

Progress Against the Law

Sean Leonard
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Fan Distribution, Copyright, and the Explosive Growth of Japanese Animation

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SEAN LEONARD

Massachusetts Institute of Technology

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Abstract

The medium of Japanese animation is a powerhouse in the world of alternative entertainment. Proselytization by fans ignited the anime movement in America, despite Japanese copyright holders' abandonment of the American market. We present an historical and legal analysis to demonstrate that, at least in one case spanning two decades, fans' continual infringement of copyright spurred the progress of commerce and the arts.

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Table of Contents

1. Introduction	5
2. Anime and Its Fandom: A Primer for Non-Fans.....	8
2.1. Anime	8
2.2. Fan Distribution	10
2.3. Fansub.....	10
3. Historical Analysis of Fan Distribution and Subtitling.....	13
3.1. Pre-Fan Period	13
3.2. Technology Change; Cartoon/Fantasy Organization	15
3.3. Japanese Enter and Abandon the Market.....	18
3.4. Fan Activity Increases	23
3.5. Anime Importers Fail to Release Quality Material	28
3.5.1. The <i>Robotech</i> Exception and the Second Wave	31
3.6. C/FO at Its Height; C/FO in Japan	34
3.7. C/FO Fan Distribution.....	38
3.7.1. Fan Networks as Proselytization Commons.....	41
3.8. Birth of Fansubbing; Collapse of C/FO	42
3.9. New Clubs, New Fans, New Fansubbing	45
3.9.1. Reverse Imperialism	48
3.9.2. Organizing an Open Proselytization Commons	49
3.10. Conventions.....	52
3.10.1. AnimeCon '91	52
3.10.2. Anime Expo and Anime America 1992-1993	55
3.10.3. Fansubbing and its Causal Link to Licensing.....	57
3.10.4. Fansubbing <i>vis-à-vis</i> Bootlegging.....	59
3.10.5. Preparation, Distribution, and Exhibition of Fansubs.....	61
3.11. Industry	65
3.11.1. A.D. Vision.....	65
3.11.2. AnimEigo	66
3.11.3. Streamline Pictures	67
3.11.4. Pioneer LDC.....	70
3.12. Success Returns to Japan.....	71
3.13. Concluding the Historical Analysis	73
4. Legal Analysis of Fan Distribution and Subtitling.....	79
4.1. Basics of International Copyright Law	79
4.2. Copyright in Japanese Animated Works in Japan	81
4.2.1. What Is Owned and Who Owns It	82

4.2.2. Domestic and International Rights of These Owners	83
4.3. Time-Shifting/Fan Recording from America	85
4.4. Sharing Among Friends	86
4.5. Showings at Clubs.....	87
4.6. Copying and Sending Across Country	87
4.7. Pen Pals in Japan	88
4.8. Renting at Mom and Pop Stores	91
4.9. Recording Anime from Japan and Sending Them to America	93
4.10. Translation	96
4.11. Fansubbing.....	97
4.12. Distributing Fansubs Before and After Licensing.....	97
4.13. Before We Conclude	98
4.14. Concluding the Legal Analysis	99
5. Progress Against the Law	100

Citation and Romanization Formats

Except in “Legal Analysis of Fan Distribution and Subtitling,” citations adhere to the MLA style with footnotes.¹ In “Legal Analysis of Fan Distribution and Subtitling,” citations adhere to the *Bluebook* style.²

Japanese to English transliteration is littered with exceptions and discrepancies. For Japanese proper names, this analysis adheres to the person’s preferred Romanization if known. If the person has no known Romanization, this analysis uses the popular usage of the person’s name in anime-related discourse. In most cases, names are specified in Western style, with given name first and family name last. Subsequent references to the person employ his or her last name only.

Japanese anime titles are referenced in the text according to their prevailing English-language designation during the time period. For example, the text employs

Space Battleship Yamato, not *Uchū Senkan Yamato*, 宇宙戦艦ヤマト, or *Star Blazers*;

however, the text uses *Star Blazers* when it specifically discusses that adaptation. If significant discrepancies exist between the original Japanese, common English, and American commercial titles, an endnote at the first instance of the title will furnish all of the Japanese and English titles.

Foreword and Acknowledgements

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¹ Gibaldi, Joseph et. al. *MLA Style Manual: Second Edition*. New York: Modern Language Association of America. 1999.

² Harvard Law Review Staff. *Uniform System of Citation: The Bluebook*. Cambridge, MA: Harvard Law Review Association. July 1996.

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Fan Distribution, Copyright, and the Explosive Growth of Japanese Animation

1. Introduction

Interest in, and consumption of, Japanese animation has increased exponentially across the world in the last ten years. Total sales of anime and related character goods rose to ¥9 trillion (US\$80 billion) in 2002, up from less than a tenth of that a decade earlier.³ Despite Japan's flagging revenues in other markets from steel to manufacturing and heavy industry, the *Wall Street Journal* recently commented that "Japan has more than made up for it because of its cultural exports."⁴ Indeed, Prime Minister Junichiro Koizumi lauded anime in his 2003 opening speech to the Diet. Using *Spirited Away* as a pointed example, Koizumi asserted that anime has become "the savior of Japanese culture."⁵ Considering all of this "hype," we ask the question: how did anime, once regarded as a product produced for and consumed by Japanese children, become such a powerhouse in the global media market?

The answer lies in the international pull, not push, of anime to other nations' shores. A wave of internationals became interested in anime, manga (Japanese comics), and other cultural products as they studied or served in the military in Japan in the 1960s and 1970s, at the very moment that the slogan "Japan as No. 1" began to reshape that country's popular consciousness. Those who returned to America wanted to share anime and manga with their friends. The introduction of the VCR into the American and Japanese mass markets in 1975 made this possible: for the first time, fans could tape

shows to show others in America.⁶ Initially unable to share because of the Japanese-English language barrier, fans were relegated to explaining the bare basics of an anime plot as a slew of fantastic imagery and incomprehensible language bombarded audiences at the back of science-fiction conventions. Worse yet, a reader might struggle with the “backwards text and images” of manga alongside a Japanese-competent friend. As Henry Jenkins once commented about this period, “We didn’t know what the hell they were saying, but it looked really cool.”⁷

New technology and distribution networks quickly enabled fans to proliferate their anime message. What followed was the birth of fan distribution—a process of releasing anime shows on a vast underground network of fans throughout the country. Following a shift in the constitution of the fandom, fansubbing, or translation and subtitling of anime videos, was added to the distribution process by 1990. After leaving college, many fans started anime companies, becoming the industry leaders of today.

Anime fan distribution networks—networks of Japanese animation fans who imported and distributed videos over a vast underground network in the United States from the 1970s through the early 1990s—represented *proselytization commons*, or spaces where media and ideas could be freely exchanged to advance a directed cause. Upon these networks many built their fortunes, and many more spread the knowledge and enthusiasm of Japanese animation to their American counterparts, all years before the

widespread adoption of the Internet. This dissemination flouts theories of globalization as directed by American cultural imperialism, for Americans “pulled” Japanese cultural products to America *en masse* without coercion by Japanese industry. Translation, reconstitution, and reproduction were not antagonistic to profit-making in early anime history; indeed, this fan process acted as a prerequisite good/service combination to widespread commercial exploitation. Fans, distributors, and producers alike further belied that these fan processes were necessary. Quite against the restrictions of copyright, fan distribution of anime flourished throughout the 1970s through 1990s to catalyze a nascent domestic industry and to impel the progress of the arts.

The remainder of the paper is organized as follows. In the second section, we provide a primer for readers who are unfamiliar with the terms “anime,” “manga,” “fan distribution,” and “fansub,” terms that this analysis will use heavily. In the third section, we detail the history of the anime fan phenomenon as it relates to the development of anime interest in the United States, unpacking the processes and motivations of key players in the movement between 1976 and 1993. We construct an historical argument based on original interviews and primary sources, ultimately determining that fan distribution functioned economically as a *prerequisite good* to licensed materials. In the fourth section, we present a legal analysis of fan distribution and fan activities, drawing from Japanese copyright law, American copyright law, and relevant copyright

implementation treaties in effect during the period under examination. We determine that fan distributors were left with no recourse to committing copyright infringement in order to satisfy their goals. In the final section, we combine these analyses to assert that a sphere of economic activity was created that existing copyright regimes would have denied, directly contributing to the rapid explosion in anime consumption and profit for all parties involved.

2. Anime and Its Fandom: A Primer for Non-Fans

2.1. Anime

“Anime” is the French abbreviation for animation, a word that the Japanese adopted to describe all animation. In America, “anime” specifically refers to the Japanese product, and is used for both the singular and the plural. The first Japanese animated film was a 5-minute short film called *Mukuzo Imokawa the Doorman* (*Mukuzo Imokawa Genkanban no Maki*) produced by Oten Shimokawa in 1917.⁸ Various anime were produced throughout the prewar and wartime periods, but animation remained a curious oddity until 1958, when animation studio Toei Doga released *Hakujaden* (*The Great White Snake*),⁹ the first full-length, color anime film. Most historians cite 1963 as the birth of the anime industry, when famed manga artist and animator Osamu Tezuka released *Tetsuwan Atomu* (*Astro Boy* in the US),¹⁰ solidifying the long-standing

connection between anime and manga and inculcating millions of Japanese youth with the love of a super-robot who looked and acted just like a real boy.

Anime is created for three distinct venues in Japan: television, theatrical release, and direct-to-video (OVA, or Original Video Animation). OVAs evolved from Mamoru Oshii's 1983 *Dallos*, and from the mid 80s to the mid 90s became the dominant venue for experimental or *avant-garde* animation. Variety in anime is both abundant and scarce: today, there are over eighty anime productions airing on TV every week. This figure does not include theatrical and OVA offerings, which would bring the number closer to 130. However, some animators, such as Hayao Miyazaki, complain that the rapid expansion of the anime industry has resulted in a dearth of creativity that is leading the industry to a dead-end.¹¹

Interest in Japanese animation in America has occurred in waves,¹² each of which left a rising wake of anime fans who extol the virtues of the medium as an alternative to both Hollywood and any other products of American popular culture.¹³ The first wave occurred in the 1960s with *Astro Boy* (1963) and *Speed Racer* (1968, originally *Mach Go Go Go*). *Star Blazers* arrived in the United States in 1978 (originally *Space Battleship Yamato* from 1974), followed by *Robotech* in 1985 (based on three series from 1982 onward). *Akira* was a major cult hit in 1988. Finally, the 90s gave way to an exponential rise of

titles and anime interest. Some of the highlights include *Sailor Moon* (1995), *Dragonball/Dragonball Z* (1995), *Pokémon* (1998), and *Princess Mononoke* (1999).

2.2. Fan Distribution

Fan distribution comprises all of the methods by which fans copied and disseminated anime to other fans between 1976 and 1993.

2.3. Fansub

Fansub is short for fan subtitling, or fan-subtitled video. Fansubs are almost exclusively subtitles of anime. Fansubs appeared in America in 1989 following the wide consumer availability of Commodore Amiga and Macintosh computers, which could overlay subtitles on top of a video stream with extra hardware. The essential hardware for fansubbing between 1989 and 1998 was a genlock, or generator locking device. This device enables a video machine, such as a TV, to accept two signals simultaneously. When operational, a genlock synchronizes an incoming video signal with computer output, enabling the overlay of subtitles in real-time. The results of a genlock system were then recorded on another videocassette and distributed along a vast fan network. Many fansubbers incorporated time-synchronized VHS and S-VHS decks into their fansubbing systems; by the mid 90s, these systems allowed for near-perfect timing and accuracy of subtitles and spoken dialogue.

Fans who subtitle videos are called fansubbers; a team of fansubbers is known as a fansub group. A fansub group traditionally consists of one or more translators, editors,

typesetters, timers, and first-tier distributors. Fansubbers usually add credits or identifying marks to their works, although they almost always use pseudonyms for legal reasons. Fansubbers additionally will add titles such as “NOT FOR SALE OR RENT” and “CEASE DISTRIBUTION WHEN LICENSED” to their works, indicating that their works are not licensed, that no money should change hands for their fansubs, and that viewers should purchase the licensed products once they are available domestically. Many fansubbers and distributors used the self-addressed, stamped envelope (SASE) system of distribution. This system required no monetary exchange. Instead, fans would send a self-addressed, stamped envelope with blank tapes and instructions in it; they would get the tapes back with the episodes recorded on them. Some fansubbers, however, charged modest fees ostensibly to cover the cost of the tape and postage.

Many fansubbers would include explanatory subtitles or supertitles about Japan, Japanese culture, or other tidbits of a subtitled anime in order to elucidate the show’s more elusive references.

As this analysis ends at 1993, it does not cover fansubs encoded in video files and distributed over the Internet, also known as digisubs. Digisubs first appeared in the late 1990s.

³ Korea government survey, 2002.

⁴ Associated Press. *Wall Street Journal*. 17 Apr. 2003.

- ⁵ "The Hollowing Out of Japan's Anime Industry." *Mainichi Interactive*. 25 Feb. 2003.
<<http://mdn.mainichi.co.jp/news/archive/200302/25/20030225p2a00m0oa024000c.html>> 8 May 2003.
- ⁶ "1975: Sony Betamax Combination TV/VCR Released in the U.S." *CED Magic: Pictorial History of Media Technology*. <<http://www.cedmagic.com/history/>> 8 Dec. 2003.
- ⁷ Jenkins, Henry. Personal Interview. 28 August 2000.
- ⁸ Clements, Jonathan and Helen McCarthy. *The Anime Encyclopedia*. Berkeley: Stone Bridge Press, 2001. p. 283.
- ⁹ *Hakujaden*. 白蛇伝. *Legend of the White Snake. Panda and the Magic Serpent*. 22 Oct. 1958. Data source: "Anime News Network – Hakujaden (movie)." *Anime News Network Encyclopedia*. 2004.
<<http://www.animenewsnetwork.com/encyclopedia/anime.php?id=655>> 28 Apr. 2004.
- ¹⁰ *Astroboy 1*. "Tape One: Birth of Astroboy; The Monster Machine." Prod. Osamu Tezuka and Fred Ladd. Distr. The Right Stuf, Inc. 1963, NBC Films; 1991, The Right Stuf, Inc.
- ¹¹ Kitano, Masayuki. "Miyazaki says Japan animation faces dead end." *Japan Today*. 20 Feb. 2002.
<<http://www.japan-today.com/>> 15 Mar 2002.
- ¹² Omega, Ryan. *Anime Trivia Quizbook, Episode 1*. Berkeley: Stone Bridge Press, 1999.
- ¹³ Napier, Susan. *Anime: From Akira to Princess Mononoke*. Hampshire, England: Palgrave Press, 2001.

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3. Historical Analysis of Fan Distribution and Subtitling

We present an original history of the fan movement in the United States. This history has been compiled and verified from a series of personal interviews, fan artifacts, and other primary sources. We provide appropriate citations for known references from this period.

