them with promotional material which the fans showed in many events. This was highly unusual, since at the time the studios would not have interacted with their domestic fans so informally. This was also unofficial, since the studios would not license the screenings and distributed tapes, as this might hinder their efforts to sell their shows to American television. The studios could not

formally recognize fan activity, but they knew that the fans were not profiting from their actions, and they provided the studios with free publicity and market research.

This attempt for anime to enter the US market was not successful however. By 1982 the Japanese studios had concluded that although there was a growing and overlooked market, they were not going to succeed there. In the end the studios withdrew and ended their contact with the fan organizations, but did nothing to discourage their continued activity. Thus the way was open for the fans to expand into the markets the Japanese studios had abandoned, and they did so quickly and effectively. At the time it was believed that a centralized organization would be most efficient in distributing material, while having a wide selection available. This led to the establishment of international fan clubs with chapters in many cities and countries.

Perhaps unfortunately, these centralized organizations indeed were efficient and collected vast libraries of anime tapes. The number of fans continued to rise, and to keep up with the demand, multi-generation copies of videos had to be made. This led to a deterioration of video quality, which had originally been quite high, but already in the early 1980's extremely poor tapes of 15th generation or worse started to turn up. It became common practice for fans to compare video quality of tapes. Not surprisingly, with these quality problems conflicts arose within the clubs. Some would have preferred to keep anime as their private hobby, presumably to avoid the problems associated with mass distribution. However, the majority of the fans wanted to promote anime and expand to new audiences. To overcome the language barrier, translation and plot synopsis booklets were created, with the creators taking pride in and seeking credit for their work.

From translation booklets moving to actual subtitles was the next logical step. The first known fansub dates from 1986, but in that time the cost of the subtitling technology was prohibitive, preventing its spread. Nevertheless, fansubs were a revolutionary leap, for the first time enabling fans to fully understand what was going on. As the cost of technology declined making it accessible, fansub groups began to

be formed, and their works appeared in circulation. The first widely distributed fansubs were made by the Ranma Project, starting in 1989. Already this very first group adopted many practices fansubbers have followed ever since, including taking measures against bootleggers selling their works for profit.

During the 1990's the number of fansub groups steadily grew, and they began to communicate with each other to prevent overlap in their work. As they rose in popularity the distribution demand skyrocketed, forcing fansubbers to move to tiered distribution models to keep up. At the same time companies started to appear on the market, licensed to distribute anime titles in the United States, and they enjoyed moderate financial success. This meant that fansubbers had to adopt practices that would serve their ends and protect the interests of the companies. Thereafter all fansubs have contained notices that prohibit the sale or rent of the fansubs, as well as request users to cease distribution when the series became licensed. The companies, some of which had been founded by fans within the community, found this acceptable. The fansub groups would cease distribution upon request, or even without request when the licensing of a series was announced.

The next major change in fansubbing came with the appearance of digital fansubs². Video CDs had already been used as digital source material, but the fansubs had not been distributed in digital form. The problem that had prevented this was the file size. The transfer speeds of the early Internet were not high enough to share large video files, and the heavy cost of CD burning hardware prevented the use of CDs for distribution, even as VHS tapes were used. Both problems were solved by developing technology, and very quickly digital fansubs replaced the analog tapes.

The first known digital fansubs began to appear in 1998³, in various formats. These first encodes had typically very small resolutions, and the subtitles were often too small to read. The quality varied greatly, since many encodes were made from VHS fansubs, and different episodes in the same series could be released by different groups with different standards. The situation improved very quickly though. During

2001 fansubs became mainly digital, with the last VHS fansubbers quitting the next year. The RealMedia and MPG formats were abandoned, the AVI container becoming the new standard. New fansubber groups were formed.

With the change came the need to organize the digisubbers. Originally just about anyone could encode and release digital versions from their VHS tapes, but as new fansub groups began to release new shows in digital format, they began to communicate and cooperate with each other as the VHS fansubbers had done. The change also resulted in the fansubbers gaining better control over distributing their work. Digital fansubs could always be downloaded from various sources, including private FTP sites and services like Usenet, eDonkey2000, Kazaa and Carracho. While they remain in use to this day, they could never compare to the main distribution channel that IRC was.

The digital fansubbers typically added their own credits to their encodes, including the IRC channel and network of their group. The group maintained bots on these channels, from which new releases could be downloaded with high speeds. As before, the groups would cease distribution upon licensing, and since their own bots were the best download sources, removing files from the bots was an effective means to stop distribution. Groups also expected visitors to their channels to remove licensed shows from their private file servers.

As the age of digital fansubs got under way, the relationship between the fansubbers and companies had also changed. Once the fansubbers had been able to justify their actions by the fact that the shows they released were not and would not be available in the English language⁴. However, by 2000 anime was becoming mainstream, and nearly all anime shows were being licensed for commercial release in the United States as soon as they were produced⁵. The VHS fansubs, suffering from generation loss from being copied, had also not been able to compete with official releases with their quality, but digital fansubs were of comparable quality and could be copied without limit. Fansubs became a problem for the companies⁶, which felt they no

longer needed fansubbers to point them to popular titles, or to promote and expand anime. Many fans disagreed. The English dubs often suffered from quality problems, and fans would not give up fansubs for official products they perceived as inferior. Other fans disliked dubs regardless of quality, and did not want to pay extra for the English production costs⁷. Most of the fansub groups maintained good relations with the companies as before, but some fans were more vocal. The old school spirit of promoting anime was spent, and many new fans simply did not want to see anime become mainstream, and they resented the companies for interfering with their hobby⁸. One infamous case was the group AnimeJunkies⁹, which became known for shoddy translations, often deliberately so, and for their hostility toward official companies.

The year 2003 brought the next major change to fansubs, as BitTorrent replaced IRC as the main distribution channel of fansubs. This finally put an end to the secretive, underground nature of fansubbing, and brought them to public view. The number of downloaders grew, as torrent files could be easily found with search engines. This at the latest should have alerted companies to the danger fansubs had become, not only to the distributors in the United States but also the producers in Japan, yet they took no action beyond speaking publicly against fansubs. The fansub groups still clung to their uneasy balance with the companies, due to the fact that they still maintained a measure of control over their distribution. Torrents were typically found on trackers hosted by the groups, making it a simple matter to remove licensed series from their tracker. Without the group tracker serving as a beacon around which the downloaders gathered and the seeders within the group, licensing of a series made downloading it significantly harder, protecting the fansubbers from legal consequences. However, licensed series could still be found on IRC and on illegal torrent sites.

The situation has remained fairly stable ever since. Anime fansubs are out in the open, free for anyone to download, and the companies have taken no serious action against them, except in the case of Odex in 2007. Usually the fansub groups and distributors have complied when asked to stop sharing certain series, but while this

has made downloading of licensed series harder it has not stopped it. There are various trackers sharing clearly illegal material that can be easily found, and while they are slower and less reliable than downloads supported by fansub groups, it has proven practically impossible to completely stop the sharing of fansubs. There have been changes in legislation however, such as in Japan, where downloading shows for personal use became illegal in 2010¹⁰. The anime companies have not yet tried to use their new legal means however, and after the disastrous case of Odex it is questionable whether they will. It seems clear that the situation cannot continue like this though, with the fansubs and piracy choking the anime industry. How it will play out remains to be seen.

¹ Wikipedia - Osamu Tezuka

http://en.wikipedia.org/w/index.php?title=Osamu_Tezuka&oldid=363682203

² Anime News Network - Anime Download Site blocks Asia (visited 28.5.2010)

<http://www.animenewsnetwork.com/news/1998-09-12/anime-download-site-blocks-asia>

³ LOGH RealVideo Subtitling Project (visited 28.5.2010)

<http://www.logh.net/classic/loghlist/9707/0581.html>

⁴ Anime News Network - Fansubs... Our perspective (visited 28.5.2010)

<http://www.animenewsnetwork.com/editorial/1999-06-09>

⁵ Anime News Network - 2001 A Year in Review: Fansubs (visited 28.5.2010)

<http://www.animenewsnetwork.com/feature/2002-01-01/6>

⁶ Anime News Network - 2002 Fansubs in Review (visited 28.5.2010)

<http://www.animenewsnetwork.com/feature/2003-01-27/7>

⁷ Anime News Network - Why dub-haters are killing anime (visited 28.5.2010)

<http://www.animenewsnetwork.com/editorial/1998-11-09>

⁸ Anime News Network - Anime Fandom at Odds with Anime in the Mainstream (visited 28.5.2010)

<http://www.animenewsnetwork.com/editorial/2000-02-15>

⁹ Fansubbing - Everything Shii Knows (visited 28.5.2010)

<http://shii.org/knows/Fansubbing>

¹⁰ Managing Intellectual Property - Copyright Act amended (visited 28.5.2010)

<http://www.managingip.com/Article/2400365/Japan---Copyright-Act-amended.html>

3.2. Cartoon/Fantasy Organization (C/FO) 1977-1989

Anime first appeared in the United States the same year it did in Japan. The first animated series that would define the anime style was *Astro Boy*¹¹, based on a manga comic by Osamu Tezuka. The show premiered in Japan on the first day of 1963, and arrived in the United States in September the same year. The English adaptation was done by Fred Ladd¹², who later worked on bringing *Gigantor* and *Kimba the White Lion* to the United States. They were followed by other series, including *Speed Racer*, which would become the first anime shown in Germany.

These first adaptations were edited and incomplete, consisting of only part of the episodes aired in Japan. The editing changed names and plot points, and removed references considered too mature for the target audience. Despite that anime had thus been sanitized from the start, the demands to reduce the amount of violence in animated series led to anime virtually disappearing from American television. Fred Ladd commented that by the early 1970's you couldn't give away a Japanese-made series¹³.

During the 1970's some anime series were brought to the United States, but being heavily edited they had little success. By far the more significant penetration of anime began within months of the introduction of video recorders in 1975. The history of what would become the first and largest anime club in the United States began from a meeting at the Los Angeles Science Fiction Society (LASFS), where Fred Patten was shown subtitled anime recorded by a fan from Japanese community television channels¹⁴. Soon other fans were recording anime and bringing it to the science

fiction club and other fan events. They were amazed by the richer content in anime compared to contemporary American cartoons.

A group of sixteen fans including Patten decided they needed their own club, where they could indulge in watching anime regularly. In May 1977 they founded the Cartoon/Fantasy Organization (C/FO)¹⁵. Soon they began to correspond with other fans across the country. Discovering that the anime shows differed per region, they began to trade tapes.

Being originally from the science fiction club LASFS, the members of the C/FO were able to use the connections of their parent organization. They began to trade videos with science fiction fans in Japan, who wanted shows like *Star Trek* and *Battlestar Galactica* in exchange for anime tapes.

The C/FO also established contact with anime studios in Japan. Being a bookdealer, Patten had already written to manga publishers in the early 1970's¹⁶, hoping to sell their books. One of those he got in contact with was Osamu Tezuka's Mushi Productions. Tezuka was later invited to C/FO meetings, and encouraged the fans to promote anime. The C/FO got involved with other studios as well and helped them promote their shows in America.

One of these studios was Toei Animation, which discovered and approached the C/FO directly, asking their help in market research. For this purpose they provided the C/FO with promotional materials which they displayed at conventions. Tokyo Movie Shinsha (TMS) provided Patten with a subtitled print of *Lupin III: Castle of Cagliostro* for showing at the 1980 World Science Fiction Convention in Boston, expecting to receive fan feedback. Patten recalled his contact at TMS saying it was highly unusual for company representatives to deal with fans so informally on a business level, and that in Japan they would not associate with fans except in planned publicity events where the fans would be the audience.

One more of these studios to approach the C/FO and Patten was Tatsunoko, which essentially used Patten as its unofficial representative. Patten received video tapes from Tatsunoko which he was to show to any Hollywood executives he might meet. He was specifically told not to represent himself as an official representative of Tatsunoko. In return for this service, Patten was named the American agent of Tatsunoko's fan club, which enabled American fans to buy anime merchandise through the club.

What all these contacts between anime studios and their American fans had in common was that the studios refused to license fan screenings and the video recordings they were trading. Patten recalls being explained this by the representatives he came in contact with. The reason was the protection of copyrights, the impracticality of giving written permission to informal fan groups, and the risk that the existence of bootlegs on the market would deny their efforts to sell their programs to American syndicated television. The studios could not support the fan activities in principle, but they knew they were getting free publicity and that the fans were not making a profit, and so they condoned their practices unofficially.

This time of unofficial but very real practical cooperation did not last very long. The efforts of the C/FO, such as they were, did not bring the studios the kind of publicity they had hoped. The last known commercial attempt was from Toei Animation in 1982, trying to sell its *Galaxy Express 999* feature film to the major American movie studios. C/FO members helped send out invitations to Hollywood studio representatives to a test screening, but none of them attended. The movie was sold to a small studio known for its exploitation films¹⁷. Toei closed its Hollywood offices and ended relations with the C/FO.

