

**Cultural Policy in the Digital Age:
The Emergence of Fans as Political Agents in Copyright
Discourse**

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Cultural Policy in the Digital Age: The Emergence of Fans as Political Agents in Copyright Discourse

Abstract:

Cultural policy theory operates on a division between producers and the public. Dualisms, such as producer/consumer – or, in more nuanced circles, the triadic relationship of consumer/producer/owner – have had a structuring effect on the way in which we envision cultural policy theories. At its core, the producer/consumer dualism implies subjectivities – that is to say that it defines positions in relationships between socio-political actors/actresses. At the governmental level, such clear-cut subject positions are perceptible beyond theories, entering into the actual practice of policy-making to the point where certain policies structure the notion of the public (or consumers), and the producers and/or owners. Copyright law, for instance, represents a good example of such an ideational construct. As a form of cultural policy, copyright law seeks to define the rights of producers with regards to their productions. Consequently, this thesis aims at exploring the forms of agency that develop and challenge both the practice and theoretical constructs of cultural policy. Two aspects command us to question anew these boundaries, one based on contemporary social and technical transformations (the rise of the digital age), and one based on cultural practice (in this case, those of fans and fandoms). Borrowing from theories of cultural studies and Foucauldian approaches to discourse analysis, this thesis explored the emerging discourses surrounding fans and their use of copyrighted material via the internet. Putting emphasis on three fandoms that have had marked histories of fan activism and fan production via the use of copyrighted material – Star Trek, Firefly, and Harry Potter – this paper investigated fans' use of copyrighted material in developing fan cultures and as a vehicle for their discursive practices. These cases illustrate how fans have challenged the established repertoires of subjects in cultural policy (making and theory), and how their form of agency represents an interesting case of resistance to the rise of the cultural industries conception of cultural policy.

Keywords: cultural policy, copyright, fan labour, fans, cultural industries

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Introduction:

We live in a day and age of absolute consumerism, where any and everything imaginable can be (and is) commodified, packaged, and served for consumption – including culture. From the shirt on one's back to the grass on the ground to the music on the radio, commodities are everywhere, and most – if not all – are being sold, in one form or another, to anyone willing and able to purchase them. Commodification, particularly of culture, is a prominent theme in cultural policy and studies discourse. For authors such as Brecht, Suhrkamp, and Adorno, cultural commodities are “not governed by their own specific content and harmonious formation,” but by the value – the profit – they realize for their creator(s) in the market-place (Adorno, 1991, p.99). In other words, the value of a cultural commodity is measured by the monetary sum it fetches in the open market; not by its intrinsic merits. Inherent in these notions of cultural commodities and, more specifically, consumerism is the relationship between the consumers and producers of commodities. Broadly conceived, this relationship is defined in terms of the production of commodities: producers create and market commodities to consumers who then purchase and consume them. This relationship is recurring and requires a degree of continuity in terms of both production and consumption in order to function. While this relationship might suggest a co-dependency on the part of both consumers and producers, it underlies the fact that consumers and producers have been widely approached, academically, as separate entities. Furthermore, consumers have been historically viewed, by cultural academia, as secondary figures, with consumption being seen as a “domain of passivity” (Poster, 2004, p.411). Notwithstanding the views of authors such as de Certeau, Simmel, and Bourdieu – who acknowledge the importance of consumers (p.411-412), the view of consumers (amateurs or users, depending

on the variation of cultural policy theory used) as subordinates has gone largely uncontested in academic circles.

That being said, the emergence of digital technologies in the latter half of the 1990s and early 2000s, coupled with the continued advent of new technologies, has eroded the relationship between producers and consumers, and has put a proverbial “monkey wrench” into the continuity of production and consumption – at least insofar as cultural commodities are concerned. New technologies have empowered consumers, and have enabled them to bypass the traditional markets and modes of cultural consumption – in many cases allowing consumers to replicate and propagate cultural commodities without paying for them. Similarly, new technologies have also given consumers the power to produce their own commodities – often based on the commodities or intellectual properties of producers. This phenomenon is arguably no more apparent than in fan culture, where fans are notoriously known for producing labour for, and based on, their favourite intellectual properties – such as specific movies, television shows, video games, music, and comic books. Fan labour includes the production of fanart, fan fiction, viral marketing, re-enactments, video game and movie modifications/edits, costumes, and a host of other activities.

Fans and fandom, in general, present a particular challenge to the binarism of the consumer/producer relationship. Fandom calls into question the distinction between consumer and producer: the fan is, at once, a consumer and producer of cultural commodities. Furthermore, fandom also challenges the authority and authenticity of the author and his/her work: if a fan can replicate or produce the same commodities as an author, then what control – if any – does the author have over their productions? For many authors and producers, the answers to these quandaries have come in the form of copyright law. Arguably, copyright law represents the fine line that exists between producer and consumer –

between producer and fan. While copyright law has historically been used to protect the rights of authors vis-à-vis the reproduction and profiteering of their works and intellectual property, it has hitherto been used sparsely insofar as the digital medium is concerned – in large part due to the fact that copyright, primarily designed with the print medium in mind, is arguably antiquated and incompatible with digital technologies. For this reason, many media producers have lobbied their governments to amend copyright law and “bring it into” the 21st Century. While amendments to Canadian copyright law have been proposed, nothing has been ratified to date. The proposed amendments in question, while arguably beneficial to copyright holders, put into question the rights of fans and consumers – both in terms of their rights when consuming commodities and in their rights to produce commodities inspired by the intellectual properties of producers. Consequently, a debate has emerged in Canada and abroad with regards to whether copyright law requires amending.