3.1. Pre-Fan Period

Japanese animation entered the United States before 1975, but with varying degrees of adaptation. The first documented films that were distributed across the United States were *Panda and the Magic Serpent (Hakujaden)* starting March 15, 1961, followed by *Magic Boy (Shōnen Sarutoki Sasuke)* on July 8, 1961¹⁴ and *Alakazam the Great (Saiyūki)* on July 26, 1961.¹⁵ While American producers had to stick fairly close to what was onscreen for the graphics, they changed much of the story to cater to American children's perceived tastes. Fred Ladd, who produced the American versions of *Astro Boy* (1963), *Gigantor* (1965), *Kimba the White Lion* (1965), and *Speed Racer* (1967), was notorious for changing names¹⁶ and editing plotlines. Before *Astro Boy*, Ladd was involved with a Belgian production doing a modernization of *Pinocchio* called *Pinocchio in Outer Space*. When NBC bought the rights to *Tetsuwan Atomu* in 1963, the company contacted Ladd because of his previous work, which was similar to *Tetsuwan Atomu*. However, these similarities were tenuous at best. American production companies were

used to completely Americanizing foreign products, removing un-American speech as well as all but the most scant of references to the original Japanese production teams.

These shows turned out to be enormously popular with Americans, however, and there is little doubt that Ladd contributed towards the short-lived success of Japanese animation in the 1960s. Nevertheless, pressure to sanitize children's television in 1970s America paralleled dramatic advances in violence and sexual content in Japanese animation, largely due to the influence of Go Nagai's *Devilman* (1972), *Mazinger Z* (1972), and *Cutey Honey* (1973). American networks decided to move cartoon shows from weekday primetime—the former home of *Astro Boy* and *Speed Racer*, alongside the classic *The Flintstones* and *The Jetsons*—to Saturday mornings, at which point a variety of parent groups pressured the networks for an increased sanitization of animated programming. Ladd points out, “You couldn't give away a Japanese-made series here [by the early 1970s].”¹⁷

A few Japanese cartoons did make it over to the US and are worth noting. *Gatchaman* (as *Battle of the Planets*, later *G-Force*) was brought over in 1978. The former production was significantly sterilized, and both productions remained too unpopular to be sustained on American television. *Space Battleship Yamato* aired in 1978 with minimal retooling as *Star Blazers*, proving more successful. Its popularity was confined to the East Coast, however, explaining the prevalence of East Coast *Star Blazers* fandom.

Finally, *Voltron*¹⁸ made significant inroads into the children's market in America in 1984-1986; its sanitization could be described as halfway between *Star Blazers* and *Battle of the Planets*. In all these cases, however, shows' Japanese origins were strictly eradicated. Japanese animation interest would surface again in the next decade, but its driving force was a very different market: the micro-market created by fans.

3.2. Technology Change; Cartoon/Fantasy Organization

Post-*Astro Boy* anime penetration spread through the United States within three months of the release of the first video cassette recorders in November 1975. By March 1976, Japanese community TV stations in the United States started running subtitled giant robot cartoons, such as *Getter Robo*. These stations had been running Japanese cartoons beforehand, but their previous broadcasts were aimed at very young children. Thanks to the availability of VCRs, science fiction and comics fans could record these new shows and show them to their friends.

Fred Patten, founder of the first anime club in the United States, described his experience in detail. Patten's first exposure to anime occurred at the Los Angeles Science Fiction Society (LASFS) in 1976. During one of the weekly meetings, Patten met up with another fan who was an early adopter of Sony's Betamax technology. The fan said, "You've got to look at this recording I made of this Japanese science fiction animated cartoon," and proceeded to show it at one of the society's meetings.

Over the next year, the fan brought a number of recorded Japanese giant robot cartoons with English subtitles to the science fiction club. Additionally, several other fans recorded shows from Japanese community TV and showed them at various fan events. At the time, fans were amazed that the Japanese cartoons depicted so much more violence than cartoons in the United States. A standard plot device in the Japanese cartoons, for example, was that the hero's father had been killed by the villain, that entire cities were blown up, and that the hero had to survive in the aftermath of a ruined world.¹⁹ Whether or not these cartoons showed any graphic bloodshed, it was obvious that hundreds of thousands of people were supposed to have been killed. In American cartoons from 1976-1980, no one was ever hurt in even the so-called action-adventure, or superhero, cartoons. Villains in American cartoons could do little more than make a few ugly faces.

In 1977, a small group of fans, Patten included, decided that they liked the Japanese cartoons so much that they should found a separate club so that they could watch them on a regular basis, instead of watching them at odd hours at a general fan party. At these fan parties, it was common for a proponent of a Japanese cartoon to propose to watch it, but he—usually he at the time—would be voted down by the majority who preferred American fare. In May 1977, these fans started the

Cartoon/Fantasy Organization (C/FO), meeting regularly on the third Saturday of each month.

In November 1977, fans from the C/FO in LA started corresponding with other Japanese animation fans around the country. They found out that while they were showing Japanese cartoons in other cities, the cartoons were not always the same. Los Angeles and New York City were getting different sets of cartoons: New York was getting *Cyborg 009*²⁰ and *Galaxy Express 999*,²¹ for example, which were not being shown in Los Angeles. Consequently, the fans started trading tapes back and forth.

At that time, many LASFS members maintained pen pal relationships with other science fiction fans around the world. Most of them were in English-speaking countries, but a few of them had correspondents in Japan. As a result, C/FO members began to trade videos with Japanese fans who wanted *Star Trek* and *Battlestar Galactica*. C/FO members were interested in the Japanese science fiction cartoons that were not being shown in Los Angeles television, and it was a fortunate coincidence for the fans that both the United States and Japan used the NTSC system for broadcast, so that video tapes could be played in both countries.

Of course, the tapes that the fans received from Japan were not subtitled at all: fans had to watch them in pure Japanese. By the late 1970s, the majority of Japanese cartoons remained simple enough so that the average viewer could discern their plots

just from watching their visuals, such as in *Space Battleship Yamato* (1974) and *Space Battleship Yamato 2* (1978). Because there was no other alternative, fans reported that they were happy enough to watch untranslated shows. By 1979, fans and clubs, who had recently established an independent identity from the science fiction movement, began using the term *anime*.

C/FO was not the only anime club in existence by this time. For instance, there were very big fan clubs in Boston, in New York, and in Philadelphia. There was a mobile fan club on the East Coast that called itself the Gamelan Embassy, named after the antagonists from *Space Battleship Yamato*. The Gamelans were devoted to showing Japanese animation at the science fiction and comic book conventions in the New England and Mid-Atlantic regions. Starting in 1980, they would show anime programs in one of their hotel rooms at science fiction conventions. The Gamelans put out fliers throughout these conventions, reading, "If you want to see Japanese animation come up to room XYZ," and, "We're going to be showing it all night long."

3.3. Japanese Enter and Abandon the Market

Throughout this period, it was considered socially acceptable to show whatever Japanese animation anybody could get on videotape without trying to get permission from the Japanese companies, because almost none of the Japanese studios had offices in America. The few that did—Toei Animation, Tokyo Movie Shinsha (TMS, now TMS

Entertainment), and Tatsunoko—automatically said *no* because their local representatives did not have the authority to permit those uses. Furthermore, they were not going to take the trouble to ask Tokyo if a group of American teenage fans could show one of their cartoons to other fans for free. The representatives in America knew what the answer from Tokyo was going to be: *absolutely not*.

At this time, Patten became officially involved with these animation studios. This section describes Patten's involvement in detail, revealing that the Japanese were unsuccessful in accessing the American market because they perceived that the barrier to entry was too high.

In 1978, Toei Animation established its first regular office in North Hollywood. Toei launched its office to try to promote its animation in the West, after nearly a decade of inactivity. Toei discovered the C/FO and asked if its members could help them do some marketing research. Toei provided merchandise for test marketing at the San Diego Comic-Con, where Patten ran the first American fan convention dealer's table, replete with anime merchandise. Toei provided a sample of what they considered their boys' and their girls' TV programming. *Captain Harlock*²² dominated the boys' material, and *Candy Candy*²³ dominated the girls'. The boys' merchandise sold very well, but almost no one was interested in the girls' materials. Mrs. Hozumi, a Toei representative, also brought 16mm reels of the untranslated pilot episodes of a number

of their TV programs of that time: the first episode of *Captain Harlock*, the first episode of *Captain Future*,²⁴ the first episodes of their giant robot cartoons, and a few first episodes from their girls' cartoons. Fans were fascinated with how different these cartoons were from American offerings. Hozumi took copious notes on everything that happened at the convention, which she sent back to Tokyo.

Back in Hollywood, Tatsunoko in 1979 told fans that, "We are aware that you American fans are having screenings of some of our cartoons without getting our permission, and we cannot really allow you to do this officially. By the way, though, we would like some of these cartoons to be shown to Hollywood executives. Could you show them your copies of these cartoons?" Japanese studios—at least Toei, TMS and Tatsunoko—were very obviously aware that fans were engaged in unauthorized distributions and screenings, but their feelings were very mixed. While they could not support the fan activity in principle, as evidenced by their unwillingness to license these rights, they knew that fans were not profiting from their activities, and that the studios were getting free publicity out of it.

The next year, TMS provided a subtitled 35mm print of *Lupin III: Castle of Cagliostro* for showing at the 1980 World Science Fiction Convention in Boston, Noreascon II. Patten, in concert with convention volunteers, created survey forms for the screening. The survey forms asked questions such as "How did you like this

movie?" and, "Do you think that this movie would be popular with the American public?" Patten urged viewers to fill out a form before they left the screening; once completed, he sent them back to TMS.

By 1982, however, the Japanese studios finally realized that they were not going to succeed in the American market. There was one exception: in an incident quite unrelated to Toei/TMS/Tatsunoko, the endearing *Sea Prince and Fire Child* (Japanese *Syrius no Densetsu*, or *The Legend of Syrius*, 1981) by Sanrio Communications was licensed to RCA/Columbia Pictures Home Video for a direct-to-video release in 1982.²⁵ While this release was obscure, it remains memorable among its few American fans. The last known commercial push came from Toei Animation when it was trying to sell its first *Galaxy Express 999* theatrical feature to the major American movie studios. Toei again recruited C/FO members to help send out invitations to Hollywood studio representatives for a test screening in Burbank, about two blocks from the Warner Bros. studio. However, no Hollywood executives attended the screening.

By the end of the year, Toei sold *Galaxy Express 999* to Roger Corman's New World Pictures, which had gained infamy as a low-budget exploitation company.²⁶ New World Pictures significantly altered *Galaxy Express 999*, destroying its intricately woven story in place of a failure aimed at younger children. Toei was highly disappointed. They told the C/FO, "Thank you for all the help you've given us. We've decided we do

not want to follow this any further at the moment.” They closed their American office and returned to Japan.

For most of the 1980s there was no longer any real contact between the Japanese studios and the American fans, with a few minor exceptions. In 1987 a Japanese company called Gaga Communications, a large, Japanese theatrical and TV marketing company,²⁷ had promotional responsibilities for a number of Japanese movies. In 1987 they held promotional screenings at LA comic book conventions for a number of movies and original animated videos (OAVs). *The Guyver* and *Wicked City* were among them. In addition to showing these titles to fans, they had invited a number of Hollywood studio representatives to come to the screening. Their clear intention was to surround these representatives with fans whom they hoped would be very enthusiastic, so the representatives could see how popular these were with American teenagers. Again, the effort proved fruitless.

However, in 1988 Gaga was at least successful selling *Wicked City* to Streamline Pictures, the first anime specialty company, started by Carl Macek and Jerry Beck. Macek and Beck were very aware of Gaga Communications and negotiated with them regularly. A discussion of Streamline continues, however, later in this analysis (see page 67).

3.4. Fan Activity Increases

One year after the Japanese backed out of the American market in 1982, an American, Frederick L. Schodt, would publish his seminal work *Manga! Manga! The World of Japanese Comics*,²⁸ documenting for the first time in English the vitality and ubiquity of manga in Japan. By this time Schodt was no foreigner to Japanese ways: he was one of the few non-military Americans studying Japanese in the 1970s, and through a series of twists and turns, managed to strike up a friendship with Osamu Tezuka after surprising the comic author with his flawless Japanese.²⁹ Dr. Tezuka had a few choice words for the foreword of *Manga! Manga!*, speaking on the topic of the slow acceptance of manga outside Japan:

This is why Japanese animation—which is dubbed and doesn't confuse the reader by 'reading' in one direction or another—has been able to open the door for Japanese comics overseas where printed materials have failed. Having solved the problem of language, animation, with its broad appeal, has in fact become Japan's supreme goodwill ambassador, not just in the West but in the Middle East and Africa, in South America, in Southeast Asia, and even in China. The entry port is almost always TV. In France the children love watching *Goldorak*. *Doraemon* is a huge hit in Southeast Asia and Hong Kong. Chinese youngsters all sing the theme to *Astro Boy*.³⁰

Dr. Tezuka's words were very true from what he knew in 1983. As he would write these words, however, a very different "entry port" was emerging in the West: the networks of organized anime fandom.

After the Japanese companies backed out of the American market in 1982, there were no moral or legal forces to discourage fans from copying and distributing tapes amongst themselves. From the late 1970s to the end of the 1980s, there were movements to establish national and international fan clubs with chapters in a number of cities. The Cartoon/Fantasy Organization was the first of these. There was also the Earth Defense Force, which was mainly a *Star Blazers* (the American release of *Space Battleship Yamato*) club with some interest in other programs. These clubs all had chapters in a number of cities; the theory behind them was that they could promote anime much more efficiently, and could get more anime for the chapters in different cities to watch, if the chapters united through a central organization.

The visual quality of tapes started deteriorating as more fans developed in America because fans started making multi-generation copies of the videos. Visual quality remained high within the first year after C/FO members began to receive tapes from people in Japan. By the early 1980s, however, some of the copies C/FO members reported were 15th to 20th generation copies, which were extremely poor. It became common for fans to compare video quality between their tapes. For example, one fan might bring his copy of the first *Urusei Yatsura* tape, somebody else would bring his copy of the same one, and they would compare them and see if one was of noticeably better video quality. The better quality tape would eventually be shown.

Many fans also experienced ideological conflicts as the fandom grew between the early 1980s through the early 1990s. Patten reports, for example:

I got into some pretty bitter arguments with some fans in the early 80s [within the C/FO] that thought we should not try to promote Japanese anime, that we ought to keep it a small select group, you know – neat stuff that only we were aware of. I have always disputed it.

In 1985, the Gamelan Assembly announced that they were dissolving because anime was now popular enough that conventions were scheduling their own official anime rooms. They had achieved their purpose, so they no longer had to do it themselves.

An overwhelming majority of fans, however, felt that anime should expand to more segments of the American public, even if that meant a radical change in the constitution of the fandom. A few fans, for example, began to write translation booklets to accompany untranslated anime programming at clubs and conventions. A translation booklet would usually be twenty-five to thirty pages with the entire dialogue for a full length movie or a batch of episodes. Translators would publish the booklet in fanzine format, *i.e.*, as an amateur-produced magazine written for a subculture of fans.³¹ The booklets sold for \$2 or \$3 per copy to recoup the translator's costs of production.

The first well-known translation booklet presented the text in Rumiko Takahashi's *Urusei Yatsura* theatrical feature *Only You*, produced by Toren V. Smith in June 1985.³² Anyone who was really interested could try to read the booklet and watch the movie at the same time. There were at least three or four other writers of translation

booklets: one of whom was located near the Great Lakes, a couple on the East Coast, and one David Riddeck of LA. Toren Smith eventually moved from publishing these booklets to starting up Studio Proteus, a company that went on to do professional translations for American comic book companies. Along with other anime fans, David Riddeck started up US Renditions, a brief-lived anime specialty company.