After the Japanese studios abandoned the United States market, there were no more moral or legal forces to discourage the fans from distributing recorded anime tapes. This also allowed the fandom to expand and increase its activities. At the time, there were movements to establish international fan clubs with chapters in several cities,

with a central organization that could promote and distribute anime more efficiently. The C/FO was a prime example of this development. Its first separate chapter was founded in New York in 1980, and at its height it had over three dozen chapters in the United States and Canada, including one at an air force base in Japan.

By the late 1980's the C/FO had a massive system for distributing anime to its member chapters, based on the idea that anime should be free but controlled. The distribution network became closed, and access to anime became dependent on having the right connections. Divisions arose within the C/FO between chapters that had better access to anime than others. These divisions deepened into rivalry, and the chapters began to hoard material and withhold it from others, trading it only in return for something they wanted. The C/FO began to unravel. Although it promised unlimited access to anime to its members, it became increasingly incapable of providing that access and living up to its promise.

In 1989 there was a power struggle at the top of the C/FO. Patten felt he should step down, but he did so without leaving a clear line of succession. From the infighting arose a new leadership that wanted to change the C/FO according to their own image. Patten began to write articles for general magazines, reasoning that his purpose of promoting anime would be better served this way than by writing to the C/FO fanzine. Many resented this, accusing Patten of disloyalty, while others were against promoting anime altogether, and would have preferred to keep it to a select group.

In the end the C/FO did not survive its problems. Most of its chapters seceded and became independent anime clubs, leading to the C/FO organization being disbanded in July 1989. The original Los Angeles chapter took its original name and continues as the original C/FO. The closed network C/FO had been ceased to exist, and replaced with an open one. The future would be in fansubs, which had appeared just before the C/FO collapsed.

What is there to be learned from this history? Perhaps the most interesting question is why the Japanese anime studios abandoned the United States market. The foremost reason would be that they could not get the interest of any of the big studios and television syndicates. The fact that they recruited anime fans to aid in their efforts, that they thought they needed their help, is revealing. The barriers to entry into the United States market were too high.

Another reason is that in the few cases where anime series and movies were sold to the United States, the experience was often sour for the creators. Anime series were cut and carved up into movie length with no respect for the original. The credits for the series could be falsified and all mention of the Japanese origins removed¹⁸. Sometimes the edited versions were successful, like in the case of *Robotech*¹⁹, which became a cult series. This adaptation was markedly more faithful to its origins than most others, but it still took extensive liberties in combining three unrelated series into one. Even theatrical movies were not safe from edits. *Nausicaä of the Valley of the Wind* had most of its names changed and half an hour cut from it. Both the director Hayao Miyazaki and the producer Isao Takahata were appalled. Incidents such as these served to discourage anime studios from trying to export their work to the United States.

Did the anime clubs play any role in the decision to withdraw from the American market? They had played an active role in the promotion of anime, in direct cooperation with official studio representatives. It is interesting to note that this happened without official acknowledgement of their activities, especially when the head offices in Japan frowned on direct involvement with fans. The local representatives who interacted with the fans ignored the illegality of their activities for strategic reasons. Meanwhile the head offices were less informed than their local representatives. Most likely the anime studios learned that there was a demand for anime in the United States, evidenced by the existence of anime clubs and fans, but they did not recognize their importance.

What have other academics to say on the matter? Regrettably, there is only one scientific article that covers this subject, written by Sean Leonard²⁰, and while it includes a detailed and comprehensive history of anime fandom, there is no diversity of views and opinions to compare. As things are, Leonard gives three reasons why the Japanese studios gave up on the American market. First, they never expected to make much money there. After the American entertainment companies ignored them and denied them entry, and edited their products in a disrespectful manner in the few cases when anime did make it to the United States, the studios saw further attempts as wasted effort. They ignored the activities of the fans for the same reason, because they did not see them affecting their business interests one way or the other. They could neither imagine fansubbing become a problem twenty years later, or the growing fan movement to become a viable market.

Another reason presented by Leonard is cultural resistance. Avoidance of uncertain ventures is embedded into Japanese business logic, and because of the problems and risks involved in selling anime, Japanese executives were reluctant to enter into such unproven business transactions out of fear of failure and public scorn. In addition, the Japanese could not imagine their domestic products having any value in America, and they lacked the experience to realize the potential of what they had.

The final reason given by Leonard lies in the structure of the anime industry within Japan. The production and distribution of anime was fragmented to several companies, which had no vested interest in understanding or developing external markets. Their assets tied to the domestic market in Japan, the companies lacked the funds and the motivation to support experts in international intellectual property rights. This problem remains even today, keeping Japanese studios from taking a more active role in the distribution of anime in the world, and from reaping the full benefits of the new worldwide popularity of anime. Curiously, Leonard makes no mention of the many anime series produced for initial or simultaneous release in Europe, though many of them were co-productions initiated by the European partners.

Was the decision to leave the United States market misguided? Even the limited presence of anime studios would have enabled them to influence the future of the fan movement. While the closed distribution network of the C/FO existed, the anime studios could have exercised considerable power. But, in 1982 no one could have predicted the rise of fansubs and what they would mean to the anime industry. Before fansubbing, the language barrier was effective in keeping the anime fandom marginal. When the Japanese left the United States market, large scale video fansubbing was still a decade away. Global distribution of digital fansubs was two decades away. The early anime fans were useful in the promotion of anime in the United States, but technological progress eventually turned them into a force that threatens legal distribution of anime. Also, it is unlikely that attempts to control the closed network would have worked, but they would only have necessitated the shift to an open network earlier. The arrival of the Internet and digital fansubs would inevitably have made control increasingly difficult.

As things happened, the animation boom of the late 1980's, evident in high quality animated series and new movie classics of the Disney Renaissance, sparked new interest in animation. This may have contributed to anime gaining a new opportunity to enter the United States market, combined with the efforts of fans who continued to spread their fandom, founded the first anime distributors in the United States, and eventually broke into mainstream. From the ruin of the C/FO arose new fan groups, and the availability of technology to create fansubs significantly lowered the barrier of new fans to enjoy anime. The coming tide of anime could not be stopped.

¹¹ Wikipedia - Astro Boy

http://en.wikipedia.org/w/index.php?title=Astro_Boy&oldid=362011810

¹² Wikipedia - Fred Ladd

http://en.wikipedia.org/w/index.php?title=Fred_Ladd&oldid=300684668

¹³ Fred Ladd: An Interview (visited 28.5.2010)

<http://www.awn.com/mag/issue1.5/articles/deneroffladd1.5.html>

¹⁴ Petteri Uusitalo, Fanikäätäminen. *Anime-lehti* 24-25, 2008.

¹⁵ WikiFur - Cartoon/Fantasy Organization

http://en.wikifur.com/w/index.php?title=Cartoon/Fantasy_Organization&oldid=175549

¹⁶ American Manga - Fred Patten Interview (visited 28.5.2010)

http://web.archive.org/web/20041020025452/www.pulp-mag.com/archives/5.09/interview_patten.shtml

¹⁷ Bright Lights Film Journal - Roger Corman's New World Pictures (visited 28.5.2010)

<http://www.brightlightsfilm.com/27/newworldpictures1.php>

¹⁸ Wikipedia - The Wizard of Oz

[http://en.wikipedia.org/w/index.php?title=The_Wonderful_Wizard_of_Oz_\(1986_TV_series\)&oldid=364188547](http://en.wikipedia.org/w/index.php?title=The_Wonderful_Wizard_of_Oz_(1986_TV_series)&oldid=364188547)

¹⁹ Wikipedia - Robotech

<http://en.wikipedia.org/w/index.php?title=Robotech&oldid=364624893>

²⁰ Sean Leonard, Celebrating Two Decades of Unlawful Progress: Fan Distribution, Proselytization Commons, and the Explosive Growth of Japanese Animation. *UCLA Entertainment Law Review*, Vol. 12, No. 2, p. 189, 2005.

<http://ssrn.com/abstract=696402>

3.3. History of anime in Europe

In reading the history of fansubs, it is noteworthy how that history is focused in the United States. This does not mean the rest of the world would have been idle. Indeed, anime fandom has a long history in Europe and other countries, and the fans in them have also engaged in similar activities, copying and trading video tapes much like in the C/FO. Today, fansubs are downloaded throughout the world, and fansub groups have been established working in various languages. Some fansub groups have gone international, and produce multi-language fansubs with several subtitle tracks.

However, all of these activities were based on models first established in the United States. There is no denying that anime fandom as it is today originated there, and spread to the rest of the world. However, thirty years ago the situation looked a lot different. Anime had arrived to the United States first, but while it disappeared from American television due to sanitization of cartoon violence, in Europe it achieved prominence decades before this happened in the United States.

In the United States, anime disappeared from mainstream television during the early 1970's, and did not make a major comeback until about thirty years later. The reason for this was pressure from various groups to sanitize content, as cartoons were considered to be directed at children. Europe had a different approach. During the 1970's and 1980's many European countries showed anime series that had been co-produced with European studios, and which were often simultaneously aired in Japan and Europe. These co-productions were a guarantee that the finished product would be suitable for European television without extensive editing.

One of the earliest of such co-productions was *Vicky the Viking*, in German *Wickie und die starken Männer*²¹. This was the first international co-production of the German ZDF and Austrian ORF television broadcasters, which charged the Japanese animation studio Zuiyo Enterprises, later Nippon Animation²², with adapting the story to an animated series. The series was aired in Germany in 1974, with Japan following two months behind. This was the second anime ever shown on German television, after *Speed Racer*²³ in 1971.

Vicky the Viking was based on a Swedish book series, and its anime adaptation was followed by more projects, many of which were also based on Western literature. One of them was *Maya the Bee*, in German *Die Biene Maja*²⁴, based on German novels. The series was first shown on German television in 1976-1977, and it achieved lasting popularity, receiving a second season of episodes and appearing in reruns ever since. The series was also dubbed and appeared on television in several European countries²⁵.

Other countries had their own co-productions. In Spain, BRB Internacional worked together with Nippon Animation to create *Dogtanian and the Three Muskethounds*²⁶ and *Around the World with Willy Fog*²⁷, which were aired in 1981 and 1983. The latter has achieved lasting popularity in Spain, similar to *Maya the Bee*, and both also appeared in several other countries.

In addition to co-productions, other series were produced by Japanese studios and dubbed for release in Europe. *Heidi, Girl of the Alps*²⁸ from 1974 was a huge success, both in Japan and the rest of the world. It was also the first in the still-running World Masterpiece Theater series, which features a new anime based on classical literature each year. Nearly all of those series also made their way to Europe. *The Wonderful Wizard of Oz*²⁹ was simultaneously aired in several European countries and Japan in 1986³⁰.

While most of these series were aimed at children, it should come as no surprise that they were followed by other anime series aimed at somewhat more mature audiences. In France and Quebec, *Space Pirate Captain Harlock*³¹ became hugely popular in the early 1980's, under the title *Albator, le corsaire de l'espace*. Its impact was such that the expression Albator generation has made it into the French language. Italy and Spain were forerunners in showing anime on television, followed by other countries. On private and unmoderated television channels in Italy, 83 different anime shows were aired between 1978-1983³².

In Europe these series have been ingrained in the memories of millions who saw them as children, and not only in the larger countries. Most of the aforementioned series were dubbed and aired also in Finland, and shown in reruns over the years. They have also been popular around the world. Many of these series have enjoyed success in Latin America, South Africa, Arabic countries, India and China³³. Considering this, it is most curious to note that they had very little popularity in the United States, sometimes appearing only heavily edited and shortened into feature film length, or not at all. Even *The Wonderful Wizard of Oz*, with the American origins of its story,

was never released there in episodic format. And yet, as has been seen, the current anime movement clearly started from the United States, despite them being underdeveloped when it came to anime availability. Why did this happen? Why did the Europeans not start the fan movement, despite being exposed to anime in large scale decades before the United States?

The most obvious answer would be in the misguided decision of Japanese studios to withdraw from the United States market. They knew there was an unsatisfied demand for anime there, yet they believed they could not succeed and left the demand to be satisfied by fan organizations. While in Europe all you had to do was turn on the television at the right time, the Americans had to invent fan distribution to be able to watch anime.

Another possible reason may be found in demographics. The United States had significant communities of Japanese immigrants or their descendants, with their local television stations showing imported Japanese shows. These stations were an early source for American anime enthusiasts trading video tapes. Europe had no such communities, or Japanese language television channels aimed at them. Also, another source of anime in the early days of fan distribution was from American soldiers serving in military bases in Japan. Again, Europe lacked a similar source.

One more possible explanation is that unlike Europe, the United States had a significant domestic animation industry and tradition, which supplied American television with animations for children. Europe did not, and so animations on European television became predominantly Japanese. In the United States, anime still suffered from the reputation of being too violent or risqué, and of the perceived difficulty in adapting it for the United States market. Anime series were frequently heavily edited for television in the United States, which disgusted the original creators and was rarely successful. This resulted in extra costs for very little gain, and served only to keep anime out of the United States market. Europe had no problem in acquiring series from Japan, even commissioning their creation, and showing them

with minimal editing. This made anime mainstream in Europe, but in the United States it became a cult following.

It is also important to note that although anime series were being watched by millions in Europe and the rest of the world, few of them were aware that the shows were made in Japan. Similarly, Fred Patten was not aware of *Astro Boy* and other early anime series in the United States being Japanese³⁴, and Olivier Vanhee made the same observation in France³⁵. This was partly due to the Japanese postwar policy of obscuring the origin of their exports, as described by Anne Allison³⁶. In the United States, anime awareness spread in the first anime clubs and their networks, but Europe had no such networks or need of them. Thus Europeans remained uninformed of the shows they loved being anime, until the birth of the Internet enabled the formation of fan communities and the spread of information. Even then, anime faced difficulties in becoming mainstream. Vanhee describes how controversy and moral panic surrounding anime and manga led to anime disappearing from French television in 1997, only to reappear a few years later. Finland had its own similar episode as late as 2003, when the *Dragon Ball Z* manga was withdrawn from stores, following accusations both offensive and absurd that the comic contained child pornography³⁷.

It would seem that the reason for the fan movement beginning in the United States is a combination of demand and opportunity. It started from small groups of enthusiasts, who had no options for watching anime other than distributing it illegally. They were even encouraged to do so, though never officially. Many anime creators were fully aware of the fan activities in the United States, and although they could not recognize them as legal, they condoned them. From this became the anime movement of today. Europe had no reason or need for a similar fan distribution network, although anime tapes were traded in Europe already in the 1980's.

Whatever the reason, the anime movement spread from the United States to the rest of the world. There was a boom in American animation in the late 1980's, often

credited to Disney's decision to start producing animated series³⁸. But even that success is hollow in that much of the animation work was done in countries like Japan³⁹ and Taiwan⁴⁰, and the tide of anime was incoming. From the 1990's anime surged in popularity, and today anime influences are evident even in Disney's works. In the wake of anime came other parts of fan subculture, such as anime conventions, which have vastly outgrown the scifi conventions they started as part of.

An interesting question to ask here is how much did the anime movement contribute to the global success of anime? Vanhee describes how anime appeared on French television starting as early as 1988, then identified as a distinctly Japanese cultural product. Manga comics linked to popular anime series appeared some years later. Clearly France had a head start compared to the United States, which followed some years behind, so the early rise in popularity of anime and manga in Europe cannot be explained by the spread of the American anime fandom. The availability of digital fansubs in the 2000's most definitely helped the continuing success of anime, but fansubs had no part in the original impact anime had in Europe. Only the United States market can be credited as having been won through the efforts of the fans.

In some ways Europe has absorbed the tide of anime better than the United States. Europe's own tradition in comics has been strong enough to not be threatened by the arrival of anime and manga, despite the misinformed controversies. Nevertheless, Europe too saw a major growth in the popularity of anime and manga. Manga now dominates half of the German comic market, and anime has a secure position in television programming.

²¹ Wikipedia - Wickie und die starken Männer

http://de.wikipedia.org/w/index.php?title=Wickie_und_die_starken_Männer&oldid=71342903

²² Wikipedia - Nippon Animation

http://en.wikipedia.org/w/index.php?title=Nippon_Animation&oldid=358862991

²³ Wikipedia - Speed Racer

http://de.wikipedia.org/w/index.php?title=Speed_Racer&oldid=73060824

²⁴ Wikipedia - Biene Maja

http://de.wikipedia.org/w/index.php?title=Biene_Maja&oldid=74613779

²⁵ Anime News Network - Maya the Bee (visited 28.5.2010)

<http://www.animenewsnetwork.com/encyclopedia/anime.php?id=1415>

²⁶ Wikipedia - Dogtanian and the Three Muskethounds

<http://en.wikipedia.org/w/index.php?title=Dogtanian&oldid=360361635>

²⁷ Wikipedia - Around the World with Willy Fog

http://en.wikipedia.org/w/index.php?title=Around_the_World_with_Willy_Fog&oldid=364379805

²⁸ Wikipedia - Heidi, Girl of the Alps

http://en.wikipedia.org/w/index.php?title=Heidi,_Girl_of_the_Alps&oldid=359837292

²⁹ Wikipedia - The Wizard of Oz

[http://en.wikipedia.org/w/index.php?title=The_Wonderful_Wizard_of_Oz_\(1986_TV_series\)&oldid=364188547](http://en.wikipedia.org/w/index.php?title=The_Wonderful_Wizard_of_Oz_(1986_TV_series)&oldid=364188547)

³⁰ Anime News Network - The Wizard of Oz (visited 28.5.2010)

<http://www.animenewsnetwork.com/encyclopedia/anime.php?id=1499>

³¹ Wikipedia - Space Pirate Captain Harlock

http://en.wikipedia.org/w/index.php?title=Space_Pirate_Captain_Harlock&oldid=352285377

³² Paul Gravett, Manga: Sixty Years of Japanese Comics. 2004. Finnish translation by Juhani Tolvanen, Manga: 60 vuotta japanilaista sarjakuvaa. 2005.
ISBN 951-1-20524-2

³³ Wikipedia - Fushigi no Kuni no Alice

http://en.wikipedia.org/w/index.php?title=Fushigi_no_Kuni_no_Alice&oldid=352429302

³⁴ American Manga - Fred Patten Interview (visited 28.5.2010)

http://web.archive.org/web/20041020025452/www.pulp-mag.com/archives/5.09/interview_patten.shtml

³⁵ Olivier Vanhee, The production of a "manga culture" in France: a sociological analysis of a successful intercultural reception. Communication à la Conférence Internationale, Asia Culture Forum 2006, Mobile and Pop Culture in Asia, Gwangju, Korea, October 2006.

http://www.ceri-sciencespo.com/themes/manga/documents/texte_production_vanhee.pdf

³⁶ Anne Allison, The Cultural Politics of Pokemon Capitalism. Media in Transition 2: Globalization and Convergence, May 10-12, 2002.

<http://web.mit.edu/cms/Events/mit2/Abstracts/AnneAllison.pdf>

³⁷ Kvaak.fi - Dragonballin nousu ja tuho (visited 28.5.2010)

<http://www.kvaak.fi/naytajuttu.php?articleID=53>

³⁸ Wikipedia - Disney's Adventures of the Gummi Bears

http://en.wikipedia.org/w/index.php?title=Gummi_Bears&oldid=364732879

³⁹ Internet Movie Database - TMS Entertainment (visited 28.5.2010)

<http://www.imdb.com/company/co0133168/>

⁴⁰ Wikipedia - DuckTales

<http://en.wikipedia.org/w/index.php?title=DuckTales&oldid=364540627>

3.4. Technology and production of fansubs

The earliest precursors of fansubs were translation booklets, which accompanied showings of unsubtitled anime at clubs and conventions, and which were also distributed along with the tapes. These booklets were typically 25-30 pages in length, and contained the full dialogue of an anime movie or a selection of episodes. There were also plot synopsis booklets, which were less detailed but enabled viewers to keep up with events on screen. Like actual fansubbers later the creators of these booklets were fans themselves, but the prestige they earned in the fan community for their efforts was without doubt an important motivation. These booklets were inconvenient, but they were still a move up from guessing what was going on, or having to rely on someone present to be able to translate on the fly. The technology to

add subtitles to the video existed, but was beyond the reach of the fans due to its prohibitive price.

This would soon change however, and it did not stop everyone. The first known fansub surfaced in 1986. It was an episode from the series *Lupin III*, a third generation copy of a fourth or fifth generation original someone had subtitled using a Commodore Amiga and a genlock. Though the video quality was poor, the fans were astonished. The price of the technology was around \$4000 at the time, but even more amazing was the patience required, since the work required to subtitle a single episode less than half an hour long was estimated at a hundred hours. But the first step had been taken, and the fans now knew it could be done.

Though new and better computer models came and went, the genlock remained the essential piece of fansubbing hardware until the end of the VHS era. The genlock, short for generator locking device, synchronizes an incoming video signal with other video signals, in the case of fansubbing with the subtitles generated by the computer. This enabled realtime overlay of subtitles, and the result could be recorded to a video tape. This fansubbing process was essentially analog, even though the subtitles were made with a computer, since the video signal was never converted or stored in digital form. This also meant that the process also degraded video quality, if VHS originals were used. Later the availability of video CDs made the creation of pristine first generation fansubs possible, but they were still susceptible to degradation during distribution. The first widely distributed fansubs of the Ranma Project in 1989 used laserdisc originals.

The most common method of distributing VHS fansubs is known by the acronym SASE, which stands for self-addressed stamped envelope. The person requesting the fansub would send an empty video cassette to the distributor, with an envelope to return the cassette in with the requested episodes recorded on it. This system worked remarkably well, and clearly indicates the fansubber philosophy that their services should be free, and their determination to avoid accusations of bootlegging. There

were exceptions who did not follow this rule, but they were often and heavily criticized⁴¹. More problematic was satisfying the growing demand. At first the fansubbers copied tapes for whoever wanted them, but later they had to move to tiered distribution models and ally with local anime clubs to handle the increasing load of distribution. Still, copying of VHS fansubs remained slow and work intensive, and the numbers of distributed copies of individual tapes probably rose no higher than hundreds. Together with the generation loss decreasing the quality of the copies, this meant that VHS fansubs were not a replacement or threat to official products.

The next major step in the development of fansubs was digisubs. These were made possible by the availability of a suitable format, RealVideo⁴², released in 1997. What made them appealing were the improving connection speeds of the Internet and growing hard disk capacity, which enabled the transfer and storage of large video files. However, the first digisubs were far from being large by modern standards, with file sizes around 30MB and resolutions of 320x240 pixels, and in some cases even smaller. For better quality, episodes could be divided into two parts of 30MB each. Many RealVideo encodes of different series are known and probably date to the late 1990's, but the earliest digisubs that can be dated accurately are from the series *Legend of Galactic Heroes*, which were released in 1999, though the project had already begun the previous year. The series itself is much older, as were many other series that appeared in early digisubs. In many cases, the files may have been reencoded from original VHS fansubs.

The development of digisubs was rapid. The RealVideo format was soon abandoned, replaced by the AVI container coupled with different video codecs. DivX was at first popular, but it was later superseded by the free Xvid codec. The file sizes grew as the quality increased. Some of the early digisubs, even those released by the same fansub group, could have file sizes varying between episodes, but very soon standards emerged. Anime collectors burned digisubs on CDs, so the file sizes were selected to make full use of the CD capacity. 175MB became the most common file size among fansubs, with 233MB used more rarely, or if the fansub group used DVD originals.

350MB was very rarely used for ordinary anime episodes. Anime movies could consist of one or two files of 700MB each. These standards remained in use long after burning anime on CDs had become marginal. With the availability of HDTV the file sizes and resolution of fansubs have increased, and the old standard sizes have ceased to be important.

At first digisubs could be obtained through various channels. These included receiving anime episodes burned on CD through the mail, but this never gained such popularity as the SASE method had had for VHS fansubs, and the people who offered to send anime in this manner in exchange for money were suspected of making a profit, and thus being bootleggers. There were various services from which anime could be downloaded, such as Usenet, eDonkey2000 (ed2k), Kazaa and Carracho. These were not available on all systems, they could involve long waiting times in download queues, and they were generally unsatisfactory. The most significant channel for anime downloads became IRC, Internet Relay Chat. Fansub groups would maintain an IRC channel where they hosted XDCC⁴³ bots offering fansubs for download. These bots were remarkably fast, reaching download speeds of over 100 KB/s, comparable to the early BitTorrent. Individual users could have their own bots, which more commonly offered DCC⁴⁴ sends from their private collections, and which rarely exceeded speeds of 20 KB/s. XDCC bots could be offered for the fansub groups by individual people too⁴⁵, but bots hosted by educational facilities were most desired. It is no longer possible to verify how many of the bots were hosted at colleges and universities, but at least one, based on its hostname, was found at the Student Union of Helsinki University of Technology.

The problem with using IRC to share anime was that the file transfers were prone to errors and often unreliable. Private file servers, commonly called fservs, could require users to wait in queue up to several days, and if the transfer was interrupted when it finally started, the waiting would continue. Incomplete files could not always be resumed. Data could become corrupted or go missing. Things were usually better with the XDCC bots run by fansub groups, but it was still necessary to do something

about the errors. Fansub groups began to use Cyclic Redundancy Check, and to include CRC codes with their releases, to enable downloaders to check whether their files were intact. Files typically had names such as this:

```
Mahoromatic_Season_2_-_07_(Triad_-_C08C9A2C).avi
```

The file names would include the name of the series, season and episode number, name or abbreviation of the fansub group and the CRC code. With BitTorrent the CRC codes were no longer needed since file integrity was ensured by the client software, but they can still be included for historical reasons. Sometimes the file version was mentioned if the group released fixed versions, and in rare cases the title of the episode could be included.

The first IRC channels offering anime for download were founded on different networks such as Aniverse and DALnet, but eventually most of them gathered on a single network, mIRC-X. This had the advantage that the same bots could simultaneously serve several channels. This time ended as the mIRC-X network was taken down due to DDoS attacks in February 2004⁴⁶. Since then the IRC networks used by fansub groups have become more varied, and the number of users has steadily decreased, but many groups still maintain XDCC bots. The main reason for the reduction of IRC users has been the advent of BitTorrent. First introduced in 2001⁴⁷, BitTorrent gained popularity within the anime community slowly, until two years later it surpassed IRC as the main channel of fansub distribution⁴⁸.