Plot synopsis booklets also existed: each booklet contained up to a full page synopsis of the action in an anime film (the most common) or the episodes in a TV series. These synopsis booklets were more common at some of the science fiction conventions in the mid-to-late 80s that had regular anime rooms, largely because of an identical practice among science fiction fandom. A couple of conventions—Balticon, for example—would publish these booklets of plot synopses, some of which totaled over a hundred pages. Some fans took the booklet format even further, publishing a comprehensive guide to *Space Battleship Yamato*, covering its original Japanese version along with its American *Star Blazers* counterpart.

Translators and compilers of these books considered their work the American equivalents of *roman* albums and other anime specialty books that were being published in Japan. Called by the same term in Japanese, *roman* albums are compilations of production stills and information from various anime; they are highly prized among collectors. Authors of translation and plot synopsis booklets were interested in more

than the \$3 per book: they wanted the prestige within the anime fan community of publishing something that all American fans would want. The practice of publishing booklets continued for at least five years, until fansubbed and commercial anime became more readily available.

Starting around 1986, a number of fans wanted to build up a professional anime magazine presence in the US that they hoped would approach the number of magazines about anime that existed in Japan. For instance, Rob Fenelin of New Jersey was part of a group that wanted to publish the American equivalent of *Animage*, *Newtype*, and other monthly professional Japanese anime magazines. Fenelin published three or four issues of *Animezine* from New Jersey; two fans on the West Coast named Trish Ledoux and Toshi Yoshida published *Animag*, which ran twelve to thirteen issues.³³ *Protoculture Addicts* began in Montreal. Most of these magazines appeared very professionally published,³⁴ and most of them contacted the Japanese studios to get professional-quality graphics along with permission to publish. However, they were all such small scale activities that most could not afford to continue for more than a few issues, if they sold issues only to the fans. Getting newsstand distribution was, and would remain, extremely difficult for a small fan group. With the exception of *Protoculture Addicts*, which grew very slowly over a number of years, most of these magazines published only half a dozen to a dozen issues. It would not be until Viz

started up with *Animerica* (1992) with the Japanese mega-publisher Shogakukan behind it that a regular American anime magazine would be established. Toren Smith, David Riddeck, and others in the mid 80s wanted to take fan projects beyond the fan bases and turn them professional; Trish Ledoux and Toshi Yoshida ultimately succeeded with *Viz* and *Animerica*. For the other two, publishing translation booklets turned out to be a good starting point.

3.5. Anime Importers Fail to Release Quality Material

Attempts by the fans to convince the 1980s video and movie industries to release Japanese animation were consistently turned down flat. The only exceptions were a small handful of B-grade movie companies that would buy Japanese cartoons with the express intent of carving them up into “kiddy” cartoon movies. When Roger Corman obtained the rights to *Galaxy Express 999*, for example, he did more than “camp it up.” In another instance, in voice dubbing *Captain Harlock*, New World Pictures gave Harlock a John Wayne accent.

Another tragedy of the 1980s was Celebrity Home Entertainment’s release of *Revenge of the Ninja Warrior* (1985, Japanese *Kamui no Ken*, better known as *Dagger of Kamui*), which was fortunately picked up and given a proper treatment by AnimEigo after its original license had expired. *Kamui no Ken* was a sort of samurai/ninja story set during the transition of the fall of the Tokugawa Shogunate and the re-establishment of

Japan under the Emperor Meiji in 1868. Celebrity Home Entertainment tried to turn it into a science fiction adventure “set on a far away planet,” even though Jiro, the main character, eventually travels to America and meets Mark Twain in Virginia City, Nevada. Celebrity Home Entertainment made no attempt to be faithful to the Japanese original; they just rewrote the script however as they wanted.

Perhaps the most notorious example of rewriting, however, is the revisionist *Warriors of the Wind* (April 1986), based upon Hayao Miyazaki’s *Nausicaä of the Valley of the Wind* (1984). New World Pictures cut a half hour out of it; they cut expenses wherever possible and changed most character names. Both Hayao Miyazaki and Isao Takahata were appalled. In 1992, Takahata said of the edited version:

It is absolutely horrible! They did an enormous and aberrant censorship; they cut Hisaishi’s pieces of music, [not to mention] the changed dialogues. It was a great error of Studio Ghibli and we haven’t given broadcast rights to foreign countries since, and we’ll never again give such rights without an attentive examination of the conditions beforehand. For that matter, the international rights for *Nausicaä* given to the U.S.A. will be over in 2 or 3 years. All these movies are grounded strongly in Japanese culture and are not conceived with an eye towards exportation. Censoring them is worse than betraying them.³⁵

These edits, however grievous, were no worse than most of the non-Disney animation movies that Americans could see at that time. These animations were universally of poor quality, whether somebody else’s adaptation of a Japanese animated feature or an animated feature that was simply made cheaply in the first place, from

Fritz the Cat to the French movie *Fantastic Planet*. *Fantastic Planet* had some intellectual appeal; using an *avant-garde*, futuristic animation style merely hid the fact that it employed a very limited animation style. In general, however, if it was animation, then it was for children, so producers assumed that they needed to “dumb down” the plot, whether the subject of mutilation was *Warriors of the Wind*, *Star Chase of the Legend of Orin*, the *Felix the Cat* theatrical feature, or something else. Even with the editing that New World Pictures did to *Warriors of the Wind*, it was probably superior to many others: it was poor only in comparison with the original Japanese version.

Despite New World Pictures’s poor handling of *Nausicaä*, fans were inspired by Miyazaki’s original, as was increasingly obvious according to fan evidence from the period following 1984. Patten recounts that, because of *Nausicaä*’s seminal influence, fans organized the first anime tour to Tokyo in summer 1986 in order to see Miyazaki’s *Laputa: Castle in the Sky*, as well as the landmarks that they had only glimpsed in anime. Copied videos of the original *Nausicaä* had come over to America; these videos were quickly disseminated throughout the fan base. When the American anime companies started up, the first anime that all the fans wanted were Miyazaki’s movies: evidence of this is provided throughout Usenet archives and by Patten himself. He recounts, “I know that when I worked for Streamline in the beginning of 1991, we were constantly

getting letters and even a few phone calls from fans saying ‘why aren’t you getting Miyazaki movies? This is what we really want to see.’”

The first theatrical distribution right that Streamline Pictures acquired was a one year license for *Laputa*. Streamline was constantly renting *Laputa* out for college and art house screenings. At the end of the year Streamline wanted to renew the license, but Tokuma would not allow it. Parallel to maneuverings in the previous decade, Tokuma licensed *Laputa* to Streamline so that the former could test-market the film at Streamline’s expense. Tokuma, like its predecessor anime companies in the 1980s, was not interested in dealing with small companies: Tokuma wanted to strike a deal with one of the big American studios, which they finally clinched with Disney in 1996. Whether ultimately fortuitous or not, one fact is clear: Tokuma, like all previous Japanese studios, was unwilling to invest substantially in the American market without a guaranteed payout.

3.5.1. The *Robotech* Exception and the Second Wave

In spite of the aforementioned botched efforts, anime made at least one faithful—and markedly successful—foray into the commercial sector in the mid 1980s. We now discuss the motivations of Carl Macek, the producer of *Robotech*. In 1981, Macek ran a comic book and movie memorabilia specialty shop in Orange, California. Macek also assisted with marketing and promotion for the movie *Heavy Metal* during this period, leading him to research animation that was not oriented toward the children’s market.

At the same time, there was an anime club starting up in Orange: the Orange County branch of the Cartoon/Fantasy Organization. They needed a new meeting place, and Macek agreed to let them meet once a month in his shop. Many of the members were regular comic book customers of his. As he also sold animation cels from American movies, he was always interested in being friendly with the fans as a good way to attract additional customers. These activities introduced him to Japanese animation: after awhile, he started importing some Japanese cels from Tatsunoko to sell in his shop.

Macek became as much of a Japanese animation specialist in America as existed at that time, leading him to Harmony Gold to help create *Robotech*. Harmony Gold representatives contacted Macek, informing him that they had worldwide rights outside Japan to a number of Japanese cartoon TV series. They had bought the rights mainly to sell in Europe and Latin America; they planned to dub these anime into Italian, French, and Spanish. They wanted to try and capitalize on their investment in America, but they were not sure how to go about it. During this period *He-Man and the Masters of the Universe* was extremely popular with its 130 episodes.³⁶ All of the syndicated TV stations in America were clamoring for similar shows with high episode counts going beyond sixty-five episodes. Unfortunately, most of the Japanese series at the time were too short.

Macek pointed out that Harmony Gold already had the rights to *Macross*, which was associated with Tatsunoko Productions, and that Tatsunoko had other science fiction programs that were similar in nature and that had been done in a similar art style. Harmony Gold then replied that if Macek took three of these and edited them together, he could make a single series out of it. This possibility led to his association with Harmony Gold and with *Robotech*, which made him even more of an anime expert. He began promoting *Robotech* by attending a number of science fiction conventions, talking to the fans, and finding out what the fans wanted. Through these events, he became aware that there was a growing cult interest in anime among the adolescent and young adult public, one that was simply being ignored by the entertainment establishment. The entertainment executives at the time mistakenly inferred that if a product was a cartoon, then it must be for young children in order to sell well; since Japanese cartoons were much too violent and complex in plot for young children, they would not sell well. Based on his experience with anime fandom, Macek edited *Macross*, *Orguss*, and *Southern Cross* into *Robotech*, which turned out to be a resounding commercial success.

Macek quickly gained notoriety in the fan community for the serious re-editing required of the *Robotech* saga, although he has asserted that the decision to combine the three series was Harmony Gold's (ultimately, based on the market at the time).³⁷

Nevertheless, we argue that *Robotech* was markedly more faithful to its original anime series than other commercial attempts during this period: it kept in, for example, the pivotal love triangle between Hikaru Ichijo (Rick Hunter), Lynn Minmay (Lynn Minmei), and Misa Hayase (Lisa Hayes), the first love triangle on both Japanese and American animated television. Furthermore, we note the profound connection between *Robotech* and Macek's involvement with early American fandom: the creator of this pivotal "wave" of anime fans was none other than a fan himself who relied extensively on the fan network that developed at that time.

3.6. C/FO at Its Height; C/FO in Japan

We return to a discussion of the Cartoon/Fantasy Organization during the height of its activity between 1985 and 1989. By this time, the C/FO had over three dozen chapters throughout America; it even maintained a chapter called C/FO Rising Sun near an air force base in Japan. At this point, the C/FO had established a massive official system for the distribution of untranslated tapes among its member chapters. In 1985, many of the C/FO's videos not acquired through pen pal relationships or Japanese family members were acquired through Little Tokyo in Los Angeles, *Nipponmachi* in San Francisco, the Japanese district of New York, and other places that sold Japanese import goods. These locations would have little "Mom and Pop" video stores that sold or rented original Japanese videos. In addition, some store owners would request their

relatives in Japan to record and send Japanese shows to them, at which point they would offer the tapes for rent. Fans would purchase or rent these tapes, copy them, and circulate them in the anime fan community. Many of these tapes would have all of the Japanese commercials and station break parts intact between segments of anime programming. Despite the well-developed network, in the mid 1980s there emerged a dichotomy among the small anime fandom, where there were “haves” and there were “have-nots.” Access to anime became a matter of *who you knew* in order to gain access: once you knew the right people, however, it was easy to access any anime available, quality issues aside.

In Japan, however, another fan network was forming led by James Renault³⁸ and the fans at C/FO Rising Sun. Renault became involved with anime growing up overseas. His father was a military man: throughout the 1960s and 1970s he was stationed at Tachikawa airbase, and later Misawa airbase, in northern Japan. Renault was cared for by a Japanese nanny most of the time in his youth, during which he watched a lot of Japanese television. He developed relationships with Japanese pen pals, to whom he would send tapes of American programming after his family became one of the first families to own a Betamax on the airbase.

Renault recounts that, in the late 1970s, he traded tapes frequently with pen pals back in America. Even if there were tapes that he did not intend to watch, his family

was able to trade them to other military personnel, or to Japanese contacts. For example, followers of *Dallas*³⁹ had no way of following that series while on Misawa airbase; Renault was able to get the most recent tapes of “Who Shot JR?” to others on the base, giving them a connection to the mainland U.S. that they otherwise would not have.

Renault returned to America to finish high school and college. While in America, he met people like Patten, Lori Eason, and the Hanisons in San Francisco: all were serious archivists by the early 1980s. During the early 1980s, Renault watched the C/FO grow and expand. He had little to do with American fandom at this time; his main source of anime was through his pen pals in Japan, who would periodically send him interesting tapes. He would occasionally “sit down and binge watch for hours at a time,” but would not watch every day, nor would he watch every tape he had.

As it turned out, Renault had *many* Japanese pen pals. In fact, the majority of his pen pals eventually went into the industry itself. They were considered odd by Japanese standards: they wanted to do animation, they wanted to do art, they wanted to do television, they wanted to direct, and they wanted to do movies, so they did. His pen pals included artists like Kenichi Sonoda, Monkey Punch (who was a good friend of Renault’s father, as both were avid jazz collectors), and Go Nagai. Through these animators, Renault met many other people who were studying under them, or

otherwise were involved with them in their studios. Through these connections he acquired most of his anime directly from “the source.”

Renault joined the military in 1986, and had the great fortune to be sent back to the Misawa base at which he was raised. He resumed contact with many of his old pen pals and started sending more tapes, since he was in the city and went shopping daily. He reentered organized fandom. Later that year, he met a gentleman by the name of Joshua Smith⁴⁰ who was the president and chief operator of C/FO Rising Sun. The chapter consisted of six or seven die-hard fans who were also all military people. This group included Renault, Smith, Hillary Hutchinson,⁴¹ Ronald Davidson,⁴² and a few others. Hutchinson served as the primary contact with C/FO San Antonio, which had a large following at the time. Davidson would later be a key player in several anime conventions throughout America.

Renault would drive from Misawa to Tokyo every weekend to shop, to drop “goodies” off to people in studios, to build up relationships and find out what was going on in the industry, and to follow up on things he was reading in Japanese animation magazines. For instance, he uncovered much of the production data of the original *Bubblegum Crisis* series as it was being developed. He learned how anime were put together, a process that he would later describe in his C/FO newsletter columns. Through his methods, news of what was being developed would get back to the United

States before most of the anime magazines were being published in any form. As with the aforementioned translation booklets, C/FO newsletters were perhaps the most insightful publications that were being distributed before the anime magazines, because in them fans would get the synopses of all of the latest shows, would get colorful art, and would get other information about fan gatherings, sci-fi shows, and conventions where anime was being screened.

3.7. C/FO Fan Distribution

Many of the people involved in the early days of the fan network who were copying and sending tapes were affiliated with the armed forces. If anime came from Japan, and it was not from a Japanese national, the person distributing it was *probably* in the American military. The few nonmilitary American nationals in Japan were usually conducting business; with a few notable exceptions (*e.g.*, the translator and author Fred Schodt), they did not come to Japan because of its popular culture.

Tapes sent by military personnel were sent through military carriers, not by international mail. Consequently, the postal service marked all US-bound mail with the postmark, "San Francisco, CA, APO." Many C/FO members thought that members in the Rising Sun chapter were living in San Francisco, because Rising Sun members would send parcels back to California that would arrive in one day. Instead, tapes were placed on a cargo planes bound for Travis Air Force Base.

Led by Renault, C/FO Rising Sun applied American military distribution techniques to their operations. Smith worked in full time file line and Renault worked part-time in supply. Renault applied his experience to produce tapes on request, allowing him to copy over forty tapes per week. When Renault worked with the fansubbing group Teiboku Fansubs in 1993,⁴³ he again applied his logistics knowledge to Teiboku's distribution practices. He taught these methods to other fansubbing and distribution groups so that they could maximize their tape throughput.

The MIT Anime Club's archives confirm Renault's account. A variety of tapes, including *Dirty Pair TV Episodes 1-13, 14-26*, and *OVA's 1-10*, were uncovered: based on Renault's information, we were able to confirm the source—an air force base in southern Japan with ties to C/FO Rising Sun—and approximate date—1985 to 1986—of the TV recordings, given that *Dirty Pair TV* was not aired on Japanese TV or distributed on video until well after 1990. The chain of distribution for these tapes would include the anime club at University of Texas at Austin, which had direct distribution ties to C/FO Rising Sun, and of which the MIT Anime Club founder is an alumnus. The chain also may include C/FO San Antonio, which held formal ties to C/FO Rising Sun and informal ties to UT Austin's anime club. These data, coupled written accounts and oral interviews, provide substantial evidence that C/FO distributed anime materials widely throughout an international fan network.

C/FO's materials, however, remained in untranslated Japanese. The tapes were essentially the only anime available in America, with the limited exception of anime broadcast by Japanese community television. Reported Renault:

People were desperate for whatever they could get, and part of what I would do, and part of my job when I was working as the chapter director for C/FO Rising Sun was to provide synopses for all the shows we sent back. So, you had an idea of what was happening with the specific show. Even if it wasn't a translation, it was just quick synopsis so that people knew what the storyline was when they picked it up and started watching it. It was actually very useful. Every now and again we'd be able to dupe one of our Japanese hangers-on to actually translate an episode, but that usually took a lot of doing, usually a lot of bribery of alcohol or something a long those lines!

Renault described C/FO's motivation for the mass copying of tapes. He explained that, back in the 1970s and 1980s, there *were* no legal ramifications because no parties had any interest in the ramifications. At that time, there was no American anime industry. "Every now and again, somebody would pick up a license and bring a show to America which they would dub over and change and so on. Well, we weren't all that particularly interested in watching that particular show, but we wanted to see what the original looked like. That was our motivation. Back then, the motivation was just to get anime to the masses, and to that end, we spent a lot of money and postage!"

Tape fidelity remained a major drawback to this distribution system, suggesting that exposure to anime was this system's chief economic and social advantage. Viewers

of anime in the mid-to-late 1980s suffered through Japanese commercials, shaky video, and the ever-present language barrier.

Anime bootlegging—that is, the mass copying of anime tapes for profit—was virtually nonexistent in America at this time: some people tried, but their operations quickly collapsed because, with one letter, groups like the C/FO would be delighted to send the untranslated Japanese materials for free. Bootleggers could not match the C/FO in terms of quality, price, or selection. C/FO chapters could obtain any show that anybody wanted, and they could get the show for the minimal cost of postage.

Ultimately, fan distribution through C/FO's efforts, particularly C/FO Rising Sun, sought to keep anime free, but keep anime controlled within the C/FO organization. C/FO chapters only sent material to people who really wanted anime and who would share it with other close friends, as least as far as the C/FO could determine. C/FO chapters also adhered to their “free and controlled” philosophy when they engineered their arrangements between clubs. *Show it to all of your friends in order to promote Japanese animation.* Assuming that a fan had access to the network, he or she could access as many anime and related goods as were available.

3.7.1. Fan Networks as Proselytization Commons

In terms of the theorist Yochai Benkler,⁴⁴ the physical layer (the postal system) operated as a commons for many types of media, but both U.S. law and the logical layer (the C/FO organization) restricted access to the physical layer's contents. The logical

layer (the C/FO organization) operated under control, and the content layer (anime) operated as a commons directed towards a particular cause: to get more anime to the masses. We dub the anime network that existed during the 1980s a *closed proselytization commons*. Like Lawrence Lessig's characterization of the early Internet as an innovation commons,⁴⁵ the proselytization commons offered a world of creativity—a world of *difference*—to those who had access to it.

This commons of anime distribution, however, existed several years before the widespread adoption of the Internet. In succeeding years, many would build their fortunes on this proselytization commons. In practice, the commons of the mid 80s was closed: it did not embrace the end-to-end principle of provider neutrality.⁴⁶ C/FO built a model of control into the commons, assuming that *it*, the C/FO, controlled access to the largest flows of anime throughout the United States. This arrogance proved to be its downfall, leaving the next generation to the construction of a new, *open* proselytization commons.

3.8. Birth of Fansubbing; Collapse of C/FO

The very first known fansub was documented at C/FO Rising Sun, sent to that chapter by the late Roy Black of C/FO Virginia in Blacksburg. Black sent C/FO Rising Sun a third-generation copy of a fourth or fifth generation copy of a *Lupin III* episode that someone had genlocked with a Commodore Amiga and had subtitled, scene by

scene, so that the translator could translate the entire episode. The video was very choppy and grainy: its picture quality had been completely bled out from successive copy generations. Nevertheless, the tape represented the first faltering steps of a revolution leap: for the first time, a fan could watch an episode and fully understand what was going on.

The *Lupin III* fansub turned out to be an anomaly. The technology to fansub was extremely expensive for an average fan (on the order of \$4000 in 1986), and the time commitment to subtitle an episode would stretch to over one hundred hours. C/FO members did not expect to see more fansubs come out in the near future after 1986, and to their credit, they never did. Nevertheless, they reported being “blown away at somebody having that level of patience. It was kind of like giving the caveman fire. It was just, now that we have it, we have to figure out *how* we’re going to put it to use.”

Quite unrelated to the fansubbing incident, however, C/FO began to show wane by the late 1980s. In late 1988, established chapters refused to trade or communicate with one another due to a great deal of politicking: if a group had a larger membership or an item of value, the group would withhold items from another group to get something else that they wanted. After awhile, many of the chapters fell into a deadlock, which one fan described as a “well, we’re not going to talk to those guys since they have nothing of value to us” stalemate.

In 1989 a power struggle ensued at the very top of the C/FO. Fred Patten had basically done everything that he could do as the C/FO's leader: he led the group for over a decade, and became weary from his long tenure. Patten felt that he should step down for the organization and for anime to move to the next level. Many accused Patten of disloyalty because he began to write articles for general magazines, rather than for the perpetually behind-schedule C/FO fanzine. Patten reasoned that if the purpose of his fan involvement was to proselytize anime and make it better known in America, it would be certainly advantageous to publish his work in a popular culture magazine instead of a club zine.

In other words, the high priest of the closed proselytization commons recognized the value of an open one, but the custodians of the closed commons branded him a freethinking traitor.

Patten stepped down amidst the fury, but he did not setup a clear line of succession. Furthermore, the slow speed of postal mail exacerbated communications difficulties, since electronic means were still out of reach of most C/FO members. Much infighting resulted, and in that infighting new leaders came to power who wanted to change C/FO operations to fit their own images. When they asserted themselves, many members balked, provoking a high volume of mudslinging and name-calling.

Although The C/FO *promised* unfettered access to anime within its organization, access into C/FO's networks proved more difficult than one might expect. To gain access, a group had to be a member organization, and the group had to receive tapes through C/FO's central command, which originally was in Los Angeles, but later moved to San Antonio. The C/FO would bring in new charter members, but then after awhile, Central Command stopped sending tapes to those charter members on request, which caused much strife. Many members complained, "well, I joined your organization, I paid the annual dues, and I'm not getting the things were promised me, so why should I pay the annual dues?"

The late 1980s became a rough time for fandom because of the increased difficulty in obtaining materials from these established groups, particularly from C/FO San Antonio, C/FO Denver (C/Food), and C/FO Sacramento. Most of the chapters seceded from the C/FO, which ceased to exist as a conglomerate organization in July 1989.⁴⁷ In 1990, C/FO would be referred to as "the Collapsing Fan Organization" in infamy of its tortuous demise.⁴⁸

3.9. New Clubs, New Fans, New Fansubbing

Right after the C/FO cratered, technology changed and fansubbing became accessible to the public. The rise of fansubbing has little relation to the C/FO's demise: indeed we concur with Julie Davis at *Animerica*, who argues that the technological

innovation of affordable subtitling permitted both the growth of fansubbing and the practicality of starting up professional anime companies. Had AnimEigo, U.S. Renditions, and other companies tried to start before 1986 or 1987, they would have quickly folded due to the expense of producing subtitled videotapes. Our evidence supports this assertion: fansubs and anime companies started at about the same time. This analysis reveals a critical dependency, however: companies were equally dependent on the fan base as they were on the rapidly declining price of technology.

It is very difficult to determine whether the first widely available anime was a fansub or commercial release: that determination rests on the definition of “widely available.” There were a few poorly documented ventures into subtitling in the 1980s: an unconfirmed report of *Nausicaä* shown subtitled at the Indianapolis Comic Book Show (August 1989),⁴⁹ the debut of a subtitled *Bubblegum Crisis 6* shown January 20, 1990,⁵⁰ and a subtitled version of *My Neighbor Totoro* shown January 23, 1990,⁵¹ followed in the upcoming months with *Project A-ko* and *Etranger*. AnimEigo debuted a sneak preview of *MADOX-01* at the 1989 WorldCon on September 1-2,⁵² but it would be until April 4, 1990 that *MADOX-01* actually reached video distribution.⁵³ It is known that Robert Woodhead and Roe Adams of AnimEigo subtitled *Vampire Princess Miyu OVA 1* in late 1988,⁵⁴ but this “fansub” never saw distribution, at least not until a commercial release in 1992. Furthermore, US Renditions beat AnimEigo by three months with their

January 1990 releases of *Gunbuster Vol. 1* and *Dangaio Part 1*, both professionally subtitled.⁵⁵

After reviewing the evidence, we conclude that the earliest, widely-distributed release was the first two episodes of *Ranma ½*, fansubbed under the Ranma Project which started at BayCon in San Jose, CA in May 1989.⁵⁶ Members of the Ranma Project would buy Japanese laserdiscs and subtitle from them, resulting in a clean, pristine copy. Although Usenet and interview sources concede that other subtitling projects existed, the Ranma Project represented the first coordinated subtitling effort that successfully distributed its tapes throughout the country and exhibited its work at AnimeCon '91 over the hotel's video system.⁵⁷ All references to previous work strongly imply that those works saw little, if any, distribution. In any case, these "fansubs" could not be distributed until the re-establishment of a fan distribution network following the demise of the C/FO.

Significantly, we find additional evidence of Japanese inaction in the Ranma Project's charter post, as well as a kernel of thought developed throughout the fansubbing movement:

> Also, are the subtitled episodes mentioned available anywhere???

No. This is where the problems [come] in.

Since we do not have the official rights to do any of these, we really cannot 'sell' these on the open market. I have given a number of copies away, with my blessing to the

[recipients] to copy the hell out of it, but this is a VERY grey area. I fully expect to either be told to stop by Kitty Films (which I would) or be sued the s\$!t out of, which would only make potential audiences over here [very] mad [...]

The reality just may be that they just don't care, period. A well known comic book writer who's spent a lot of time in Japan (come on...you should know who this is....) said that when he met with some executives in a couple of studios and let them know the 'piracy' situation [that's] going on here, they said they didn't care what went on over here. Was this because of the yen-dollar exchange wouldn't make it profitable for anything to be released here, or they just think of us as a bunch of [weird] Americans.⁵⁸

Perhaps even more remarkable was the speed of the Project's subtitling and distribution: within weeks of the LDs being released, members of the Project subtitled and distributed the episodes. While the Ranma Project was active, it managed to subtitle the first two seasons of *Ranma ½*, some *Maison Ikkoku*, and a smattering of other titles. The Project lasted through January 1992.⁵⁹

3.9.1. Reverse Imperialism

The rise of fansubbing and the rise of the anime industry paralleled other major social shifts. For example, the constitution of the fandom shifted to a large college-age base. New college anime clubs supported their anime interest: UT Anime in 1986, Cornell Japanese Animation Society (CJAS, once CJS) in variously September 1988 or late 1989,⁶⁰ Cal-Animage in January 1989, Purdue Animation in 1990, and the MIT Anime Club in September 1990, to mention a few. Owing in part to the demographic

shift and the rise of many anime-related activities in the San Francisco Bay area, Internet—particularly Usenet—usage rose dramatically among anime fans.

We remind the reader that these activities also paralleled post-Cold War globalization. Russia was already destabilizing. Soldiers who remained overseas started to return home. The telecommunications industry started to pick up. There were many world events happening all at one time, and few realized exactly what was going on in the world, let alone what was going on with this fandom: the pull of culture into a dominant America, “reverse imperialism,” in the absence of mature animated programming. Just as subtitling technology began to be readily affordable among fans, so too did frequent business trips to Japan become affordable and convenient for anime industry leaders. John O’Donnell of Central Park Media, Robert Woodhead of AnimEigo, and John Ledford of A.D. Vision were able to travel to Japan much more freely because the threat of an actual Soviet invasion was lifted, coupled with Japan’s much longer promotion as one of America’s active trade partners.

3.9.2. Organizing an Open Proselytization Commons

For the first anime fansubbers, however, these macro concerns were irrelevant: their chief aim was to spread anime as far and wide as possible. They formed, in essence, an *open* proselytization commons into which anyone was welcome. This subsection describes that early formation.

Fansubbing groups usually ran at the whim of their translators: the shows that groups subtitled were usually those that their translators enjoyed. This dependence on translators answers the ruminations of many fans during this period, “well, why did somebody do *Saint Seiya*, or why did somebody do this?” The subtitled version was produced because the translator liked that show, *not* because the market demanded it. Indeed, the Ranma Project started on the premise that since *Ranma ½* might *never* be released commercially, it was worth the Project’s efforts to translate *Ranma ½* and show it to fans.

As subtitling groups became more organized, fansubbers began to talk to one another: many of them were in college, so many of them had access to the Internet. By 1993, fansubbers (the first known reference to the videos as “fansubs” was made in March 1993)⁶¹ coordinated with one another to prevent releasing two translations for the same show; this cooperation also allowed fansub groups to monitor one another. Anime fansubbers grew from zero groups to about four between the foundation of the Ranma Project and AnimeCon ’91, then to eight groups in the following span of about six months. Numbers increased to fifteen following Anime Expo ’92, where it remained for about two years. A couple of groups folded, but then a couple of other groups took their place. The number of groups multiplied in 1993, increasing into the mid 90s.