Typical fansubs had their subtitles burned into the video signal. This enabled fansub groups to add goodies such as karaoke lyrics for the theme songs, translations of signs, and their own credits, but it also meant that fansubs were only available in one language, English. There were naturally exceptions. Already the first dated digital fansub project, *Legend of Galactic Heroes*, attempted to find translators for different languages so they could be included. Some fansub groups were formed in Europe, and worked in their local languages. Other fansubs were released with soft subs in

separate files, or used different containers that allowed multiple subtitle tracks. One group named Honobono⁴⁹ had exceptional numbers of subtitle languages. The container they used was OGM, which has also been used in DVD rips containing different audio tracks. The latest container used by fansubbers is MKV or Matroska, which can also contain multiple audio and subtitle tracks, and the H.264 video codec has also become common recently. Many groups continue to produce AVI encodes with hard subs though, and other groups offer two versions, one modern using MKV and H.264 with soft subs, and another legacy version using AVI and Xvid with hard subs.

Why is this technological history of fansubs significant? Apart from simply documenting the phenomenon, it is important to notice that the change of fansubs from promoting anime to threatening the industry was caused by technological development as much as development of the fandom. In the VHS era, fansubs could not compete with official products with their quality. The fansub groups had no control over the necessarily tiered distribution, but their requests to stop distribution were honored, since many of the anime fans were still veterans who were committed to promoting anime and following the rules. This made fansubs acceptable to the companies. Digital fansubs however can compete with official products, and they can be copied without limit. Downloading digisubs on IRC required some technical experience as well as effort, and since the fansubbers had full control over the most powerful bots offering downloads, their control in fact worked best during this time. With the appearance of BitTorrent, the spread of fansubs became uncontrollable, since anyone could upload the torrents on another tracker even if the fansub group stopped. The increased popularity of anime brought new fans, who had no ties to the old anime fandom or its rules, and only cared about watching free anime. This meant the downloading of fansubs became rampant, and began to threaten the industry.

Though the tools and programs used in the making of fansubs have developed over the years, the process has stayed much the same. The anime episodes are recorded from television on computer in Japan, then shared. Fansub groups download these

untranslated originals, called raws, and then subtitle them through teamwork. Fansub teams typically consist of several roles, including translators, timers, encoders, quality checkers and distributors. The finished fansub can be released within a few days, even within 12 hours of the original broadcast in Japan. Other groups use Japanese DVDs as originals and work at a more leisurely pace.

⁴¹ The True Cost of Fansubs (visited 28.5.2010)

<http://www.dan42.com/cost-of-fansubs.html>

⁴² Wikipedia - RealVideo

<http://en.wikipedia.org/w/index.php?title=RealVideo&oldid=364397677>

⁴³ Wikipedia - XDCC

<http://en.wikipedia.org/w/index.php?title=XDCC&oldid=363757675>

⁴⁴ Wikipedia - DCC

http://en.wikipedia.org/w/index.php?title=Direct_Client-to-Client&oldid=344943093

⁴⁵ About james1179 (visited 28.5.2010)

<http://james.seedhost.com/aboutme.htm>

⁴⁶ Anime-Planet forum - Why irc.mircx was shut down (visited 28.5.2010)

<http://www.anime-planet.com/forum/faq-tutorials/2742-why-irc-mircx-shut-down.html>

⁴⁷ Wikipedia - BitTorrent

[http://en.wikipedia.org/w/index.php?title=BitTorrent_\(software\)&oldid=363705088](http://en.wikipedia.org/w/index.php?title=BitTorrent_(software)&oldid=363705088)

⁴⁸ Anime News Network - BitTorrent - The future of fansubs? (visited 28.5.2010)

<http://www.animenewsnetwork.com/editorial/2003-06-08>

⁴⁹ AniDB - Honobono (visited 28.5.2010)

<http://anidb.net/perl-bin/animedb.pl?show=group&gid=99>

3.5. Fansubs and licensing

The first widely distributed fansubs were the first two episodes of *Ranma 1/2*, released by the Ranma Project in 1989, as documented by Leonard⁵⁰. This happened at a time when there were no companies in the United States involved in the distribution of anime. This gave moral justification for the fansubbers, since it seemed likely the series would never be shown in the United States. It also meant there was little risk of any legal consequences, as the Japanese studios had ignored the activities of anime fans in the United States for several years. The first fansubbers were thus in a position where they could choose the philosophy that would define fansubbing for years to come.

Before fansubs, the closed network of the C/FO had been the central for trading and obtaining anime. The philosophy of the C/FO had been to keep anime free but controlled. That control was permanently lost with the collapse of the C/FO, but that still left the fans who believed anime should be free, who wanted to promote anime, and who were against bootlegging. Against this background it is not surprising what the Ranma Project did. They would copy tapes for everyone who asked, and did not take money for their services. As with the creators of translation booklets earlier, the prestige they gained in the anime community was enough for them, combined with the knowledge that their efforts were making anime accessible to new fans.

Much of this is evident in the charter post of the Ranma Project. The group was apparently concerned that their activities would be noticed by Kitty Films, the studio that produced *Ranma 1/2*, and that they would either be told to stop or be sued. Neither ever happened, even though the studio apparently became aware of fansubs. Still, it is clear that the Ranma Project did not accept payment to avoid being branded as bootleggers, both because bootlegging was against their beliefs as fans, and because it could have resulted in legal consequences. They said they would stop if the studio asked them to, and this spirit has kept fansubbing a step above piracy ever since.

An interesting case in the relations of anime studios and fansubbers can be found from anime conventions organized in the early 1990's. In those times the studios were still reluctant to support anime fandom and industry in the United States, with some exceptions. The anime fans however wanted their support, and obtained licenses for anime screenings at conventions. Most of the anime shown at AnimeCon '91 in San Jose was unsubtitled, although the Ranma Project showed some of their work there. This left many attendees confused, and in the following years the staff at conventions spent significant effort to gain permission to show fansubbed anime. One organizer, who ran the programming for Anime Expo '92, Anime America '93 in San Francisco and Anime Expo '93 in Los Angeles, contacted each of the companies and explicitly asked for their permission.

The Japanese studios gave their permission, but required that the scripts would be approved by American companies they had licensed their shows to. Consequently nearly all of the anime shown at Anime Expo '92 was subtitled by fans. The convention attendees naturally wanted copies, which Anime Expo could not offer, but the fansub groups made it known they would provide copies to anime club members. Many clubs were formed for this reason only.

An important question concerning fansubs is whether their popularity would prompt licensing. Many defenders of fansubs cite different shows as examples of series that likely never would have been licensed for distribution in the United States were it not for fansubs. This remains a matter of hot debate today, but in the early years of fansubs the causal link seems very clear. Of the anime titles shown at Anime Expo '93, many were licensed by American companies soon after the convention, where their showings had been well attended. Some of them had already been considered for licensing, but there were others no one in the industry had any interest in, until the convention displayed their popularity as fansubs.

This was not an isolated incident, but part of a trend. In the early 1990's fansubbed anime shows were far more likely to become licensed than others. This can not be explained with coincidence. Without fansub popularity to use as an indicator, American anime importers would have relied on the popularity in Japan, which would have given different results. It seems apparent that American companies did use indicators such as convention attendance and fansub consumption to choose which anime series to license. This makes sense, considering that anime fandom was still small then. The companies had to rely on and listen to the fans to turn a profit. Choosing blindly among the large number of anime shows released each year could have resulted in costly failures.

The fansubber groups were undoubtedly aware of the effects of their actions. Their stated intent was to promote anime and spread it to new fans, and they were making a difference. They could choose whatever series they as fans wanted to see, their fansubs would make the series popular enough to license, at which point they would cease to distribute it. All fansubbers adhered to this rule from the start, once the anime was licensed for release in the United States, it would be removed from circulation. This is apparent in notices added by fansubbers into their releases, stating the fansub is not for sale or rent and that it should no longer be distributed once licensed. Fansubbers also encouraged fans to support official releases by buying them when they became available.

Of course, during the era of VHS fansubbing, the fansub groups had little control over distribution of their work. Copying video tapes was time-consuming, which meant the distribution of video fansubs was necessarily tiered. Fansub groups could only stop distribution at the origin, beyond that they had to appeal to like-minded people to respect their wishes and support the fledgling anime industry in the United States. This was mostly successful, since enough people did stop distribution, making licensed series significantly harder to obtain as fansubs. This however also resulted in bootleggers selling fansubs. Anime bootlegs had been practically nonexistent while the C/FO lasted, since any anime title bootleggers could offer for a price could be

obtained from the C/FO for free. When fansubs became available bootleggers began to sell them. The Ranma Project became more restrictive in its distribution in 1990, after they found out their tapes were being bootlegged in Philadelphia. Another fansub group developed different techniques to make their work identifiable, since bootleggers were removing the notices added by fansubbers.

When fansubs became digital fansubbers gained better control over their distribution, but still not perfect. The XDCC bots maintained by fansub groups were the most efficient source of anime downloads, and removing licensed shows from them made downloading them significantly harder, though not always impossible. Ordinary users also had file servers on IRC channels, and though channel rules often forbade sharing licensed shows, this rule was not enforced effectively. First, no one checked the file servers for licensed shows with any regularity, and second, the rules only forbade the sharing of licensed fansubs created by the group, so they could still be shared on the channels of other groups. Even these imperfect rules proved effective though. To download licensed anime, one had to search through possibly hundreds of file servers to find them, and then spend several days in queue and downloading, if the file server in question stayed up that long. After some time, finding a particular licensed fansub became practically impossible. Other sources of anime downloads did not matter in this, since they were so little used that finding anything that way was always a matter of luck.

During the first years of digisubs there was still some manner of bootlegging. Some people offered CDs for sale on which they had burned anime fansubs. Although they claimed to charge only enough to cover their own expenses, many suspected them and frowned upon their activities. Bootlegging was finally put to an end with the easy availability of anime downloads through BitTorrent. It was originally thought that BitTorrent would give fansubbers even better control over distribution⁵¹, since the group controlled the tracker the torrents were available from, and it was believed that without the support of the fansub group the downloads would soon die out. This was proven false, as it was shown that other groups besides fansubbers could maintain

anime torrents after the series had been licensed. BitTorrent has effectively made controlling of fansub distribution impossible. Most fansubs are now downloaded through BitTorrent, though XDCC bots are still maintained by some groups on IRC.

As shown so far, in the early years of VHS fansubbing the companies needed the popularity generated by fansubs to sell their products, and they also used their popularity in choosing what to license. *Fushigi Yuugi* and *Azumanga Daioh* are examples of series that might never have been released if fansubs had not alerted the companies to their potential, but both are already old. The question of whether the anime industry still uses fansubs today to tell them what to license remains open, though some fans defending fansubs will claim that they do. Do they really?

In an attempt to answer this question, we'll have a look at some more recent series which started airing during the spring season in 2008⁵², and whether there is any correlation between fansubs made of them and their licensing status. The following table contains statistics of these 39 series, taken from anidb.net. This site is used by anime collectors to keep track of what they have, and it has grown into the best database of fansubs in existence. In interpreting the data it must be taken into account that the user base is mature, meaning series aimed at children have little popularity, but the data would be perfect for deciding which series to market for DVD sales. Since most anime series licensed to the United States market are only sold on DVD and not shown on television, one would assume that the correlation between popularity and license would be strong.