In the earliest days (1989-1990), fansubbers served as their own distributors: they copied tapes individually to anyone who requested them. A tiered distribution system quickly replaced this model, enabling a much wider spread of fansubs. One fansubber recounts that if he could produce twelve tapes a week, he would be fine. When distribution started to really ramp up, i.e., when fans started getting Internet access in increasing numbers and started becoming aware that additional titles were available, distribution demands “exploded.”

In a few cases, the fansubbing group would establish a subcommittee, usually a single person, to manage distribution. More likely, other groups such as college-based clubs allied with fansubbers to distribute the fansubs to other clubs. Written records state, for example, that the Ranma Project and others were closely affiliated with college anime clubs. Although these groups were rarely official organs of college anime clubs, the fansub groups performed a service that provided college students with firsthand exposure to anime.

Consider William Chow of the Vancouver Japanese Animation Society, Canada, who was the first major fansub distributor. His Arctic Animation outfit sent out copies of subtitled anime as early as November 1990,⁶² and continued to distribute tapes well into the mid 90s. Chow’s advantage lay in his connections to fansubbing groups, which he made well before other distribution groups. Chow actively pursued these groups,

getting them involved in a larger network of distribution. He gained a degree of notoriety in the fan community because of his insistence at charging for tapes instead of using the SASE (self-addressed, stamped envelope) method, placing him in the eyes of some as a bootlegger. Evidence suggests, however, that Chow and other Arctic Animation associates made little if any money off of their subtling operations, and that they provided a highly beneficial in-between service for fansubbers and fans until Arctic itself was backlogged by over a year's worth of requests by 1994. Chow also distributed to college anime clubs since Arctic's first days, suggesting that he too had a provided "first-exposures" of anime to the new audience.⁶³

3.10. Conventions

The rise of clubs, industry, and fansubbing gave rise to anime conventions: gatherings where fans and newcomers alike could revel in Japanese animation and its related offerings. We consider the effects of these earliest conventions, particularly as they relate to the availability of fansubbed and licensed materials.

3.10.1. AnimeCon '91

AnimeCon '91 (San Jose) was well-attended by a lot of fans old and new who were interested in anime, but many of them expected an experience that they ultimately did not obtain. They were excited about having an anime convention, but many of them came out none the wiser because they could not understand what they were watching: most of the screening material was raw Japanese. For this reason, the Society for the

Promotion of Japanese Animation (SPJA) transformed AnimeCon '91 into Anime Expo '92 (Los Angeles), at which they planned to cater to American audiences with subtitled screenings.

An out-of-print edition of *Ä-ni-mé: The Berkeley Journal of Japanese Animation* sheds light on the motivation of at least one fan, Mike Tatsugawa: the founder of Cal-Animage and the chairman for AnimeCon '91. In *Ä-ni-mé* Vol. 1 Issue II, Tatsugawa's "Editor's Note" contains:

Japanese animation, which used to be shown in small back rooms of science fiction/fantasy conventions now has its own convention where the fans can watch their favorite movies and videos in 16mm or 35mm. [...]

What fandom is witnessing is truly a rare sight and one that we should all stop and appreciate—the transformation of a medium. [...] No longer do we have to settle for fifth generation tapes as our source of entertainment, or word-of-mouth synopses of videos. [...] If *Ä-ni-mé* had been done two or three years earlier, we wouldn't have even thought about asking the Japanese right holders for permission to print scripts to their movies. [...] Our job several years ago was to expand the Japanese animation fandom base through any means possible. Now, our task has changed. There is still a need to get more fans involved in anime, but there are more ways to do it now than at any other point in our short history. Subbing videos was great a few years ago, and in my opinion is still great today, but now we must work with the companies willing to expand into the American market [...]. It's time for animation fans to leave the cradle and start pushing harder than ever before to bring anime into the mainstream. The anime explosion is about to happen. The only question is whether we are willing to accept the results."⁶⁴

The vast majority of shows at AnimeCon '91 were licensed from Japanese licensors, but were screened without subtitles. Consider *Wings of Honneamise*, shown at AnimeCon '91. *Honneamise* is a classic anime with complex dialogue that cannot be inferred from the film's visuals; without a thorough understanding of Japanese, viewers would be totally lost. If viewers made up the story as they went along, they could concoct many different translations based on the subsequent actions in the film; of course, those interpretations would be completely wrong. To that end, reported convention executives, the SPJA discovered *why* subtitling was necessary at conventions: so that newcomers could better understand and get into anime.

There were a handful of subtitled anime at AnimeCon '91, however: the *Ranma ½* and *Maison Ikkoku* fansubs, as well as the few industry releases available, were shown. Furthermore, evidence suggests that Gainax brought a subtitled film print of the second episode of *Gunbuster*.⁶⁵ While attendance data is unavailable, written reports suggest that fans were rabid for the fansubbed material: a few fans began reporting that their first "real" anime exposure was through the *Ranma ½* fansubs.

Despite this activity, we note the continuing reluctance of Japanese companies to support American industry and fandom. Although Gainax made an official appearance at AnimeCon '91 and at certain sci-fi conventions in preceding years, Gainax's presence

was an exception rather than the rule, owing more to the pro-fan orientation of its staff than any sentiment in the Japanese industry.

Another unfortunate incident of AnimeCon '91 was the U.S. Manga Corps. screening of *I Give My All* (Japanese *Minna Agechau*), which was quickly pulled from American distribution in a snafu with the Japanese licensor, Sony. Fox TV news and the LA Times besieged the event in their desire to know about the new wave of "Japanese Pornography," perpetuating the stereotype of anime as characterized by pornographic content. Incensing fans and industry alike, the incident motivated more than a few fan groups to combat this characterization by releasing more non-pornographic anime through the fansub network.

3.10.2. Anime Expo and Anime America 1992-1993

Armed with all of these experiences, the staff of Anime Expo '92 expended significant effort securing permissions from Japanese and American companies to screen subtitled anime. For untranslated Japanese materials, AX staff secured permissions to create and screen subtitles. Harvey Jackson⁶⁶ reports these activities were the case during his involvement with Anime Expo '92, Anime America '93 (San Francisco), and Anime Expo '93 (Los Angeles). When Jackson ran programming for these conventions, he contacted all of the companies, got their permissions to screen, and explicitly asked them if the convention could have permission to screen materials subtitled. Japanese companies began to comply more readily, and since American

companies knew they were not going to have a finished product by the time the convention rolled around, they reasoned that pre-screenings would be a great way to pre-market their wares. The Japanese would give the convention permission to subtitle, so long as the American companies approved the script that the convention would ultimately use. As companies became bigger and met more of their deadlines, they began to fear the risk of a faulty script being used, and did not wish to become victims of the *comparison bug*—that is, the comparison that some fans make when they watch a sub at a convention that appears to be better than the sub that a company releases. After 1993, American companies started cracking down, limiting conventions to the raw Japanese version if they wanted to screen anything at all.

Anime Expo '92, however, had to subtitle all of its programming. Cal-Animage founder and AX Convention Chair Mike Tatsugawa, in his wisdom, realized that English subtitling was necessary to get people really interested in anime. When the convention rolled around, nearly everything the convention showed was subtitled by fans. When convention attendees discovered that local fansub groups had translated many of the convention materials, they all wanted copies. Anime Expo was not in a position to offer copies, but the various fansub groups made it known through word-of-mouth that they would be more than happy to provide copies to members of anime

clubs. This action prompted the overabundant formation of clubs in California, and particularly in the San Francisco area: many people formed clubs *just* to get access.

3.10.3. Fansubbing and its Causal Link to Licensing

To understand the repercussions of fansubbing on fandom and industry, consider the following cases. For Anime Expo '93, Kiotsukete Studios⁶⁷ subtitled all six episodes of *Tenchi Muyo!*, all three at the time existing episodes of *Ah! My Goddess*, *Ranma ½ Movie 2*, two of the *Gundam* movies, *Koko wa Greenwood*, and *All-Purpose Cultural Cat Girl Nuku Nuku*. American companies licensed many of these titles soon after Anime Expo '93: every single showing at the convention was well-attended, and people wanted to see the titles professionally released. Some of these titles were already in discussion, but there were other shows that no one in the industry had any interest in whatsoever that got picked up later.

Whether or not these fansubs actually prompted American companies to license these titles is a matter of hot debate. However, the plain facts are that anime companies in 1991 through 1993 licensed titles circulating in the fansub community with far greater frequency than non-fansubbed titles. If licensing of these titles were mere coincidence, import houses would have to have relied on the show's popularity in Japan to predict popularity with the American public. If a causation link exists, it owes to the existing popularity of anime among American fandom as measured by attendance at conventions, proliferation of clubs, consumption of fansubs, and motivations of fan-

oriented industrialists. We conclude the latter: given the universe of potential Japanese to choose to license, and the still-limited appeal of anime in the American public, early anime companies had to rely on the existing fan base, and had to grow that fan base, if they were to turn a profit. That fan base relied on the circulation of fansubs.

Conceptually, the proselytization commons shaped the commercial enterprise, not the other way around. We cite one example, and then revisit this argument in the following subsection, "Industry" (page 65).

Consider *Koko wa Greenwood* (also *Here is Greenwood*), which Software Sculptors licensed in 1996.⁶⁸ *Koko wa Greenwood* was first issued as a girls' manga; it had no following in Japan outside of teenage girls who were following the manga, and those girls hated the more boy-oriented anime! When Kiotsukete Studios fansubbed it, they thought it was quirky, yet incredibly funny. However, when Kiotsukete started distributing *Greenwood*, no one wanted it; Kiotsukete had to include it as an extra episode at the end of a tape just to get people interested in it, because those people had heard so many things about it being a girls' manga. After people started watching *Greenwood*,⁶⁹ demand grew, and the property became valuable enough to license. *Koko wa Greenwood* turned out to be a lifesaver for Software Sculptors, because up to that point they really had not released anything that was really worth having, and their sales figures bore this out. *Koko wa Greenwood* was a pleasant six-episode animation that

everybody liked. People went out and bought it; they were no longer available from the fansubbing source because Kiotsukete, the only group to fansub *Greenwood* in its entirety, stopped releasing it and told its distributors to stop distributing it.

3.10.4. Fansubbing *vis-à-vis* Bootlegging

Anime Expo '93 was also the first instance at which American industry representatives started talking more publicly about pre-existing copies eating into profits. Many of the shows from Anime Expo '92, for example, were starting to come out commercially, and people were starting to buy them in 1993. At that time, Jackson and other attendees started to hear gossip from the industry that bootleggers, as they called them, were eating into their profits, and that something had to be done about it.

Table A	Fansubs	Bootlegs
Starting Date	1986/1989	1600 (printing presses outside London)
Quality	Medium-to-High	Medium-to-High
Profit?	Non-profit: SASE; enough money to pay for tapes	Profit
Identifying marks	"Not for Sale or Rent."	None
Economic Intent	Complementary or Prerequisite Good	Substitute Good
Stated Intent	"Spread Japanese Animation"	"Make a Buck"
Distribution	Decoupled	Integrated/Only
Licensed?	No	No
"Law-Compliance Method"	Cease Distribution after Licensing	Disappear if Threatened

Table 1: *Categories and distinctions between fansubs and bootlegs.*

We carefully note the distinction between fansubs and bootlegs, summarized in Table A. Fansubbers' stated intent was to spread the awareness of Japanese animation: although they have been accused of merely "preaching to the converted" (e.g., by Carl Macek and Jerry Beck),⁷⁰ evidence throughout this section suggests that fansubbers successfully introduced the post-*Akira* generation to the diversity that the medium offered. From their earliest days, fansubbers would remove their titles from circulation once they were licensed in the United States.⁷¹ In all but the earliest fansubs, fansubbers would add subtitles like "Not for Sale or Rent" and "Stop Distribution When Licensed" in addition to their fansub group name; they would also encourage fansub viewers to purchase the licensed product once it was made available. William Chow's tapes went so far as to include these warnings during character dialogue, which some fans reported as annoying.

Bootleggers, however, were only interested in making a profit at the industry's expense. To the industry's credit, vendors had every right to believe that bootleggers were eating into profits, because there were unscrupulous enterprises that would go out and bootleg material—even fansubs—in order to sell them at sci-fi and anime conventions where they would market themselves as if they were an anime club. Perhaps the most famous bootleggers of the time were known by their pseudonyms S. Baldric and E. Monsoon.⁷² Kiotsukete would of course happily duplicate tapes for such

bootleggers, and then the bootleggers would go in and erase the segment of the tape where it said, "Not for Sale or for Rent," which Kiotsukete put at the beginning and end of every episode on every tape. Once Kiotsukete members started seeing bootleggers hawking their material at conventions, they became more restrictive when distributing to other groups. By 1995, Kiotsukete set a quota on copies made, and required that people prove that they were members of anime clubs. As technology advanced, Kiotsukete developed watermarking, overlays, and commercial spots between the breaks to better identify the group and to increase the barrier that bootleggers had to cross in order to duplicate Kiotsukete's work.

3.10.5. Preparation, Distribution, and Exhibition of Fansubs

Kiotsukete seems to be the only group that placed such extreme restrictions on distribution, but all known fansubbing groups upheld the basic principle of "Not for Sale or for Rent." Neither fansubbers nor bootleggers, however, had a license for the anime works with which they were dealing. In certain limited cases, such as Kiotsukete's, a license was obtained for screening at an anime convention. Even then, not all fansubbed materials were licensed at the earliest conventions. As Jackson explained, fansub groups during the 1989 through 1993 period worked under the philosophy of, "we only subtitle things that we know have not been picked up. If it has been picked up, we will not touch it." If a company did not announce that it had acquired the rights to a show, a fansub group generally reasoned: "well, they did not

tell us, and we can claim ignorance on this, and until it is made publicly known, we will continue to subtitle it and distribute it.”

Recent evidence suggests that members of the Ranma Project operated along a slightly different line of thought. They liked *Ranma ½* a lot, and they wanted everybody to be able to watch it. They thought that there was no way it would ever be licensed in America given that the select few anime licensed in America were of the *mecha* (giant robot) genre, or were grotesquely mutilated when localized. Consequently, Ranma Project members decided to subtitle and distribute as much of it as they could in order to show everyone how interesting it was. Once it became known that Viz Communications planned on licensing *Ranma ½*,⁷³ they stopped everything cold. They stopped *cold* not only because of legal concerns, but because, in the very tight community around San Jose, everyone in the anime field knew each other. Everybody *knew* Trish Ledoux and Toshi Yoshida of Viz. Fansubbers would have good reason to remember them, in any case, from Ledoux and Yoshida’s days at *Animag*. As Jackson reported no more plainly, “[It’s] because we have to go to Viz, and we have to go to functions, and they’re there, and we’re there, and it would be a lot more trouble than it’s worth. So, that’s why a lot of people were like, ‘okay, Trish Ledoux and Toshi Yoshida are our friends, so we aren’t going to do this to them to make their lives miserable.’”

The strong connections between fandom and industry can also be seen in the case of Kiotsukete Studios, most of whom staffed the programming crews of major conventions at the time. Japanese companies knew that convention in-house staff would prepare subtitles with their permissions, but it was not made explicit what would happen to those subtitled versions auxiliary to the convention. Without exception, if an American company owned a title, Kiotsukete would not distribute it. If a subtitled version of an unlicensed title happened to exist in the aftermath of a convention, however, Kiotsukete would almost certainly send copies to those who asked. "Initial distribution" in Kiotsukete's case consisted of two men with four professional series S-Deck VCRs making copies for everybody, but they would copy and distribute in their leisure time. Once it became known that an American company had licensed a show, they completely stopped filling requests for that title.