Series title				License		
	Episodes	First episode	Users	Last episode	Users	% finished
Code Geass Hangyaku no Lelouch R2 ⁵³				Bandai, 22.3.2008 ⁵⁴		
	25	6.4.2008	9889	28.9.2008	8163	82,5%
Kanokon ⁵⁵				Media Blasters, 15.1.2010 ⁵⁶		
	12	5.4.2008	4861	21.6.2008	3963	81,5%

Vampire Knight ⁵⁷				Viz Media, 24.7.2009 ⁵⁸		
	13	8.4.2008	4707	1.7.2008	3679	78,2%
Soul Eater ⁵⁹				Funimation, 31.12.2008 ⁶⁰		
	51	7.4.2008	6679	30.3.2009	3394	50,8%
Druaga no Tou: The Aegis of Uruk ⁶¹				Funimation, 14.2.2009 ⁶²		
	12	5.4.2008	3685	21.6.2008	3068	83,3%
To Love-Ru ⁶³				Sentai Filmworks, 6.10.2009 ⁶⁴		
	26	4.4.2008	4166	26.9.2008	2731	65,6%
Special A ⁶⁵				Sentai Filmworks, 2.9.2009 ⁶⁶		
	24	7.4.2008	3044	15.9.2008	2340	76,9%
Wagaya no Oinari-sama ⁶⁷				Kadokawa Pictures, 5.7.2008 ⁶⁸		
	24	7.4.2008	2770	15.9.2008	1920	69,3%
Blassreiter ⁶⁹				Funimation, 14.2.2009 ⁷⁰		
	24	6.4.2008	2554	28.9.2008	1636	64,1%
Nabari no Ou ⁷¹				Funimation, 25.12.2008 ⁷²		
	26	7.4.2008	3497	29.9.2008	1609	46,0%
Crystal Blaze ⁷³				Crunchyroll, 18.3.2009 ⁷⁴		
	12	9.4.2008	1589	25.6.2008	1009	63,5%
Junjou Romantica ⁷⁵				Right Stuf, 2.7.2009 ⁷⁶		
	12	11.4.2008	1095	27.6.2008	894	81,6%
Neo Angelique Abyss ⁷⁷				Sentai Filmworks, 29.10.2009 ⁷⁸		
	13	7.4.2008	960	30.6.2008	692	72,1%
Net Ghost Pipopa ⁷⁹				Crunchyroll, 23.12.2008 ⁸⁰		
	51	6.4.2008	148	29.3.2009	46	31,1%
Golgo 13 ⁸¹				Sentai Filmworks, 23.4.2010 ⁸²		
	50	12.4.2008	1057	28.3.2009	41	3,9%
Yu-Gi-Oh! 5D's ⁸³				4Kids, 19.3.2008 ⁸⁴		
	111+	2.4.2008	294	ongoing	-	-
Kurenai ⁸⁵				unlicensed		
	12	4.4.2008	4816	20.6.2008	4143	86,0%

xxxHolic: Kei ⁸⁶				unlicensed ⁸⁷		
	13	4.4.2008	3668	27.6.2008	3013	82,1%
Amatsuki ⁸⁸				unlicensed		
	13	5.4.2008	3040	28.6.2008	2397	78,8%
Toshokan Sensou ⁸⁹				unlicensed		
	12	11.4.2008	2953	27.6.2008	2380	80,6%
Itazura na Kiss ⁹⁰				unlicensed		
	25	5.4.2008	3020	27.9.2008	2341	77,5%
Kaiba ⁹¹				unlicensed		
	12	11.4.2008	2726	25.7.2008	2274	83,4%
Kamen no Maid Guy ⁹²				unlicensed		
	12	6.4.2008	2851	22.6.2008	2088	73,2%
Allison to Lillia ⁹³				unlicensed		
	26	3.4.2008	2901	2.10.2008	1970	67,9%
RD Sennou Chousashitsu ⁹⁴				unlicensed		
	26	9.4.2008	3074	1.10.2008	1933	62,9%
Bus Gamer ⁹⁵				unlicensed		
	3	15.3.2008	1655	29.3.2008	1517	91,7%
Kyouran Kazoku Nikki ⁹⁶				unlicensed		
	26	13.4.2008	2146	5.10.2008	1471	68,5%
Nijuu-Mensou no Musume ⁹⁷				unlicensed		
	22	13.4.2008	2366	28.9.2008	1442	60,9%
Da Capo II Second Season ⁹⁸				unlicensed		
	13	6.4.2008	1432	29.6.2008	1253	87,5%
Penguin Musume Heart ⁹⁹				unlicensed		
	22	19.4.2008	1499	15.11.2008	978	65,2%
Zettai Karen Children ¹⁰⁰				unlicensed		
	51	6.4.2008	1407	29.3.2009	741	52,7%
Monochrome Factor ¹⁰¹				unlicensed ¹⁰²		
	24	8.4.2008	1302	30.9.2008	645	49,5%

Kyou Kara Maou! - 3rd Series ¹⁰³				unlicensed ¹⁰⁴		
	39	3.4.2008	916	19.2.2009	562	61,4%
Himitsu: The Revelation ¹⁰⁵				unlicensed		
	26	9.4.2008	737	1.10.2008	362	49,1%
Blue Dragon: Tenkai no Shichi Ryuu ¹⁰⁶				unlicensed ¹⁰⁷		
	51	5.4.2008	85	28.3.2009	27	31,8%
Onegai My Melody Kirara ¹⁰⁸				unlicensed		
	52	6.4.2008	12	29.3.2009	4	33,3%
Sugar Bunnies Chocolate! ¹⁰⁹				unlicensed		
	26	1.4.2008	3	30.9.2008	3	100,0%
Penguin no Mondai ¹¹⁰				unlicensed		
	110+	5.4.2008	102	ongoing	-	-
Uchi no 3 Shimai ¹¹¹				unlicensed		
	102+	8.4.2008	22	ongoing	-	-

For each series the table includes its name, licensing status, number of episodes, date of broadcast and number of people who have the first episode, date of broadcast and number of people who have the last episode, and the percentage of people who stayed with the series until the end. Note that the licensing status of some series is uncertain. Anime News Network, AnimeSuki¹¹² and EnviroSphere¹¹³ seem to agree on them being unlicensed, but companies do not always announce their new licenses, and absence of proof is never proof of absence. In any case, if the anime companies used the popularity of fansubs to decide what to license, there should be a strong correlation between license and a high number of users. Presumably the number of people who keep watching the series should also be important, indicating the series can get its viewers hooked.

How should this data be interpreted? The first thing to do is to identify the anomalies. Two of the series were licensed before they even began airing in Japan. Both of these are explained by them being additions to existing series with an established fanbase. The first *Code Geass* was a huge hit in 2006-2007¹¹⁴, got licensed immediately after

it finished¹¹⁵, and the licensing of the sequel was a done deal. *Yu-Gi-Oh!* in turn is a popular franchise dating back to a manga from 1996 and a first anime version from 1998¹¹⁶. It is often seen as an anime for children, which explains its low user counts on AniDB. *Yu-Gi-Oh!* is also shown on television unlike most licensed anime.

Another strange case is *Golgo 13*, which starts with over a thousand users having the first episode and dwindles to almost nothing. This is partly explained by the fact that the fansubbers working on it canceled the project halfway, but already then the fan following had collapsed, and it is telling that the fansubbers themselves apparently lost interest. In light of these numbers, this series should not have been licensed.

One more interesting case is *Soul Eater*, which starts out as the second most popular anime of the season, but drops to half by the time the series ends. It is noteworthy that the series was licensed while it was running, but this appears not to have had much effect on its downloads. Although some groups did drop the series, following traditional fansubber ethics, others took over¹¹⁷. The decrease in users on AniDB toward the end of the series is steady, and there is no drop near the time the licensing was announced. The series has a substantial number of users even at the end, but the number of people who lost interest should be alarming to potential licensors.

What is left to say? The choice of which anime to license seems hopelessly random. The numbers tell of many series having more fans, and who were more loyal, than most of the licensed series. *Kurenai* stands out in particular, with its large number of fans, 86% of whom followed the series to the end, more than any of the series that got licensed. Naturally every anime has its fans who wonder why the object of their fandom is not licensed, but in this case, in light of the numbers, it cannot be explained why this series has not been picked for distribution in the United States¹¹⁸.

What conclusions can be drawn from this? First, the claim that anime companies would need fans to tell them what to license is no longer valid. Out of these series, the obvious choices were licensed without any input in the form of fansubs. Beyond

those, the choice of what to license becomes random. If the companies can turn a profit like this, without paying attention to what is already popular, good for them. They have been opposing fansubs for years. However, even if the companies can survive without listening to the fans, that is no reason why they should not listen. Clearly fansubs can still indicate popular titles the industry has missed.

Another thing is the observation that the traditional fansubber ethics are all but dead. The licensing of *Code Geass* prior to airing did not stop several fansub groups from working on it. When *Soul Eater* was licensed in the middle, there was only token acceptance from fansubbers, who continued their work away from the public eye. Claims that the companies would have broken the rules by sending cease and desist letters have a hollow ring to them, since the majority of fans obviously no longer care whether a series is licensed or not.

One final observation is that the majority of these series remain unlicensed, two years after their first broadcast. Clearly times have changed from the start of the millennium, when nearly all series were reportedly licensed immediately after airing. This means that despite the obvious copyright infringement, anime fansubbing continues to serve its original purpose of translating anime that would otherwise be inaccessible to American audiences, which fansubbers have traditionally considered ethical.

⁵⁰ Sean Leonard, Celebrating Two Decades of Unlawful Progress: Fan Distribution, Proselytization Commons, and the Explosive Growth of Japanese Animation. *UCLA Entertainment Law Review*, Vol. 12, No. 2, p. 189, 2005.

<http://ssrn.com/abstract=696402>

⁵¹ Anime News Network - BitTorrent - The future of fansubs? (visited 28.5.2010)

<http://www.animenewsnetwork.com/editorial/2003-06-08>

⁵² Animeph - Spring 2008 season new anime list/preview (visited 22.5.2010)

<http://www.animeph.com/anime-season-list-spring-2008.html>

⁵³ AniDB - Code Geass Hangyaku no Lelouch R2 (visited 22.5.2010)

<http://anidb.net/perl-bin/animedb.pl?show=anime&aid=5373>

⁵⁴ Anime News Network - Anime Boston 2008 Bandai Entertainment (visited 22.5.2010)

<http://www.animenewsnetwork.com/convention/2008/bandai-entertainment>

⁵⁵ AniDB - Kanokon (visited 22.5.2010)

<http://anidb.net/perl-bin/animedb.pl?show=anime&aid=5575>

⁵⁶ Anime News Network - Kanokon TV Anime Listed by Media Blasters (visited 22.5.2010)

<http://www.animenewsnetwork.com/news/2010-01-15/kanokon-anime-listed-by-media-blasters>

⁵⁷ AniDB - Vampire Knight (visited 22.5.2010)

<http://anidb.net/perl-bin/animedb.pl?show=anime&aid=5586>

⁵⁸ Anime News Network - Viz Adds Vampire Knight Anime (visited 22.5.2010)

<http://www.animenewsnetwork.com/news/2009-07-24/viz-adds-vampire-knight-anime-updated>

⁵⁹ AniDB - Soul Eater (visited 22.5.2010)

<http://anidb.net/perl-bin/animedb.pl?show=anime&aid=5610>

⁶⁰ Anime News Network - FUNimation Adds Soul Eater Anime from Media Factory (visited 22.5.2010)

<http://www.animenewsnetwork.com/news/2008-12-31/funimation-adds-soul-eater-anime-from-media-factory>

⁶¹ AniDB - Druaga no Tou: The Aegis of Uruk (visited 22.5.2010)

<http://anidb.net/perl-bin/animedb.pl?show=anime&aid=5503>

⁶² Anime News Network - Funimation Acquires Bamboo Blade, Druaga, Dragonaut (visited 22.5.2010)

<http://www.animenewsnetwork.com/news/2009-02-14/funimation-acquires-bamboo-blade-druaga-dragonaut>

⁶³ AniDB - To Love-Ru (visited 22.5.2010)

<http://anidb.net/perl-bin/animedb.pl?show=anime&aid=5625>

⁶⁴ Anime News Network - Sentai Filmworks, Section23 Add To Love-Ru Anime (visited 22.5.2010)
<http://www.animenewsnetwork.com/news/2009-10-06/sentai-filmworks-section23-add-to-love-ru-anime>

⁶⁵ AniDB - Special A (visited 22.5.2010)
<http://anidb.net/perl-bin/animedb.pl?show=anime&aid=5584>

⁶⁶ Anime News Network - Sentai Filmworks Adds Blue Drop, Polyphonica, Special A (visited 22.5.2010)
<http://www.animenewsnetwork.com/news/2009-09-02/sentai-filmworks-adds-blue-drop-polyphonica-special-a>

⁶⁷ AniDB - Wagaya no Oinari-sama (visited 22.5.2010)
<http://anidb.net/perl-bin/animedb.pl?show=anime&aid=5557>

⁶⁸ Anime News Network - Kadokawa USA Announces Six New Licenses (visited 22.5.2010)
<http://www.animenewsnetwork.com/news/2008-07-05/kadokawa-usa-announces-six-new-anime>

⁶⁹ AniDB - Blassreiter (visited 22.5.2010)
<http://anidb.net/perl-bin/animedb.pl?show=anime&aid=5531>

⁷⁰ Anime News Network - Funimation Acquires Bamboo Blade, Druaga, Dragonaut (visited 22.5.2010)
<http://www.animenewsnetwork.com/news/2009-02-14/funimation-acquires-bamboo-blade-druaga-dragonaut>

⁷¹ AniDB - Nabari no Ou (visited 22.5.2010)
<http://anidb.net/perl-bin/animedb.pl?show=anime&aid=5630>

⁷² Anime News Network - FUNimation Licenses Nabari no Ou Ninja Anime (visited 22.5.2010)
<http://www.animenewsnetwork.com/news/2008-12-25/funimation-licenses-nabari-no-ou-ninja-anime>

⁷³ AniDB - Crystal Blaze (visited 22.5.2010)
<http://anidb.net/perl-bin/animedb.pl?show=anime&aid=5723>

⁷⁴ Anime News Network - Crunchyroll to Add Chi's, Mainichi Kasan, Saki Anime (visited 22.5.2010)
<http://www.animenewsnetwork.com/news/2009-03-18/crunchyroll-to-add-chi-mainichi-kasan-saki-anime>

⁷⁵ AniDB - Junjou Romantica (visited 22.5.2010)
<http://anidb.net/perl-bin/animedb.pl?show=anime&aid=5532>

⁷⁶ Anime News Network - Right Stuf Adds Aria the Origination & Arietta, Antique Bakery, Junjou Romantica (visited 22.5.2010)
<http://www.animenewsnetwork.com/news/2009-07-02/right-stuf-adds-aria-the-origination-and-arietta-antique-bakery>

⁷⁷ AniDB - Neo Angelique Abyss (visited 22.5.2010)
<http://anidb.net/perl-bin/animedb.pl?show=anime&aid=5623>

⁷⁸ Anime News Network - Sentai Adds Hidamari Sketch, Glass Mask, Neo Angelique Abyss (visited 22.5.2010)
<http://www.animenewsnetwork.com/news/2009-10-29/sentai-adds-hidamari-sketch-glass-mask-neo-angelique-abyss>

⁷⁹ AniDB - Net Ghost Pipopa (visited 22.5.2010)
<http://anidb.net/perl-bin/animedb.pl?show=anime&aid=5773>

⁸⁰ Anime News Network - Crunchyroll Licenses TV Tokyo's Web Ghost PiPoPa Anime (visited 22.5.2010)
<http://www.animenewsnetwork.com/news/2008-12-23/crunchyroll-licenses-tv-tokyo-web-ghost-pipopa-anime>

⁸¹ AniDB - Golgo 13 (visited 22.5.2010)
<http://anidb.net/perl-bin/animedb.pl?show=anime&aid=5746>

⁸² Anime News Network - Section23, Sentai Add Golgo 13 TV with English Dub (visited 22.5.2010)
<http://www.animenewsnetwork.com/news/2010-04-23/section23-sentai-add-golgo-13-with-english-dub>

⁸³ AniDB - Yu-Gi-Oh! 5D's (visited 22.5.2010)
<http://anidb.net/perl-bin/animedb.pl?show=anime&aid=5739>

⁸⁴ Anime News Network - 4Kids Confirms Yu-Gi-Oh! 5D's American Fall Premiere (visited 22.5.2010)

<http://www.animenewsnetwork.com/news/2008-03-19/4kids-confirms-yu-gi-oh-5d-american-fall-premiere>

⁸⁵ AniDB - Kurenai (visited 22.5.2010)

<http://anidb.net/perl-bin/animedb.pl?show=anime&aid=5535>

⁸⁶ AniDB - xxxHolic: Kei (visited 22.5.2010)

<http://anidb.net/perl-bin/animedb.pl?show=anime&aid=5570>

⁸⁷ This is the second season of *xxxHolic*, which is licensed by Funimation, but this season is apparently not.

⁸⁸ AniDB - Amatsuki (visited 22.5.2010)

<http://anidb.net/perl-bin/animedb.pl?show=anime&aid=5534>

⁸⁹ AniDB - Toshokan Sensou (visited 22.5.2010)

<http://anidb.net/perl-bin/animedb.pl?show=anime&aid=5558>

⁹⁰ AniDB - Itazura na Kiss (visited 22.5.2010)

<http://anidb.net/perl-bin/animedb.pl?show=anime&aid=5678>

⁹¹ AniDB - Kaiba (visited 22.5.2010)

<http://anidb.net/perl-bin/animedb.pl?show=anime&aid=5673>

⁹² AniDB - Kamen no Maid Guy (visited 22.5.2010)

<http://anidb.net/perl-bin/animedb.pl?show=anime&aid=5277>

⁹³ AniDB - Allison to Lillia (visited 22.5.2010)

<http://anidb.net/perl-bin/animedb.pl?show=anime&aid=5569>

⁹⁴ AniDB - RD Sennou Chousashitsu (visited 22.5.2010)

<http://anidb.net/perl-bin/animedb.pl?show=anime&aid=5538>

⁹⁵ AniDB - Bus Gamer (visited 22.5.2010)

<http://anidb.net/perl-bin/animedb.pl?show=anime&aid=5547>

⁹⁶ AniDB - Kyouran Kazoku Nikki (visited 22.5.2010)

<http://anidb.net/perl-bin/animedb.pl?show=anime&aid=5580>

⁹⁷ AniDB - Nijuu-Mensou no Musume (visited 22.5.2010)

<http://anidb.net/perl-bin/animedb.pl?show=anime&aid=5671>

⁹⁸ AniDB - Da Capo II Second Season (visited 22.5.2010)

<http://anidb.net/perl-bin/animedb.pl?show=anime&aid=5652>

⁹⁹ AniDB - Penguin Musume Heart (visited 22.5.2010)

<http://anidb.net/perl-bin/animedb.pl?show=anime&aid=5800>

¹⁰⁰ AniDB - Zettai Karen Children (visited 22.5.2010)

<http://anidb.net/perl-bin/animedb.pl?show=anime&aid=5674>

¹⁰¹ AniDB - Monochrome Factor (visited 22.5.2010)

<http://anidb.net/perl-bin/animedb.pl?show=anime&aid=5585>

¹⁰² Anime News Network - 3 Titles' Fansubs Pulled on Behalf of Japan's d-rights (visited 22.5.2010)

<http://www.animenewsnetwork.com/news/2008-08-11/3-titles-fansubs-pulled-on-behalf-of-japan-d-rights>

¹⁰³ AniDB - Kyou Kara Maou! - 3rd Series (visited 22.5.2010)

<http://anidb.net/perl-bin/animedb.pl?show=anime&aid=5815>

¹⁰⁴ The previous two seasons were licensed by Geneon, but it is unknown whether this season was licensed prior to Geneon closing in 2007.

¹⁰⁵ AniDB - Himitsu: The Revelation (visited 22.5.2010)

<http://anidb.net/perl-bin/animedb.pl?show=anime&aid=5658>

¹⁰⁶ AniDB - Blue Dragon: Tenkai no Shichi Ryuu (visited 22.5.2010)

<http://anidb.net/perl-bin/animedb.pl?show=anime&aid=5869>

¹⁰⁷ This is the sequel to *Blue Dragon*, licensed by Viz Media, and it is not known whether that license covers this series as well.

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- ¹⁰⁸ AniDB - Onegai My Melody Kirara (visited 22.5.2010)
<http://anidb.net/perl-bin/animedb.pl?show=anime&aid=5852>
- ¹⁰⁹ AniDB - Sugar Bunnies Chocolate! (visited 22.5.2010)
<http://anidb.net/perl-bin/animedb.pl?show=anime&aid=6206>
- ¹¹⁰ AniDB - Penguin no Mondai (visited 22.5.2010)
<http://anidb.net/perl-bin/animedb.pl?show=anime&aid=5901>
- ¹¹¹ AniDB - Uchi no 3 Shimai (visited 22.5.2010)
<http://anidb.net/perl-bin/animedb.pl?show=anime&aid=5803>
- ¹¹² AnimeSuki - License Database (visited 22.5.2010)
<http://www.animesuki.com/licensed.php>
- ¹¹³ EnviroSphere - Series database (visited 22.5.2010)
<http://www.envirosphere.com/series.php>
- ¹¹⁴ AniDB - Code Geass Hangyaku no Lelouch (visited 28.5.2010)
<http://anidb.net/perl-bin/animedb.pl?show=anime&aid=4521>
- ¹¹⁵ Anime News Network - Bandai Entertainment Adds Code Geass, Three More Anime (visited 28.5.2010)
<http://www.animenewsnetwork.com/news/2007-07-21/bandai-goes-geass>
- ¹¹⁶ Wikipedia - Yu-Gi-Oh!
<http://en.wikipedia.org/w/index.php?title=Yu-Gi-Oh!&oldid=361552822>
- ¹¹⁷ Mininova - Tadashi dropped Soul Eater (visited 28.5.2010)
<http://forum.mininova.org/index.php?showtopic=235038344>
- ¹¹⁸ Anime Vice - Quickie: More Kurenai Anime Coming Soon... to Japan (visited 28.5.2010)
<http://api.animevice.com/news/quickie-more-kurenai-anime-coming-soonto-japan/3615/>

3.6. Distribution after licensing

When fansubs began to be shared using BitTorrent, commentators welcomed the change, believing this would finally allow fansubbers to have full control over their distribution¹¹⁹. During the VHS era distribution had been tiered, and fansubbers could only request fans to stop sharing licensed anime, but they could not entirely stop it, and fansubs were even sold by bootleggers. During IRC file sharing fansubbers had control over the main source of anime downloads because they could remove licensed anime from their bots, but they could never make sure all fans removed the files from their private file servers. The decision to cease distribution was not worthless because it did curb the sharing of licensed anime by making it harder, but it never completely stopped it.

With BitTorrent it appeared the fansubbers would have full control because they controlled the tracker where the torrent files were available from. There were different torrent portals such as AnimeSuki and a.scarywater.net, which recently closed after over 370 million completed transfers¹²⁰. Many fansub groups had, and have, their own trackers hosted at their own sites. According to the theory, removing torrents from the tracker would effectively end the distribution, because even if the files were uploaded and shared from another tracker that did not obey the traditional ethics, the torrent could not stay alive without the support of the group that had released the files.

This theory has been proven incorrect. Torrents that are not maintained do in fact die out, but other communities besides the original fansub group can keep them up. For anime sharing, the largest and most important community was BoxTorrents, now known as BakaBT. It was founded in 2003 with the philosophy of sharing completed anime series, regardless of whether they were licensed, making no difference between fansubs and rips of official DVDs. In other words, BoxTorrents was involved in anime piracy.

Given the actions of American anime companies against piracy, BoxTorrents could not have survived without modifying their philosophy, and the site has gone down for varying periods of time several times during its history. But each time the site has returned, and adapted to the new situation. The site has been taken down by hosting providers following complaints from anime companies, but BoxTorrents settled these problems by removing the infringing content. There was an incident where a user uploaded forbidden content on BoxTorrents and got the site taken down by turning himself in¹²¹, after which a new policy was adopted where new torrents had to be approved by two site moderators.

This way the BoxTorrents site and community have moved from ignoring the traditional rules concerning fansub distribution to adopt rules of their own. Today, series licensed by certain anime publishers are not allowed there, nor are releases from two fansub groups who requested this¹²². This has led to some odd developments in the availability of certain series. One good example is *Mahoromatic*, which was originally licensed by Pioneer in 2002¹²³. Despite the license, it was uploaded on BoxTorrents, where it remained available until removed by demand of Geneon, which Pioneer had been renamed to. Curiously only the fansub version was removed though, and the DVD rip version remained on BoxTorrents. After the American division of Geneon closed in 2007¹²⁴, BoxTorrents moderators decided to allow their titles to be uploaded again¹²⁵, and the old fansub encodes of *Mahoromatic* were reuploaded in October 2008¹²⁶. This is a testament to the quality of the early fansubs, and to the fact that even anime piracy follows licenses to some degree.

The reason why BoxTorrents changed its name is an interesting case as well. The founder of BoxTorrents was accepting donations to pay for the site, but in June 2009 the site administrators discovered the income vastly exceeded the costs. The administrators felt betrayed, and decided to take the site from its founder, moving all the content under a new name, becoming BakaBT¹²⁷. There was some confusion over this, but the community survived the transition. In many ways the community can be said to have matured. They have adopted rules to protect themselves, and there is

even a glimmer of the old fansubber ethics left, in that they refuse to make a profit from what they do. Still, the very existence of BakaBT and its large userbase shows that the anime fans of today have little respect for licensing.

¹¹⁹ Anime News Network - BitTorrent - The future of fansubs? (visited 28.5.2010)
<http://www.animenewsnetwork.com/editorial/2003-06-08>

¹²⁰ a.scarywater.net front page (visited 28.5.2010)
<http://a.scarywater.net/>

¹²¹ From personal memory. Forum archives from the time have been lost.

¹²² BakaBT Wiki - DO NOT UPLOAD (visited 28.5.2010)
http://wiki.bakabt.com/index.php/DO_NOT_UPLOAD

¹²³ Anime News Network - AX 2002: Pioneer Panel (visited 28.5.2010)
<http://www.animenewsnetwork.com/news/2002-07-11/ax-2002-pioneer-panel>

¹²⁴ Wikipedia - Geneon Universal Entertainment
http://en.wikipedia.org/w/index.php?title=Geneon_Universal_Entertainment&oldid=355332087

¹²⁵ BakaBT Forum - Geneon Titles (visited 28.5.2010)
<http://forums.bakabt.com/index.php?topic=14348.0>

¹²⁶ BakaBT Forum - Mahoromatic [NLA, Triad] (visited 28.5.2010)
<http://forums.bakabt.com/index.php?topic=14775.0>

¹²⁷ BakaBT Forum - Dear Community (visited 28.5.2010)
<http://forums.bakabt.com/index.php?topic=18645.0>

3.7. The Odex case

As seen so far, the traditional fansub ethics have faded to almost nothingness. Fansubbers and downloaders generally obey the law only to avoid legal consequences from license holders. The question one must ask is, why do the companies still

tolerate this? They no longer need fansubs to open new markets for them, nor do they use them as free market research. Yet, there has been only one case where an official anime distributor made a serious effort to stop illegal anime downloads.