Whereas fansubbers always stopped sharing after a title was licensed, distributors acted inconsistently. Certain histories have lumped fansubbers and distributors together as "tape-traders," a term that simplifies the complexities of the period.⁷⁴ Unlike fansubbers, some distributors continued distributing tapes. (Contrary to popular belief, however, William Chow seems to have followed the "cease-after-license" protocol.)⁷⁵ Furthermore, other groups would use other fansubbed tapes as trade bait, which continued the propagation of material. One anime club president, for

example, attested that during his early days as a member he had to “amass a large enough collection [of anime material] copied from the club library in order to have enough interesting stuff to trade with others.”

Fansubs might also be shown at anime clubs after they had been licensed. Another member of Kiotsukete, who was also an officer at a local fan club in 1993, reported that there were “a lot of times [when] we would subtitle a show just because we wanted to screen it for our clubs, and to that end, there were a lot of times when we did that, but we did not distribute it.” For example, local anime clubs connected to Kiotsukete had already screened several fansubbed *Ah! My Goddess* episodes when AnimEigo announced that *Ah! My Goddess* would be commercially released the following year. After the announcement, Kiotsukete subtitled episodes 5 and 6 and screened them at its affiliated clubs, but did not distribute the episodes to larger fan distributors. Kiotsukete-connected clubs even let companies like AnimEigo know that they were going to screen the anime “for them.”

Despite these copyright-infringing activities, it is important to draw the distinction between fansubbers, distributors, and clubs with respect to the preparation, propagation, and exhibition of tapes. Companies were definitely unhappy about these incidents, but the Kiotsukete member pointed out that the prevailing motivation was to get more people interested in the animation itself. No fansubber made a profit off of his

or her work. There were some fansubbers who obtained jobs in the domestic industry because of the work that they did, but that is more a testament to the quality of their work. For some, fansubbing was their only way of showing the industry that they had the ability *to* work.

Most fansubbers subtitled because they loved anime. The member concluded, “I did it because I wanted to see more anime [everywhere]. I wanted to see more people enjoy Japanese animation, and to that end, that was my goal, and I think that I have been pretty successful with it.”

3.11. Industry

In this subsection we consider the development of four major American importers: A.D. Vision (now ADV Films), AnimEigo, Streamline Pictures, and Pioneer LDC. As the reader shall see, in all four cases the fan culture played a pivotal role in each company’s formation and initial operation, although the circumstances are unique to each company.

3.11.1. A.D. Vision

John Ledford and Matt Greenfield met while both were working for businesses that rented and sold anime laserdiscs.⁷⁶ Ledford and Greenfield also ran a Houston-based animation club in 1992, during which—through the fan network—they met with several others who were working in the manga industry in Japan, including Toren Smith. These artists pointed out that nothing forbade Ledford and Greenfield from

going to Japan, licensing titles, and bringing them back to America. Realizing that both Ledford and Greenfield had identical visions for anime in America, they chose to do just that. John Ledford had accumulated some savings, and Greenfield had been going to film school. They decided to form A.D. Vision, after which they went to Japan, talked to studio representatives, and convinced them to license A.D. Vision's first anime, *Battle Angel*.

After subtitling *Battle Angel*, Greenfield and Ledford staged their first preorder at Anime America in 1993. They made the announcement on Friday, June 26, and on Saturday they opened up their booth table to a horde of excited anime fans. A.D. Vision continued to release a number of successful titles; in 2002 and 2003, Ledford was twice named as one of "The 100 Most Powerful People in Genre Entertainment."⁷⁷

Significantly, A.D. Vision got its start in the fan network, and depended upon it for its initial sales. Indeed, ADV followed Streamline's model of releasing English dubs *after* it noticed that Streamline's per-title sales far outstripped ADV's subtitled releases.

Without the fan network, however, ADV would have had no market base whatsoever.

3.11.2. AnimEigo

The history of AnimEigo is well-documented,⁷⁸ so we do not recount it in its entirety here. Although CEO Robert Woodhead is not a fan *per se*, the history of the company is very connected with organized fandom. Co-founder Roe Adams was a huge anime fan; he was seen regularly during the early years of the Cornell Japanese

Animation Society in 1988. Significantly, the first post by AnimEigo on Usenet claims that “AnimEigo is a cooperative venture of Anime fans.”⁷⁹ Without the fan network and exposure to existing, unreleased Japanese animation, it is unlikely that AnimEigo would have started.

3.11.3. Streamline Pictures

In 1986, while Carl Macek was producing *Robotech the Movie*, he got together with Jerry Beck. Beck—quite well-regarded in the American animation field—was also an anime fan; he ran the New York chapter of the Cartoon/Fantasy Organization during the early 1980s before he moved out to Los Angeles. Both Macek and Beck were aware of this potential market on a very personal level. If no one was taking advantage of it, they reasoned, they decided that they might as well. They started Streamline pictures in 1988 with their release of *Akira* (1989), followed by a slew of titles that typified anime available in the early 1990s.

Fred Patten knew Macek from the early 1980s, when Patten was one of the fans who attended anime screenings at Macek’s shop. Patten would later interview Macek for articles in the American fanzines *Amazing Heroes* and *Comics Journal*. They were reasonably close acquaintances at that time, so when Macek and Beck started up Streamline Pictures, Patten offered his services and advice, since Patten was in favor of anything that would promote anime in America. Macek and Beck would regularly ask Patten about what the most popular titles with fans were, and what the main Japanese

studios of those titles were, so that they could decide whether or not they wanted to try and license those titles. After Patten lost his job as a technical librarian for Hughes Aircraft Company, Mack and Beck invited him to join Streamline Pictures; like so many others, in 1990 Patten turned his hobby into a profession. Patten was aware of Streamline's activities on a very personal basis in the early 90s, and he kept abreast of the other anime companies starting up at the time.

Streamline was the center of attention in the "dub-versus-sub" debate, a heated multi-year argument among fans over whether anime videos should be dubbed or subtitled. Many of the early fans in the days of the first licensed videos, that is, 1989-1993 (indeed, dub-versus-sub arguments continued through 1999), felt that videos should be subtitled. Subtitling was much cheaper than dubbing the videos, and the videos tended to have higher translation quality because the voice talent doing the dubbing was generally not that good. Streamline Pictures, however, made a point of only dubbing. As Macek and Beck contended, most of the general public would not take the trouble to read subtitled videos.⁸⁰ They argued that the public wanted to hear spoken dialogue even if the voice quality was not very high.

Neither Patten nor we agree with the second point, but Macek and Beck were absolutely correct on the first. Due to the long history of high-quality and abundant English-language programming in the United States, the American public remains

reluctant to go to the trouble of watching a subtitled video or movie. If the goal of an anime company was to publicize or promote anime to the public, then dubbing was a necessity; as Macek stated, “The whole goal of Streamline was to bring anime to a broad audience.”⁸¹ By 1993, Streamline’s tapes were selling so much better than other companies’ that the other companies—A.D. Vision and US Manga Corps. in particular—realized that if their main goal was to make money, then they needed to go to the expense of dubbing rather than subtitling everything.

Dubbing turned out to be less of a concern in the long run than maintaining the fidelity of the story in the original animation. Once dubbing was decoupled from the hack-and-slash methods of anime importation in the 1980s, fan furor slowly receded and sales rapidly increased. One of Patten’s main duties at Streamline Pictures was to verify the accuracy of the materials that Streamline received when they licensed a title, because Streamline tried to emphasize was that they were faithfully translating the original Japanese. These materials included the negatives, sound effects, and raw translations of Japanese scripts that Patten and others would then rewrite into smooth English: Streamline workers would adjust the language to match mouth movements and other audiovisual cues. The Japanese industry was so used to the Americans completely rewriting everything, however, that they tended to send over very sloppy translations. For instance, instead of naming the characters, they would call them Man

A, Man B, and Man C. Worse yet, they would just give the characters American names like Charlie and Joe, so that American producers could rename them as Pete, Bob, or whatever struck their fancy. One of Patten's many jobs, then, was to research and reinstate original character names.

As we have seen, Streamline Pictures was intimately connected with the fandom. While Streamline purported that it wanted to attract a broad audience, it also attempted to remain faithful to the original Japanese stories. This idea was deeply rooted in the fandom, and led to Streamline's early success.

3.11.4. Pioneer LDC

A branch of the much larger LaserDisc Corporation of America, in turn owned by Pioneer Corporation of Japan, Pioneer Animation was the first Japanese company to enter the American anime industry, announcing its entrance on April 21, 1993.⁸²

Pioneer's first projects were *Tenchi Muyo!* and *Moldiver*, both of which the company released on laserdisc and VHS. Before releasing these titles, however, they made themselves highly visible at Anime Expo '93 to show off their wares, and have continued to attend Anime Expo ever since.

It remains unclear that the presence and success of *Tenchi Muyo!* fansubs directly motivated Pioneer to enter the market. It is clear, however, that they saw enough profit in the field to justify entering in 1993, thanks in part to the fan base. Pioneer's *Tenchi Muyo!* OVA releases became standards in the industry, and with Pioneer's commitment

to high-quality anime on Laserdisc, their releases quickly landed on the “must see” lists of most fans.⁸³ In his second letter to anime fans, David Wallace, Marketing Manager at Pioneer, wrote: “Is Pioneer creating this product for the fans or for a larger audience? / We are trying to reach the broadest audience for this product. Maybe we are trying too much, but, we think we can succeed and satisfy the [anime fans (*lit. hotaku(sic)*)] and also reach a more general audience.”⁸⁴ We conclude that, like Streamline Pictures, Pioneer entered the American anime industry with intent to grow the market, but also with a reliance on the existing fan base and its established preferences.

3.12. Success Returns to Japan

As the earliest evidence from the Ranma Project suggests, many Japanese companies were aware of fan subtitling, just as some had been aware of fan distribution in 1978. They were not aware, however, to the extent that fan distribution played in developing a sustainable, growing interest in anime consumption. Rational ignorance explains their motivations in part: Japanese companies *really* did not care much about this market, as confirmed throughout interviews during this study. The American market meant almost nothing to them up through 1993. This sentiment is no longer true, because there is a tremendous amount of money to be made in America. During 1976-1993, however, Japanese companies did not think that they would be able to sell much to America in terms of entertainment goods. America was always the market that every

international industry wanted to enter, but Hollywood entertainment establishments like Warner Bros. and Disney continually denied the Japanese entrance. In almost all cases, Japanese companies were either ignored, *e.g.*, Warner Bros. failure to attend screenings between 1978-1982, refused, *e.g.*, the sentiment that, “well, we’re selling cartoons, and we’ve always been told by the Disney people that our shows will never sell in America,” or in one case, plagiarized, *e.g.*, the infamous Kimba/Simba case,⁸⁵ the details of which are inappropriate for this study.

Up through 1993, the buck stopped in Japan both literally and metaphorically. Properties might go to Taiwan or the Philippines; if it went to China, it was more often than not on a “pirate ship” or through a tape dungeon. The Japanese never expected, however, that anime would become popular in America. AnimEigo’s first licensor, for example, was shocked when AnimEigo wrote them a check for additional royalties: the licensor did not expect additional royalties! Kenichi Sonoda was equally surprised when Renault told him in the late 1980s that he had a friend in America who knew *Bubblegum Crisis*, “and really thinks it is one of the greatest shows he has ever seen.” Isao Takahata’s reaction was mentioned previously. Before he came out to Anime America ’94, Go Nagai, the boundary-pushing artist behind *Cutey Honey*, was amazed when he received tapes of works airing on American MTV that year. The tapes included Tatsunoko Productions’ *Mach Go Go Go (Speed Racer)*, as well as an MTV special on

Nagai's work. Nagai did not realize the following that anime had in America up to that time. He discovered, for example, that while *Mach Go Go Go (Speed Racer)* was regarded among a small following in Japan, in America many still regarded *Mach Go Go Go* as a cult classic. Even Monkey Punch (*Lupin III*) is still thrilled when older anime fans, people closer to his age, come up to him to talk to him about the original TV series: it amazes him that people were able to get access to those shows, considering that they were not aimed at the American market in any way, shape, or form. Without the fan network, and specifically without fan distribution, none of these activities could have ever happened.

3.13. Concluding the Historical Analysis

Fan distribution began as early as technology enabled it in 1976. Anime fandom grew out of science-fiction fandom, but quickly evolved a character of its own. The Japanese were unsuccessful in entering the American market on their terms, so they abandoned it, turning a blind eye to it for a full decade. American anime fandom grew throughout the 1980s until it became a powerhouse for underground distribution in the absence of copyright regulation. The few attempts at promoting anime in the 1980s to the mainstream grew directly out of this fandom. While unsuccessful in establishing a permanent trend, these attempts brought with them a small wake of new anime fans who quickly integrated into the fan network. The fan network, which ran on massively

distributed, untranslated anime, became a *closed proselytization commons* that catalyzed interest in unadulterated anime in the late 1980s.

Fansubbing and domestic industry essentially began at the same time with the advance of technology. Both grew out of the fanatical desire to proselytize anime, although the latter saw neglected profits in anime's commercialization, based off of experience in the fan distribution network. Fansubbing from 1989 through 1993 too served a commercial benefit in exposing a new generation of fans to new anime, especially anime that did not fit the boys'/mecha mold. Furthermore, fansubbing shaped expectations of anime that directly led to anime's commercialization. The distribution network under fansubbing became an *open proselytization commons*, and with it came a strong desire to support the nascent anime industry based on an economically undiscounted future. Without fan distribution, the fan network, the domestic industry, and thus the anime explosion, would not have taken off as it did in the 1990s.

¹⁴ *Magic Boy*. Jpn *Shōnen Sarutobi Sasuke*. 少年猿飛佐助. Dir. Taiji Yabushita, Akira Okuwara. 25 Dec. 1959. US Distr. MGM. 22 Jun. 1961. Data source: Beck, Jerry. "Animated Features 1." *CartoonResearch.com*. <<http://www.cartoonresearch.com/feature.html>> 4 Dec. 2003. Also "Anime News Network – Shonen Sarutobi Sasuke (movie)." *Anime News Network Encyclopedia*. 2004.

<<http://www.animenewsnetwork.com/encyclopedia/anime.php?id=1501>> 28 Apr. 2004.

¹⁵ *Alakazam the Great*. Jpn *Saiyūki*. 西遊記. Dir. Daisaku Shirakawa, Osamu Tezuka, Taiji Yabushita. 14 Aug. 1960. US Distr. American International. 26 Jul. 1961. Data source: Ibid. "Anime News Network – Alakazam the Great (movie)." <<http://www.animenewsnetwork.com/encyclopedia/anime.php?id=631>> 28 Apr. 2004.

¹⁶ Although according to an interview by Harvey Deneroff, Tezuka himself was delighted with the name changes proposed by Ladd's production team.