In early 2007, Odex¹²⁸ was in trouble. The Singapore-based company had published anime for several years in the Southeast Asia market, but recently its sales had been in sharp decline¹²⁹. The company had been forced to abandon or delay the releases of all but its most popular and profitable titles, and the future looked bleak. Something had to be done, and the company decided to strike at the root of the problem, namely the illegal downloading of fansubs. Odex blamed its drop in revenue on the easy accessibility of free anime downloads, and since they threatened the Odex business model, the company started an enforcement campaign against fansubs and their downloaders¹³⁰.

The method Odex used was the same which has made the RIAA infamous in the United States. First they employed a tracking company to obtain the IP addresses of suspected illegal downloaders. Next they demanded local ISPs to release the information of the customers using the IPs in question. Finally they sent letters demanding for compensation and threatening with legal action if the fees ranging from three to five thousand Singapore dollars were not paid¹³¹.

This was Odex's first mistake. The people they had targeted were not only their own customers, but the brutality of their actions provoked the outrage of the anime community. The campaign began suddenly and without warning, and the settlement fees were considered too high. Also, the people who received demands from Odex included young children, thought by many to be too young to understand the difference between legal and illegal downloads. Odex had intended to reduce the illegal downloads in Singapore by 85%, but instead it found itself in an escalating battle with its own one-time customers.

The anime community responded to Odex's claim about fansubs threatening its sales by blaming Odex for poor quality and slow releases. Unfortunately for Odex these accusations rang true, particularly the ones about bad translations and subtitles. Odex blamed its translation issues on outside contractors and limitations imposed by the Singapore Board of Film Censors, but the censors denied this, saying they preferred accurate translations. Odex also claimed that the heavy settlement fees would only cover 20% of its costs, but later changed its statement, saying it would donate the excess to charity. Odex also opened a forum, allegedly to improve its relations with the anime community, but this too backfired when one of the Odex directors made gloating remarks about suing people, and later lied about when he had made them.

But for Odex, the worst was yet to come. In September 2007 the first episode of *Melancholy of Suzumiya Haruhi*, an extremely popular anime series, was aired on Channel 56, supposedly translated by Odex. Supposedly, because several viewers recognized the translation as having been made by the fansub group A.F.K.¹³². Odex had been accused of copying the work of fansubbers before, and tried to blame it on former fansubbers who had become professional translators. Of course A.F.K. had no means or inclination to enforce its copyright to the translation, but the mere fact that Odex was exploiting fansubs while campaigning against them was disastrous to their already tarnished public image¹³³.

Another serious blow to Odex came in November, when it sent warning letters to downloaders in countries other than Singapore¹³⁴, including Japan, where it was legal to download episodes for personal use¹³⁵. Odex claimed this had been a mistake, which it blamed on the tracking company they had employed, but by this point they had little credibility and even less sympathy left. Only days later the Odex website was hacked, and then taken down permanently.

Odex's anti-fansub campaign was finally ended in January 2008, when the Singapore High Court upheld a previous decision denying Odex access to information from ISPs, for the reason that Odex was not an exclusive licensee. Only the copyright

holders themselves or exclusive licensees were given access to the information. The Japanese anime studios planned to take their own legal action, supported by Odex, but no further action has become public.

So what became of Odex? Their reputation was shot, and their products boycotted. The illegal downloads continued much the same. In effect, Odex was finished as a distributor of anime VCDs and DVDs, although the company survived. Today Odex distributes various anime merchandise, but its past continues to haunt the company. The previous company of the Odex directors was raided by the police for selling counterfeit game accessories, and now there are doubts about the authenticity of their anime merchandise.

This case should serve as a warning not to be overzealous in enforcing copyrights. The important lesson is that although Odex lost in court, it had in fact lost the game long before that. Their first and worst mistake was to start a war with their own customers, using harsh methods that only served to build resentment against the company. Odex did make attempts to alleviate this frustration, but none of them did any good when the company kept wading from one public relations disaster to the next. In the end, it did not matter whether Odex's actions were legal or not, or whether they had lied or not, since the customers had lost faith in the company. Even if they had won in court, after turning their customers against them their business would still have been ultimately lost. As things are, the company survived, but only by moving to a new line of business.

The Odex case also highlights problems that may in part explain why other companies have not taken serious action against fansubs. For one, the Singapore High Court denied Odex access to information from ISPs. Courts in other countries might not reach the same verdict, but the problem remains that the licenses given to distributor companies are rarely exclusive. Even if an American distributor took action against fansubbers in the United States, many fansubbers would simply move their operations to Europe, where there are already several fansub groups active.

European ISPs have refused to give information on their subscribers to companies, and even if they did, if the American licensors did not have the licenses for Europe as well, they would lack the authority to take action there.

One complication is that if legal action was taken, there is no obvious target. Fansub groups are not official entities that could be sued. Groups may have several people with different roles, whose parts in the copyright infringement differ. Are they all responsible together, or are some more liable than others? Some of them may hide behind aliases and be unreachable, or they may live in countries where the company has no license to the anime series the copyright to which they are defending. This might explain why Odex targeted anime downloaders, because the fansub groups were outside their reach.

Another problem is that the anime distributors may simply lack the strength to act. Many anime DVD titles sell only a few hundred copies in the whole United States, and given how small the markets are, the companies cannot afford to fight their customers and risk losing what little market share they have. No one wants to become the next Odex. Thus, anime distributors in the United States have limited themselves to sending cease and desist letters, and have never attacked downloaders of anime like the RIAA has attacked downloaders of music. Fansubbers know they cannot win against the companies, so they mostly obey, for what little it is worth. Still, it may be better than doing nothing, since inconveniencing downloaders at least limits the potential damage.

In his article, Jordan Hatcher also mentions lack of funds as a reason why anime distributors continue to tolerate fansubs¹³⁶. Enforcement of copyrights on the Internet is difficult and costly, and the anime industry may not be able to afford or want to spend money on it. Jordan also speaks of the response of the fans being a deterrent, predicting that the apparent betrayal of the existing relationship would lead to outrage and boycott from the fans. Less than two years after publications of the article, these predictions were realized in full measure in the Odex case. One final reason for the

lack of action from anime companies mentioned by Jordan is that the inevitable media coverage of any legal campaign against fansubs would draw attention to the phenomenon, and might invite more new users than it scares away.

The real question is, what are the Japanese companies doing? They alone have the authority and power to really do something about fansubs, and yet nothing has happened. As things are, the Japanese companies have left the enforcing of their copyrights to foreign licensors, which means that until a series is licensed, no one actively protects the copyright. The explanation given by Leonard that Japanese anime companies have no vested interest in foreign markets may still hold true. Anime continues to be produced for domestic consumption, and whatever revenue can be gained from foreign licenses is merely a bonus. Many people in the Japanese anime industry are young otakus who do not understand the popularity of anime outside Japan, or what they should do about it. There are exceptions to this, for example Studio Ghibli has marketed its movies around the world, but the majority of Japanese companies remain inactive. This will have to change soon, since concerns have been raised that the domestic anime market in Japan is not what it used to be¹³⁷. The Japanese companies have ignored both the threat and potential of the Internet too long, and their business model is in urgent need of reform. As the population of Japan continues to age and the target audience of anime diminishes, they may be forced to expand and become active in cultural exports to survive.

¹²⁸ Wikipedia - Odex

<http://en.wikipedia.org/w/index.php?title=Odex&oldid=351312112>

¹²⁹ Anime News Network - Singapore Company Cracks Down on Anime Downloads (visited 28.5.2010)

<http://www.animenewsnetwork.com/news/2007-06-07/singapore-company-dl>

¹³⁰ Wikipedia - Odex's actions against file-sharing

http://en.wikipedia.org/w/index.php?title=Odex's_actions_against_file-sharing&oldid=364628768

¹³¹ Soliloquy - Odex Chronicles (visited 28.5.2010)

<http://breathe.eternise.org/?p=1826>

¹³² Anime News Network - Singapore's Odex Subs Haruhi with Similar Text to Fansub (visited 28.5.2010)

<http://www.animenewsnetwork.com/news/2007-09-28/singapore's-odex-subs-haruhi-with-similar-text-to-fansub>

¹³³ Anime Desho Desho - Odex's Translators goes A.F.K. (visited 28.5.2010)

<http://animedesho.animeblogger.net/?p=2593>

¹³⁴ Anime News Network - Anime BitTorrent Users Reportedly Sent Notices by ISPs (visited 28.5.2010)

<http://www.animenewsnetwork.com/news/2007-11-19/anime-torrent-users-reportedly-sent-notices-by-isps>

¹³⁵ J@pan Inc - Intellectual Property and new Copyright Law (visited 28.5.2010)

<http://www.japaninc.com/mgz83/intellectual-property-copyright>

¹³⁶ Jordan S. Hatcher, Of Otaku and Fansubs: A Critical Look at Anime Online in Light of Current Issues in Copyright Law. Script-ed, Vol. 2, No. 4, p. 514-542, 2005.

<http://ssrn.com/abstract=871098>

¹³⁷ Anime News Network - Editorial: An Open Letter to the Industry (visited 28.5.2010)

<http://www.animenewsnetwork.com/editorial/2007-11-25>

3.8. Manga scanlations

The history and troubles of exporting anime to the rest of the world are paralleled by another Japanese cultural product, manga, or Japanese comics. Manga draws from a long tradition of Japanese art, and from Western influences, resulting in a distinct artform. Like anime, manga contains numerous different styles and genres, but they are all collectively known as manga.

Manga has always had to struggle against negative associations attached to it. These are partly due to the attitudes of misinformed early commentators, as well as an unfortunate mistranslation of the term manga as irresponsible pictures. This bad reputation has undoubtedly discouraged Western publishers from localizing manga, but in addition to the prejudices against it, manga imports suffered from very real problems¹³⁸.

The most significant problem is that manga is read right to left. No Western publisher could imagine readers being willing to read manga in this backwards direction. This meant that manga had to be reversed for publishing in the West, but this was far from easy. Unlike Western comics, manga is often not divided into rectangular frames, the order of which could be reversed with relative ease, but a single page may constitute a single artwork. If the frames can be rearranged, the speech balloons will still be in the wrong order. Consequently most Western manga publications were mirrored, but this had the effect of making characters lefthanded and reversing the folds in clothing. Even then, the text in balloons is read top to bottom, which meant many of the balloons were incorrectly shaped and sized for horizontal text. And this is all in addition to the content edits. By comparison, despite the extensive edits made to early anime shows, they took less work than publishing of manga would have taken.

When anime arrived in the United States in the 1960's, manga versions already existed in Japan of many of the anime series. Ever since, most anime shows are based on a successful manga, and rarely the other way around. Despite this, no original manga was published in the United States. There was a one-shot comic book based on the American version of Astro Boy, but it was drawn by American artists and published without permission from Osamu Tezuka. As anime disappeared from United States television in the 1970's, so did the chances of manga making a breakthrough there. Some original Japanese manga was available from a small number of pioneers, including Fred Patten, who ordered it directly from Japan.

In Europe anime became popular, even though there was no awareness that it was Japanese, but manga faced resistance there as well. The manga versions did not always tell the same story as the anime did, and they could be aimed at more mature readers than the target audience of the anime versions. Consequently European publishers did the same thing the Americans did, and published comics based on the anime drawn by European artists. Another way was to create cheap comics using screen captures from the anime. The artistic quality of these works was dubious, and eventually real manga began to appear in Europe. Italy and Spain, which were the forerunners in anime, were also the first to get original translated manga.

The success of manga in Europe may be partly explained by the thriving comic culture that existed there, which was not averse to foreign influences. At the same time during the 1970's, the American comic industry was dying out. Comics did not sell, and they disappeared from news stands and supermarkets into specialist book stores. Incidental to this, Disney comics, despite being distinctly American in origin, died out in their home country but survived in Europe.

Manga began its rise to mainstream a few years behind anime, from manga publications of previously aired anime shows. This happened more or less simultaneously in Europe and the United States during the 1990's, with Europe ahead by some years. For many countries the first real manga was *Akira* by Katsuhiro Otomo, published in the United States in 1988, four years after Japan.

At the turn of the millennium, manga had established itself in the United States and much of Europe. The fans were still not satisfied however, they wanted more. Fans began to import untranslated manga from Japan and creating their own fan translations soon after the first digital fansubs appeared. These fan translations, termed scanlations, quickly became as popular as fansubs of anime. The scanlation groups adopted their ethics directly from the fansubbers, removing their downloads when the manga was licensed by an American publisher.

By this time, opinion had begun to turn in favor of not mirroring manga, the very thing that publishers had never expected. This was partly due to demands from the manga artists, who were displeased with the tampering with their work, but soon the fans as well wanted their manga in its original format. Europe was first to get unmirrored manga, followed by the United States, where the major manga publishers converted to unmirrored manga around 2005. In the United States this change of opinion may have been influenced by scanlations, many of which kept the original orientation and sound effects, adding translations for them between the frames. When official manga publishers began to do the same it reduced expenses, since the sound effects were often an integral part of the artwork and translating them involved costly redrawing.

The main difference between anime fansubs and manga scanlations however is in their current situation. Fansubs are a threat to the anime industry, and anime distributors continue to try to limit their spread, but scanlation groups are being left in peace. The reason for this is that scanlations still have the role fansubs have lost, to promote the product. Scanlations, no matter how high quality, cannot replace the convenience of a manga book. Certainly some popular manga titles need no promotion, but on the whole, scanlated manga is not a threat to manga publishers. People who like a scanlated manga still buy it, while a small minority of fansub downloaders ever buy the anime on DVD. There is also the fact that there are a lot more manga titles in Japan than there are anime, and without scanlations many of them would never be translated to English. Manga publishers can afford to leave relatively unknown mangas to be translated by fans without any impact on their business. Consequently scanlated manga can be openly shared on sites like MangaFox and One Manga.

¹³⁸ Paul Gravett, *Manga: Sixty Years of Japanese Comics*. 2004. Finnish translation by Juhani Tolvanen, *Manga: 60 vuotta japanilaista sarjakuvaa*. 2005.

3.9. Legal overview

On the surface, it may appear the legal issues in fansubs and scanlations would be simple, due to the simple fact that they are illegal. Fansubbers have always known this, even though some downloaders and distributors tend to forget it¹³⁹. Fansubs essentially reproduce an existing work, and distributing it is a violation of the copyright of the original. However, there are some things that complicate the matter.

The most important thing that might weigh in favor of fansubs is the long and well documented history of fansubbers and anime distributors following a code of ethics. The fact that copyright holders are aware of infringing use and condone it, even unofficially, could be interpreted as an implied license. Cases like this are given by Cecilia Ogbu, who describes how the American company Fox took action against several fan sites dedicated to television series produced by Fox¹⁴⁰. The infringements of these sites were minor, but Fox feared that failing to take action could foreclose their right to act if the infringement escalated to a genuinely objectionable level. Because of this, Fox began to send cease and desist letters to fan sites, resulting in much anger. Anime distributors have begun to do the same, but while the old code of ethics was in full effect during the VHS era, it could have been a viable defense for fansubs.

Any fair use defense of fansubs would most likely be doomed. Sean Kirkpatrick explains why this so by considering the four factors of fair use¹⁴¹. First, fansubs are not transformative and they have the same entertainment value as the originals. Second, anime shows being creative works they fall into the core of copyright protection. Third, fansubs have comparable quality to the originals. Fourth, there is a high likelihood of harm from fansubs. The third point did not hold true during the VHS era, when fansubs were of clearly lower quality than official products, and therefore less of a threat, but with the high quality digital fansubs of today, their quality can even exceed that of legitimate releases. Kirkpatrick himself does not entirely agree on the fourth factor, based on the idea that fansubs could be considered

a type of time shifting which is legal. However, since fansubs are used to build collections of anime, they are distributed to an audience that would not have access to the content otherwise, and because the availability of fansubs diminishes the licensing value of the content, the fourth point would also be condemning to fansubs today. Other opinions on the matter have been also expressed. Nathaniel Noda argues that fansubs should be covered by fair use, but he excludes fansubbing and sharing of licensed series from this¹⁴².

However, it is good to bear in mind that the discussion of whether fansubs could be defended in court is mostly academic. There has never been a case where the legality of fansubs would have been tested by courts, and it is unlikely there ever will be. As noted by Jordan Hatcher¹⁴³, fansubbers do not have the money or the resources for a prolonged legal battle, especially one they would have to expect to lose, meaning they would have to settle. Even the threat of legal action in the form of cease and desist letters has been somewhat effective, and there would be significant practical difficulties in actually suing fansubbers or downloaders. Unfortunately for the companies the fans know this, and so they continue to share anime with little fear of reprisal.

Regardless of whether fansubs could be defended, or if they ever had to be defended, the point of most legal studies concerning fansubs is that they are an example where choosing not to enforce copyright has led to success, even if the Japanese companies never planned for it. The same could hold true in other fields as well. An unknown musician would not need strong copyright protection for his works, but it would make sense for him to allow them to be downloaded, in the hopes that this would increase his popularity and publicity, allowing him to sell his later works for more. The problem of copyright law is that it is applied to a wide variety of cases, some of which it is poorly suited to. Lobbyists of the major players, like the music and movie industries in the United States, have gotten copyright law changed to fit their needs, while the small timers have not had much influence.

There are also other legal issues involving anime and fansubs more interesting than simple legality. Joshua Daniels writes about how the lack of moral rights in anime distribution results in market failure¹⁴⁴. Already during the 1970's and 1980's anime shows were often edited until they became something quite different from the original, which was rarely successful commercially. There are other examples more recent and less drastic. Daniels mentions how the edited version of One Piece released on DVD by 4Kids was considered inferior by the fans, and the sales figures of the product were similarly inferior considering the popularity of the original anime. According to Daniels, Japanese companies should insist on the integrity of the original work to be preserved to prevent similar failures.

Different authors have described other fan-related activities comparable to fansubs. Leonard and Hatcher both mention doujinshi or fan-made comics, which Noda covers with more detail. Doujinshi typically use characters or settings taken from popular anime or games, but the stories and artwork are original. Many of them are erotic. This prompted Nintendo to file a complaint against a doujinshi artist who used characters from their Pokemon franchise, because those characters were portrayed in a manner Nintendo described as destructive of the Pokemon image. This case remains one of a kind, as the game and anime industries continue to endorse doujinshi, but in the United States many companies have tried to stop the publishing of fan fiction¹⁴⁵.

Of course, fansubs differ from doujinshi in that fansubs copy and compete with the original content, while doujinshi is strictly complementary. The same applies to most other fan creations, such as fan fiction and fanart, which are also created by other fandoms like Star Wars and Star Trek fans. These fan creations do not reduce the value of the original product, rather they build on it and increase its value by adding new content, while they strengthen the fandom and its commitment. In borderline cases like the Pokemon case the copyright holders may decide the fan work to be harmful to their image, but the coexistence of the game and anime industries with doujinshi implies that the benefits of allowing doujinshi outweigh the drawbacks. This view is presented by Salil Mehra¹⁴⁶, and shared by other writers.

One of the core themes of these studies is that copyright law in its current form does not achieve its purpose of fostering creativity and progress. Copyright law does not exist solely to protect the interests of the copyright holder, but to give an incentive to create more by granting an exclusive right to benefit from the work for a limited time. This original reasoning behind the law has been long forgotten, as the duration of the copyright has been extended decades past the lifespan of the creator, and as the major players have sought to limit the scope of fair use. What is needed is for the law to balance the needs of the copyright holders and the public, to keep copyright holders from stifling creativity and even damaging their own interests by misguided zeal in enforcing their copyrights.

¹³⁹ Anime Download Site - Legal ramifications (visited 28.5.2010)
<http://www.animedownload.net/ads/legal.html>

¹⁴⁰ Cecilia Ogbu, I Put Up a Website About My Favorite Show and All I Got Was This Lousy Cease-and-Desist Letter: The Intersection of Fan Sites, Internet Culture, and Copyright Owners. *Southern California Interdisciplinary Law Journal*, Vol. 12, p. 279-317, 2003.
<http://www-bcf.usc.edu/~idjlaw/PDF/12-2/12-2 Ogbu.pdf>

¹⁴¹ Sean Kirkpatrick, Like holding a bird: What the prevalence of fansubbing can teach us about the use of strategic selective copyright enforcement. *Temple Environmental Law and Technology Journal*, Vol. 21, p. 131-153, 2003.

¹⁴² Nathaniel T. Noda, When Holding on Means Letting Go: Why Fair Use should Extend to Fan-Based Activities. *University of Denver Sports & Entertainment Law Journal*, Vol. 5, p. 64, 2008.
<http://ssrn.com/abstract=1376223>

¹⁴³ Jordan S. Hatcher, Of Otaku and Fansubs: A Critical Look at Anime Online in Light of Current Issues in Copyright Law. *Script-ed*, Vol. 2, No. 4, p. 514-542, 2005.
<http://ssrn.com/abstract=871098>

¹⁴⁴ Joshua M. Daniels, 'Lost in Translation': Anime, Moral Rights, and Market Failure. *Boston University Law Review*, Vol. 88, No. 3, p. 709-744, 2008.
<http://ssrn.com/abstract=1179762>

¹⁴⁵ Rebecca Tushnet, Legal Fictions: Copyright, Fan Fiction, and a New Common Law. *Loyola of Los Angeles Entertainment Law Journal*, Vol. 17, p. 651, 1997.

<http://www.tushnet.com/law/fanficarticle.html>

¹⁴⁶ Salil Mehra, Copyright and Comics in Japan: Does Law Explain Why All the Cartoons My Kid Watches are Japanese Imports? *Rutgers Law Review*, Vol. 55, p. 155, 2002.

<http://ssrn.com/abstract=347620>

4. Results

The history of fansubs now goes back over twenty years, and since the beginning fansubbers have defended the practice by adhering to a self imposed code of ethics. Fansubbers only worked on unlicensed series, and stopped distribution immediately when a series was licensed. Since VHS fansubs were uncommon and too low in quality to threaten official releases, and because anime distributors could use the popularity of fansubs as an indicator of what to license, everyone was happy. Since fansubs helped create an audience for anime and opened the United States market which the Japanese anime studios had failed to enter, fansubbers have been applauded for their efforts and it has been suggested that their actions should be recognized and protected by the law. Fansubs have been seen as comparable to other fan works which add value to the original work, though with reservations due to fansubs copying the original while other fan works add new derivative content.

That was ten years ago. The current situation of fansubs is entirely different. The availability of digital fansubs has eaten away the profit margin of anime distributors, since their quality is comparable to official products and they can be copied without limit. The old fansubber ethics are all but dead, with fansubs being produced with no regard for licenses and distribution continuing in spite of cease and desist letters sent by licensors. DVD sales have dropped, while fansubs are downloaded in the millions. The Japanese companies have done almost nothing to stop this, leaving enforcement of their copyrights against fansubbers to their foreign licensors. These licensors in turn are at a loss. They can barely make ends meet, and practical issues aside, they

can not afford the costs of campaigning against fansubs or the backlash from fans such a campaign would result in. Only the Japanese companies have the legal authority to resolve the problem, but they are suffering from their own inactivity and the effects of illegal file sharing in Japan.

The situation is clearly not sustainable. This view was reached by Justin Sevakis already in 2007¹⁴⁷, and he is not alone. The anime industry is in danger for failing to deliver what the fans want, and which fansubs do deliver. Anime distributors are often criticized for content edits, shoddy translations and substandard voice acting, and less and less fans want to spend their money to own DVDs released perhaps years after the series aired in Japan. Many fans don't want to own DVDs or collect fansubs at all, they just want to watch anime once, and they are not going to wait for official versions to be released. The business model of selling anime on DVD without first showing it on television is at a dead end. Stopping the sharing of fansubs is practically impossible, and so the business model has to be rebuilt from the ground up.

What the anime industry badly needs is for fansubs to be made redundant. This is the only way to stop their threat. What is needed is a streaming service for anime, accessible worldwide, where subtitled anime can be seen within days of airing in Japan. Anything less is unlikely to satisfy fans, and unless the fans are satisfied, illegal downloading of anime will continue. Making money from such a service may be difficult, but can be done with subscription fees, advertising, maybe even partnering with ISPs and offering the service as part of the Internet package. The current anime distributors in the United States may still have their place, but the DVDs they sell will be reduced from the primary legal source of anime to collector items.

As an added bonus, the access and download statistics of an anime streaming service could be used for market research, giving accurate statistics of the popularity of different series and genres. The system could even benefit from the fans, by officially recognizing and using their work in providing translations and in distribution.

Regrettably, the Japanese anime companies seem to suffer from a lack of vision. Thirty years ago they dominated much of the world with their animations, but they have allowed this success to slip away, and there are no signs they would be able to benefit from the current worldwide popularity of anime. What remains to be seen is if they can change their course in time or if they have to learn the hard way.

¹⁴⁷ Anime News Network - Editorial: An Open Letter to the Industry (visited 28.5.2010)
<http://www.animenewsnetwork.com/editorial/2007-11-25>

5. Conclusion

Looking back at the end of the work, I feel surprised by some of the conclusions I reached, and the certainty I have in my answers, when initially I had not dared to hope finding any. As a longstanding member of the anime community, I was aware of the code of ethics regarding fansubs, and believed it was still respected by fans and companies alike. The result of comparing licenses and user statistics on AniDB was not what I expected, as I believed there would be a clear correlation showing the companies did follow the popularity of fansubs. Instead, in light of the numbers, licensing has ceased to have significant effect on the downloading of anime. Faced with the facts, and supported by the opinions of others whose articles I read, I had to revise my thinking. Fansubs may have been a success story and a good example of how allowing infringing use may lead to positive results, but this is long in the past. In the current situation, discussing whether fansubs should be protected by law is no longer relevant, and attention should turn to rethinking the way the anime industry works. The current business model has outlived its viability.

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