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- ¹⁸ *Voltron*. Jpn *Hyakujuo Go-Lion, Kiko Kantai Dairugger XV*. Dir. Katsuhiko Taguchi, Kazuyuki Okaseko, Kazushi Nomura, Hiroshi Sasakawa. Prod. Toei Animation, Tokyo 12 Channel. TV series, 125 episodes. 1981. Source: Celements, Jonathan and Helen McCarthy. *The Anime Encyclopedia: A Guide to Japanese Animation since 1917*. Berkeley: Stone Bridge Press, 2001.
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- ²⁰ *Cyborg 009*. Creator Shotaro Ishinomori. Prod. Toei Animation, Sunrise. TV series, 26 episodes (black and white). 1968. TV Series, 50 episodes (color). 1979. Source: Celements, Jonathan and Helen McCarthy. *The Anime Encyclopedia: A Guide to Japanese Animation since 1917*. Berkeley: Stone Bridge Press, 2001.
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- ²⁴ *Captain Future*. Creator Leiji Matsumoto. Dir. Tomoharu Katsumata, Hideki Takayama, Noboru Ishiguro, Yasuo Hasegawa. Prod. Toei Animation, NHK. TV series, 52 episodes. 11 Jul. 1978-30 Oct. 1979. Source: Ibid., *Anime News Network*. <<http://www.animenewsnetwork.com/encyclopedia/anime.php?id=1237>> 28 Nov. 2003.
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Fan Distribution, Copyright, and the Explosive Growth of Japanese Animation

4. Legal Analysis of Fan Distribution and Subtitling

Our analysis turns to the legal implications of the fan distribution network between 1976-1993. We will draw from American copyright law circa 1976-1993,⁸⁶ Japanese copyright law circa 1976-1993,⁸⁷ and relevant international treaties, i.e., the Universal Copyright Convention as amended in 1971⁸⁸ and the Berne Convention as amended in 1971,⁸⁹ to which the United States acceded in 1989. The reader may strongly suspect that fan distribution was illegal according to these laws. We conclude that it was, and show specifically what sections these practices violate. We further exhaust possible avenues for exceptions and fair use, showing that fans were left with no recourse but to commit copyright infringement on a wide scale. If the outcome of this fan distribution was desirable in the long run, therefore, the law did not sanction it at any point.

4.1. Basics of International Copyright Law

First and foremost, there is no such thing as universal copyright for a work of authorship. As copyright is a bundle of intangible property rights created entirely by the law, extension of copyright depends on laws that govern individual countries. Because our concern is copyright extension and enforcement in the United States, this analysis focuses on the laws and regulations of the United States in regard to animations as audiovisual works.

In the United States, copyright subsists “in original works of authorship fixed in any tangible medium of expression,” including “motion pictures and other audiovisual works,” 17 U.S.C. § 102 (2003). Works—particularly anime—are subject to protection if “on the date of first publication, one or more of the authors is a national or domiciliary of the United States, or is a national, domiciliary, or sovereign authority of a treaty party, [...] or the work is first published in the United States or in a foreign nation that, on the date of first publication, is a treaty party,” 17 U.S.C. § 104(b) (2003).

The fulfillment of 17 U.S.C. § 104(b), for our purposes, rests on two international treaties: the Universal Copyright Convention (hereafter “UCC”) and the Berne Convention for the Protection of Literary and Artistic Works (hereafter “Berne”). The United States acceded to the former in 1952 and to the latter in 1989. Japan acceded to UCC on April 28, 1956, and to Berne on July 15, 1899; therefore, these treaties both circumscribe the copyrights of Japanese nationals outside of Japan. According to the UCC, “Published works of nationals of any Contracting State and works first published in that State shall enjoy in each other Contracting State the same protection as that other State accords to works of its nationals first published in its own territory, as well as the protection specially granted by this Convention,” Universal Copyright Convention, July 24, 1971, art. II(1). Berne states, “Authors shall enjoy, in respect of works for which they are protected under this Convention, in countries of the Union other than the country of

origin, the rights which their respective laws do now or may hereafter grant to their nationals, as well as the rights specially granted by this Convention,” Berne Convention for the Protection of Literary and Artistic Works, July 24, 1971, art. V(1).

Essentially, under the UCC, works of authorship that are granted copyright in Japan are also granted copyright in the United States. In the case of Berne, copyright is upheld among all States in the Berne Union. However, neither the UCC nor Berne are self-executing in the United States, meaning the provisions of UCC and Berne do not apply automatically, *see* 17 U.S.C. § 104(c) (2003). Instead, 17 U.S.C. § 104 provides the same requirements for copyrighted works as UCC and Berne. The effect is transparent, except in cases where Berne is amended by its treaty parties without the consent of the United States, which has not happened since the US joined Berne in 1989. Both UCC and Berne contain language relating to exceptional cases for translations of copyrighted works, which we will revisit in a subsequent subsection. For purposes of this analysis, however, the effects of UCC and Berne place rights conferred upon anime as the exclusive province of US law.

4.2. Copyright in Japanese Animated Works in Japan

Japanese copyright law differs in certain respects from American copyright law.

In “Purpose,” the Japanese Copyright Law (hereafter JCL) asserts:

“The purpose of this Law is, by providing for the rights of authors and the rights neighboring thereon with respect to

works as well as performances, phonograms, broadcasts and wire diffusions, to secure the protection of the rights of authors, etc., having regard to a just and fair exploitation of these cultural products, and thereby to contribute to the development of culture.”

We consider the implications of Japanese copyright law in this subsection.

4.2.1. What Is Owned and Who Owns It

Japanese law qualifies “works,” including “cinematographic works,” as valid for protection, JCL 2 § 1 art. 10. Cinematographic works are eligible for copyright for seventy years, JCL 2 § 4 art. 54. Works must be authored by Japanese nationals, or must be first published in Japan, JCL 1 § 2 art. 6. Two classes of protection exist in Japanese law: moral rights, and copyrights.

Moral rights are inalienable, and are conferred upon the original authors of a cinematographic work “attributed to those who, by taking charge of producing, directing, filming, art direction, etc., have contributed to the creation of that work as a whole, excluding authors of novels, scenarios, music or other works adapted or reproduced in that work,” JCL 2 § 2 art. 16. This definition of cinematographic authorship only holds if Article 15 does not apply, i.e., the work is not a work for hire.

Copyright in a cinematographic work belongs to “the maker of that work, provided that the authors of the work have undertaken to participate in the making thereof,” JCL 2 § 3(4) art. 29(1). “Makers of cinematographic works” refers to “those who take the initiative in, and the responsibility for, the making of a cinematographic

work,” JCL 1 § 1 art. 2(1)(x). Because neighboring rights in Japanese copyright law provide particular rights to broadcasters, broadcasters frequently invest in the work to become “makers.” In practice, JCL motivates several classes of companies to become copyright holders: distribution houses, derivative-works companies such as toymakers, and production companies. Production companies, of course, take charge of authoring the work, *i.e.*, the production company vested with authorship is the company where the producer, director, and sub-directors work. Subcontracting occurs frequently in the anime industry; indeed, it is rare for a large project to *not* have multiple studios working on it at the same time. However, if a production company subcontracts some work out to another production company, then the subcontracted company rarely owns joint copyright in the work.

4.2.2. Domestic and International Rights of These Owners

Because Japanese domestic rights are relevant to our study for the purpose of comparison with American rights, we briefly list them. JCL 2 § 2 arts. 18-20 cover the three moral rights: “making the work public,” “determining the indication of the author’s name,” and “preserving the integrity.” The eleven major rights under copyrights, JCL 2 § 3 arts. 21-28, cover the rights of reproduction, of performance, of presentation, “of public transmission, etc.,” of recitation, of exhibition, of distribution, of transfer of ownership, of lending, “of translation, adaptation, etc.,” and “of the original author in exploitation of a derivative work.” The last right is particularly

curious: the copyrights, though not the moral rights, of an author extend to derivative works made with his or her original work, JCL 2 § 3(3) art. 28.

Neighboring rights exist in Japanese copyright law: these rights are granted to those who communicate works to the public, even though these groups do not create works *per se*. Broadcasters have neighboring rights as relates to anime: in particular, rights of fixation, of photographing, of reproduction, “of making available,” of retransmission, and “of communication to the public by enlarging devices,” JCL 4 § 4 arts. 98-100. That these rights overlap with the rights of authors explains much about the co-ownership of anime titles.

Unlike American copyright law, Japanese copyright law contains no general fair use provision. Indeed, many have argued that the moral rights of authors in Japanese copyright law form the exact opposite of the fair use rights of the public in American copyright law.⁹⁰ Japanese law does, however, contain a laundry list of limitations on copyright: most notably, it permits reproduction for personal, family, or “limited circle” use (called “private use”), quotations (including pictorial quotations), performances for non-profit functions, and translations for certain classes of works. These limitations are largely outside of the scope of this study: we apply the law as directly relates to uses in the United States. Indeed, we are obliged to apply American law to American fan distributors, because United States law prevails in all cases where the United States has

original jurisdiction, because UCC only specifies that Japanese works receive US copyright protection, and because the Berne Convention Implementation Act of 1988 states that US obligations under the Berne Convention are wholly satisfied by existing levels of domestic protection, Pub. L. No. 100-568, 102 Stat. 2853 § 2. Had we explained the legality of the following uses wholly in terms of Japanese copyright law, this analysis would have concluded very differently. This analysis will, however, apply JCL as it may apply to recordings extracted from Japan and sent to America.

The relations between anime copyright holders and their American rights are simpler to describe. Japanese animation owners retain all domestic rights under United States copyright law according to U.S.C. Title 17 Section 104. Their rights are enumerated in U.S.C. Title 17 Section 106, "Exclusive rights in copyrighted works," and are limited by subsequent sections 107-122. In particular, fair uses, if established, do not constitute copyright infringement according to 17 U.S.C. § 107 (2003).

4.3. Time-Shifting/Fan Recording from America

The first potential infringement raised in 1976 was the practice of time-shifting recordings from Japanese community television in the United States. For this analysis we assume that the Japanese community TV stations secured licenses from Japan for broadcast of this material. There are no known court cases between Japanese license holders and American community television stations. Although we recognize that

absence of evidence does not preclude evidence of absence, there is no good reason to believe that these television stations showed unlicensed materials: they were visible enough in America among broadcasters that, if companies like Toei wanted to sue the stations while they had a presence in the United States, they could have easily.

Sony v. Universal, 464 U.S. 417 (1983) clearly dealt time-shifting broadcast works, *i.e.*, recording these works for home use. In it, the Supreme Court ruled that time-shifting was a fair use, that the practice carried no likelihood of non-minimal harm to the potential market (as demonstrated by plaintiff copyright holders), and that the sale of home video tape recorders to the general public did not constitute contributory infringement because of the significant potential for non-infringing uses. We concur in affirming the fair use of time-shifting American broadcast anime for private, home use: this fan practice does not constitute copyright infringement.

4.4. Sharing Among Friends

Lending videotapes to others is analogous to lending books. According to the first sale doctrine, the materials in which copyrighted works are fixed are treated as property, and can be bought, sold, leased, and rented without the permission of the copyright holder. This doctrine is embodied in 17 U.S.C. § 202 (2003), "ownership of a copyright, or of any of the exclusive rights under a copyright, is distinct from ownership of any material object in which the work is embodied." Private lending to

friends and family has long been held a fair use; in any case, Section 106(3) does not apply because it specifies an exclusive right “to distribute copies or phonorecords of the copyrighted work *to the public*” (emphasis added). We hold that private sharing among friends, as fans did in the early days, does not constitute infringement.

4.5. Showings at Clubs

Showing an anime at a club, whether recorded from American television or not, constitutes a public performance of a copyrighted work, 17 U.S.C. § 106(3). The most significant exemption in statute is 17 U.S.C. § 110(1), which states that, notwithstanding § 106, “performance or display of a work by instructors or pupils in the course of face-to-face teaching activities of a nonprofit educational institution” is not an infringement of copyright. We have shown, however, that college-based anime clubs did not start en masse until the late 1980s at the earliest. Even then, college-based anime clubs would probably not qualify under the strict language of “face-to-face teaching activities” in Section 110. Furthermore, anime clubs from the late 1970s *knew* that they were in violation of the copyright owner’s rights: Toei, TMS, and Tatsunoko confronted them as early as 1978, and refused to authorize their screenings. We conclude that showings at early anime clubs were in violation of copyright.

4.6. Copying and Sending Across Country

Private distribution, we have argued, is not an infringement of copyright. However, systematic reproduction and distribution of complete tapes on the scale that

was being practiced in the late 1970s far overstepped the bounds of a fair use defense.

Evidence shows that there was little or no economic value to the tapes at this time.

Nevertheless, fair use does not rest solely on the determination of economic value or

harm. The level of distribution seen throughout the C/FO by the early 1980s began to

take on the character of a multi-branch library system, but evidence does not suggest

that it became a full-fledged, coordinated library system until well into the 1980s.

Consequently, it would not fall under “Limitations on exclusive rights: Reproduction by

libraries and archives,” 17 U.S.C. § 108. We conclude, therefore, that reproduction

dissemination of anime across the country in the late 1970s through early 1980s was

illegal.

4.7. Pen Pals in Japan

Interestingly enough, the pen pal relationships that C/FO members struck up in the early 1980s became significant sources of untranslated anime. In principle, a Japanese pen pal would be exercising his legal right to “reproduce by himself a work forming the subject matter of copyright [...] for the purpose of his personal use, family use or other similar uses within a limited circle (hereinafter referred to as ‘private use’),” JCL 2 § 3(5) art. 30. This argument follows a similar line of reasoning that *dōjinshi*, or Japanese fan comic, authors would use in intervening years to justify their practice of selling fan-comics that bore uncanny resemblances to professional characters. In the

American anime fan case, the aforementioned argument sounds tenable: exportation is permitted in the country of origin, so should not importation be permitted as well?

American copyright law is silent on the topic of exports out of foreign countries, most likely because such a law would be unenforceable outside of US jurisdiction.

17 U.S.C. §§ 601-603, however, have much to say on the subject of importation: most of it is unlawful. Indeed:

Importation into the United States, without the authority of the owner of copyright under this title, of copies or phonorecords of a work that have been acquired outside the United States is an infringement of the exclusive right to distribute copies or phonorecords under section 106, actionable under section 501. 17 U.S.C. § 602(a).

Even though exportation from Japan may be lawful, importation is unlawful without permission of the copyright holder: that right is granted to Japanese animation copyright holders and domestic copyright holders alike.

There are, however, three exceptions to 17 U.S.C. § 602(a). Exception (a)(1) did not apply in this case, although we will revisit it in a later section. We consider exceptions (a)(2) and (a)(3):

(2) importation, for the private use of the importer and not for distribution, by any person with respect to no more than one copy or phonorecord of any one work at any one time, or by any person arriving from outside the United States with respect to copies or phonorecords forming part of such person's personal baggage; or

(3) importation by or for an organization operated for scholarly, educational, or religious purposes and not for

private gain, with respect to no more than one copy of an audiovisual work solely for its archival purposes, and no more than five copies or phonorecords of any other work for its library lending or archival purposes, unless the importation of such copies or phonorecords is part of an activity consisting of systematic reproduction or distribution, engaged in by such organization in violation of the provisions of section 108(g)(2).

Subsection (a)(2) almost legalizes the importation, except for a significant catch: importation must be for the private use of the importer, and not for distribution. Even though one could argue that C/FO's systematic library processes were not fully established in the early 1980s, it is clear that fans would distribute these tapes among one another, ultimately forming long and widely-reaching distribution chains. Compare these fan trades with modern-day P2P sharing techniques. The distribution mechanism of early fandom could not propagate anime at the same speed or fidelity as modern-day P2P, but it had the same global reach and decentralized organization.

Furthermore, Subsection (a)(2)'s use of "distribution" does not qualify itself with "public distribution," as does 17 U.S.C. § 106(3). Our analysis reduces (a)(2) to two interpretations: in one interpretation, (a)(2) bans "private *and* public distribution," while in another interpretation, (a)(2) bans "public distribution," employing the same reading as 17 U.S.C. § 106(3). In the former interpretation, fans would infringe because they would eventually copy these videos for their friends. In the latter interpretation, fans would infringe because their friends or pen pals in the US were not yet organized into a

closed distribution system along the lines of the C/FO. Therefore, these fans were distributing to the public. Regarding importation via personal baggage in the latter half of (a)(2), we note that the first major fan trip to Japan occurred in 1986. Fan “binge buying” on a Tokyo run became more common for wealthy fans in the 1990s, but not in the early 1980s. Consequently, the subsection cannot apply.

Subsection (a)(3) likewise cannot apply because records indicate that only one or two copies of a work would be sent back to America, at which point the copies would be used for more than “solely” archival or lending purposes. In any case, fans’ processes were systematic enough in our opinion—as seen by the uniform degradation in tape quality and the common cultural reference to “comparing the quality of tapes”—to disqualify them according to the latter half of subsection (a)(3).

We conclude, therefore, that the process of disseminating anime through Japanese pen pals was unlawful in the United States, even if the initial receipt of tapes from Japanese pen pals were legal.

4.8. Renting at Mom and Pop Stores

The doctrine of first sale has some bearing in regard to renting anime at “Mom and Pop stores” (*see* page 34). If a title is legally imported into the United States, then it follows that these store owners are allowed to rent these tapes out just as American chains can. This is only true if these titles entered America with the authorization of the

copyright holders (unlikely), or if these titles entered the United States via the importer's personal baggage (very likely), see 17 U.S.C. § 602(a). Trafficking by means of personal baggage was common enough to be included in American law, and reports from the period indicate that baggage-importation was a widespread practice among vendors of imported media.

Importing time-shifted copies of broadcasts with intent to profit, however, violates both American and Japanese law. First and foremost, creating time-shifted copies of broadcasts with intent to profit violates the broadcaster's neighbor right of reproduction, JCL 4 § 4 art. 98, and may violate the copyright owner's right of reproduction, JCL 2 § 3(3) art. 21. The limitation for "private use," JCL 2 § 3(5) art. 30, would clearly not apply because the use is not of a private nature, even though the work is copied for a family member. Japanese copyright limitation law notwithstanding in the United States, a similar provision applies according to the subsequent subsection of the importation statute: "In a case where the making of the copies or phonorecords would have constituted an infringement of copyright if this title had been applicable, their importation is prohibited," 17 U.S.C. § 602(b) (2003). Such a reproduction with intent to profit violates the exclusive rights of reproduction and distribution embodied in Section 106; since these copies actually *were* created under such circumstances, they are illegal.

In any case, copying and distributing these works on a systematic basis, as fans did, would also constitute a violation of the rights of reproduction and distribution granted in the United States, 17 U.S.C. § 106. Renting videos from Mom and Pop stores to disseminate in the fan community was illegal.

4.9. Recording Anime from Japan and Sending Them to America

This analysis turns to fan activities in the mid-to-late 1980s, when fans disseminated Japanese animation at a much more rapid pace throughout the community.

Note an interesting provision of this case: US military personnel performed a major role in the reproduction and distribution effort. 17 U.S.C. Section 602(a)(1) specifies an exemption, which states:

[This subsection does not apply to—] importation of copies or phonorecords under the authority or for the use of the Government of the United States or of any State or political subdivision of a State, but not including copies or phonorecords for use in schools, or copies of any audiovisual work imported for purposes other than archival use.

Upon review of the evidence, we conclude that the US military personnel who disseminated tapes were not acting in an official capacity on behalf of the government. A contrary argument could be made based on the disseminators' significant use of military resources. Disseminators employed the military mail system, the consumables on base—evidence, *see* page 39, asserts that disseminators only used tapes that were

sold on base—and the military education that they received. Nevertheless, evidence asserts that the disseminators operated during their off-duty hours and that they paid for all of their material resources without direct reimbursement from the government. The disseminators directed themselves; they did not act under the authority of a commanding officer. We note the irony that US military personnel, who were still functioning in *some* official capacity by virtue of being on base in Japan, aided and abetted a reverse cultural imperialism.

However, there are extenuating circumstances in this scenario. We consider the case where the disseminators copied and sent Japanese videotapes and laserdiscs to America. If these commercially-released products were copied on Japanese territory, one could evoke a “private use” argument in favor of their reproduction. As with the “Mom and Pop store” case, once these copied tapes entered US soil on the military base, they would be infringing as per 17 U.S.C. § 602(a). Likewise, if an anime broadcast was recorded on Japanese territory and brought onto the military base, the recording would infringe the same clause. If these commercially-released products were copied on US territory, disseminators would clearly infringe the exclusive right of reproduction in 17 U.S.C. § 106(1), although they would clear the importation test. The case of an anime broadcast intercepted and recorded on US military property is much less clear. Let us assume that, like the commercially-released product, the broadcast recording is created

without violating 17 U.S.C. § 602(a) for the only following reason: there is no willful traversal of a country's borders with a television show fixed in a tangible medium.

The latter two scenarios do not take into consideration that C/FO Rising Sun was clearly part of a nonprofit library operation, however. Assuming that C/FO qualified as a nonprofit, educational and publicly-accessible (that is, accessible with a uniform membership fee) library, "Limitations on exclusive rights: Reproduction by libraries and archives," 17 U.S.C. § 108, may justify the disseminators' actions.

Unfortunately, C/FO could not qualify for an exemption under 17 U.S.C. § 108: it fails on many counts. For example, it is clear that C/FO Rising Sun made far more than one copy of each work that they tried to obtain and distribute, 17 U.S.C. § 108(a). After exhausting all of our possible scenarios that might have justified anime recording in the eyes of the law, we conclude that C/FO Rising Sun's recordings were illegal.

That disseminators' actions were illegal may have been obvious from the start, but additional evidence suggests that the disseminators, like all other importers of infringing goods, could have been caught quite easily by the U.S. Customs Service. Customs checks all mail—including APO mail—entering the United States.⁹¹ Sections 602 and 603 state:

In either case, the Secretary of the Treasury is authorized to prescribe, by regulation, a procedure under which any person claiming an interest in the copyright in a particular work may, upon payment of a specified fee, be entitled to

notification by the Customs Service of the importation of articles that appear to be copies or phonorecords of the work.
17 U.S.C. § 602(b)

Articles imported in violation of the importation prohibitions of this title are subject to seizure and forfeiture in the same manner as property imported in violation of the customs revenue laws. Forfeited articles shall be destroyed as directed by the Secretary of the Treasury or the court, as the case may be. 17 U.S.C. § 603(c)

Evidence again suggests that anime companies systematically ignored the infringements that were occurring as disseminators continued to import anime illegally into the United States. In addition to comments from Japanese companies up through the early 1990s, U.S. Customs had no records on file of anime companies that requested notification of potentially infringing materials.

4.10. Translation

A translation is a quintessential example of a derivative work, and derivative works fall under the domain of copyright protection, 17 U.S.C. § 103. Curiously, both UCC and Berne offer specific guidelines for obtaining non-exclusive licenses to prepare translations when an authorized translation does not exist in a target language. The draconian procedures required to obtain such a license include a minimum three-year period after publication before UCC or Berne would honor such a license.

This provision is moot, though: both treaties specify that domestic law must establish the right to a translation license; Title 17 of the United States Code has never contained such a provision. Consequently, fan translations are unlawfully prepared

derivative works. Because translations are wholly based on their original works, no copyrights can subsist in them.

4.11. Fansubbing

The act of fansubbing during 1989-1993 combined translation, typesetting, and reproduction onto a videotape, followed by an initial round of distribution. As this analysis has shown, these translation, reproduction, and distribution steps were illegal. Therefore, the law prohibited fansubbing as practiced between 1989 and 1993.

4.12. Distributing Fansubs Before and After Licensing

During 1989-1993, fans quickly distinguished between two periods for an anime product: the period before a title was domestically licensed, and the period after. From a legal standpoint, fansubs during both periods were illegal. However, a fansub during the latter period violates a domestic copyright of a domestic licensee, rather than a domestic copyright of an overseas owner. It is meaningless to say that a work is “not copyrighted” in the United States before it is licensed, just as it is meaningless to say that a work enjoys “copyright throughout the world.” Rather, adherence to international treaties guarantees that US copyright in a Japanese animation exists in the United States from the date of Japanese publication. The commercial exploitation of an anime work does not begin in the US, however, until the Japanese license holder licenses one or more rights to a company that will exploit the American market.

Japanese companies did not license these rights en masse for over two decades until fans created their own market through systematic violation of Japan's unexploited copyrights. This risk-taking by fans tells much about the pivotal role of a proselytization commons in the progress of the arts. Furthermore, this analysis evinces how copyright law could have obstructed that progress had any of copyright's minutiae been enforced.

4.13. Before We Conclude

This analysis is not attempting to construct an argument against the whole of international copyright law. Copyrights, and international recognition of copyrights, are invaluable in numerous cases. International copyright recognition has been instrumental to anime's commercial success for Japan as well as for America: every time this study uses "license," the word signals a transfer of exclusive rights between two countries, along with continual transfers of capital and value. As one American executive in the field said, "the most effective argument starts, 'Pay to the Order of.'" Without international copyrights, the anime market could not have grown and capitalized as it has today.

But as valuable as copyrights have been in the commercialization of anime, they also proved an insurmountable barrier to entry. As important as copyrights have been to *growth* of the present-day anime system, they equally hindered its *creation*. Without

the very real risk that fans took in their love for the medium, anime would be far less popular and profitable as it is today.

4.14. Concluding the Legal Analysis

Fan distribution and fan subtitling as practiced during 1976-1993, in virtually all of their permutations, were illegal according to copyright law. U.S. copyright law, by design or accident, presented systematic barriers to entry for both fans and industry alike. In violating the copyright law, fans took substantial risks; these risks were mitigated by apathy and indifference, not investment, encouragement, or legal support, on the part of the Japanese.

⁸⁶ "U.S. Copyright Law." *U.S. Copyright Office*. June 2003. <<http://www.copyright.gov/title17/>> 6 Dec. 2003.

⁸⁷ "Copyright Law of Japan." *Copyright Research and Information Center*. Dec. 2003. <http://www.cric.or.jp/cric_e/> 6 Dec. 2003.

⁸⁸ "Universal Copyright Convention as revised at Paris on 24 July 1971." *United Nations National, Scientific, and Cultural Organization*. 20 June 2001.

<http://www.unesco.org/culture/laws/copyright/html_eng/page1.shtml> 6 Dec. 2003.

⁸⁹ "Berne Convention for the Protection of Literary and Artistic Works." 2003. *World Intellectual Property Organization*. <<http://www.wipo.org/treaties/ip/berne/>> 6 Dec. 2003.

⁹⁰ See Sugiyama, Keiji. "Japanese Copyright Law Development." 19 Apr. 2001.

<http://www.softic.or.jp/en/articles/fordham_sugiyama.html> 7 Dec. 2003.

⁹¹ See "U.S. Customs and APO Mail." 7 Oct. 2003.

<<http://ima.korea.army.mil/Newcomer/US%20Customs%20and%20APO%20Mail.htm>> 7 Dec. 2003.

Progress Against the Law

Fan Distribution, Copyright, and the Explosive Growth of Japanese Animation

5. Progress Against the Law

Since the turn of the millennium, Japanese animation has entered the mainstream in the US. *Spirited Away* won an Academy Award, the Anime Network took off in numerous markets, and Cartoon Network pushed boundaries with ever-newer, *avant-garde* anime on Adult Swim. Anime comprises an estimated sixty percent of all broadcast animation worldwide; in the United States, annual anime sales totaled \$500 million in 2002.⁹² At a Cambridge, Massachusetts Suncoast—a metropolitan branch of a nationwide retailer of videos—anime DVD sales comprise more than twenty-five percent of the store's total revenue.⁹³

The medium has made almost unimaginable strides in America over the past ten years. For that dramatic growth, we have much to thank organized fandom. Quite against the restrictions of copyright, underground anime distribution flourished throughout the 1980s and early 1990s to build a base for a nascent domestic industry. Even fansubbing in its earliest years turned more people into avid anime enthusiasts and consumers, although the practice of fansubbing became increasingly harder to justify. That fans succeeded owes much to the apathy of foreign copyright holders, but even more to fans' own tenacity. Ironically, the least "creative" of activities—as defined by creation of original works of authorship—spawned a proselytization commons that proved enormously creative and profitable for all involved.

It remains to be seen whether the rise of Japanese animation from the fandom represents an anomaly or a basic economic principle guiding media consumption. So much of this history, for example, seems to be mere fortune and happenstance than a reasoned and systematic development of a market. Considering the barrier that copyright law presented to fans, however, it is remarkable that the industrial base grew as rapidly as it did. In a May 2003 statement by the Development Bank of Japan, Hiroaki Yamato writes:

Long ago, serious adult discussion about *anime* was unheard of, but now, even the economic media elite is giving serious attention to the issue. Long before the promotion of Japanese intellectual property became a big topic, copyright royalties for Japanese animated characters were already providing substantial contribution towards the lowering of Japan's massive deficit in service income.⁹⁴

When a media revolution sparks a major economic shift for a country, one wonders not only how the revolution happened, but whether current conditions permit a media success story like it to happen again. The proselytization commons subsisted on violations of copyright, yet proved creative, profitable, and progressive. Paradoxically, we live in an age where some media industries clamor for perfect control over their copyrighted works. Where does the contradiction lie: in the truth about the progress, or in an assumption about the copyright?

The argument of this analysis is not against the whole of copyright. We argue instead against an incorrect inference: that progress of the arts and development of

culture require perfect control over copyright. When copyright is relaxed in a nascent market, development may be erratic, but it will definitely not injure the progress of the arts. In at least one case, it proved overwhelmingly successful.

⁹² "Anime and Manga Sales Growing Around the World: Anime Makes Up 60% Of All Broadcast Animation." *ICv2 News*. 24 Jun. 2003. <<http://www.icv2.com/articles/home/2953.html>> 28 Apr. 2004.

⁹³ Suncoast. Cambridge, MA 02141. Personal Correspondence. 14 Jan. 2003.

⁹⁴ Yamato, Hiroaki. "Viewpoint: Content from Japan." *Development Bank of Japan, Monthly Economic Notes*. May 2003. <http://www.dbj.go.jp/english/library/pdf/men/men_0305.pdf> 8 Dec. 2003.

Progress Against the Law

Sean Leonard
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Fan Distribution, Copyright, and the Explosive Growth of Japanese Animation

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