Copyright law – in and of itself – arguably promotes the division of consumer and producer – a division that is, in large part, a construct of capitalist society. This division ultimately serves to propagate capitalist principles at the expense of consumers and fan culture. As everyone is, arguably, a fan of something, to some degree, the legal neglect of the rights of fans in relation to their labours is a social and systemic problem that affects everyone. This problem, in effect, is creating a tension between producers and consumers with regards to who owns the rights to cultural commodities – both those created by producers (and consumed by fans) and those created by fans. Furthermore, as fans are simultaneously producers and consumers, they pose a particular challenge to cultural policy, as it tends to view producers and consumers as separate entities. This is not to dismiss the right of producers to profit from their commodities, but rather to suggest that the division between producer and consumer is artificial, particularly where fans and fandoms are

concerned. Through a theoretical examination of case studies related to fans and fan activities, as well as through the accounts of fans and producers, this thesis explores the binary relationship of fans as both consumers and producers of cultural commodities. The rights of fans are also considered from a legal perspective, as well as from the perspectives of producers and fans. Finally, this thesis examines the relationship between fans and producers – one which, because of the recent advents in digital technology, is arguably only separated or distinguished by copyright law – a distinction which arguably promotes a capitalist mentality (logic) of production. Ultimately, the purpose of this thesis was to explore how fandoms and fan practices represent both a theoretical and practical challenge to cultural policy and, conversely, how cultural policy represents a challenge to fans.

The first two chapters of this thesis provide the context around which fans have emerged as a political entity – primarily through the internet – in copyright and cultural policy discourse. The first chapter presents an overview of the research problem. In this chapter, the history and rationale of copyright law are presented, and recent developments in copyright law and cultural policy discourse – largely in the context of the internet and digital technologies – are discussed. This chapter also discusses how fans, through the use of the internet have come to challenge the copyrights of producers in ways that were unthought-of twenty years ago. More than this, however, this chapter posits the notion that fans are cultural entities which makes use of copyrighted material in their productions – productions which are challenged by cultural policy. The second chapter delves into the academic literature on fans and fan practices. Over the years, fans have been painted by academia as social pariah with pathological and fanatic tendencies; it is only in recent years that fans have been approached, academically, in a more positive light. It is now more common to see fans discussed in terms of active audiences – audience members who both consume and produce

cultural commodities. It is these commodities that are often at the heart of the issues surround fans vis-à-vis copyright and cultural policy. Finally, the second chapter also explores the relationship between fans and producers and how it, through advents in technology, has evolved in recent years.

Chapters three and four present the theoretical and methodological frameworks used in the research and analysis of this thesis. Chapter three begins by providing an overview of the cultural studies theories broached when analysing the subject of fans in the context of cultural policy. Among the theories and works explored in the first part of chapter three are those of Roland Barthes, Theodor Adorno, and Ferdinand de Saussure, as well as more contemporary authors such as Matt Hills and Terry Eagleton. The second and third tiers of chapter three focus on the theoretical techniques of genealogy and archaeology as developed by Michel Foucault. These techniques were particularly useful in analysing the power relations between producers and fans, and bridging the gap between cultural studies and public administration. While the third chapter focuses on the theoretic of the thesis, the fourth chapter discusses the practical. In chapter four, the methodology used in researching and acquiring data for the use in this thesis is outlined. In this case, a multiple case study analysis method of research was adopted – with an emphasis on document analysis.

In chapters five and six, greater emphasis is placed on defining fans, and discussing the emergence and development of fandoms. Chapter five provides definitions of fans and fandoms – as used for the purpose of this thesis – as well as an overview of the primary fandoms observed in the research. In particular, focus has been placed on the *Star Trek*, *Firefly*, and *Harry Potter* fandoms. Chapter six delves into the history of modern fans and fandoms, and explores the culture that has emerged in the process. Chapter six, in particular, notes how advents in technology have shaped and redefined certain pre-existing fan practices

while opening the door for new and more elaborate/sophisticated practices to emerge. This chapter also discusses the impact fan activism and mobilizations have had on fan cultures. The relative success of fan mobilizations in the late 1960s and early 1970s has set a precedence for modern fan activism and has been a source of optimism in cases where the future of a fandom is uncertain – and have consequently, in certain cases, led to the proliferation of fan productions.

Chapters seven through ten present the bulk of this thesis's findings on fans and fan communities, fan practices and productions, and mobilizations. Chapter seven examines, in depth, fan mobilization and activism. This chapter explores the significance of mobilization in the cultural practices of fans and how it can lead to stronger communities. Placing emphasis on communities within the *Star Trek* and *Firefly* fandoms, chapter seven looks at the ways in which mobilization and activism are used, in some instances, to promote and/or save a cultural commodity from discontinuation; and in other instances, how mobilization is used a means to educate society on the fandom in question and dispel social stigmatism. This form of "social rehabilitation" often comes in the form of charitable work. Conversely, this chapter also examines how fan mobilization can, at times, place fans in contention with media producers – particularly in cases where said mobilization involves the use of copyrighted material. Chapter eight pursues the issues surrounding fan productions. This chapter explores copyright and cultural policy from the point of view of fans. It examines how concerns over copyright and plagiarism have shaped and influenced fan communities, productions, and mobilizations. Chapter eight also explores cases where producers have noticed fan productions online and taken legal recourse in response. Chapter nine explores how fan communities have incorporated copyrighted material into their culture. This chapter examines how certain fan activities are, by law, considered copyright infringement despite

their cultural nature. Furthermore, this chapter explores the notion that, in certain cases, fan culture is essentially being commodified by producers. In all three chapters, emphasis has been placed on fan discourse and perceptions of copyright and cultural policy in relation to particular fandoms or forms of fan productions/activities that make use of copyrighted material. Finally, chapter ten applies theory to practice by exploring the theoretical implications of copyright and cultural policy on fans and fan practices. It is in this chapter that discussion is furthered and questions are raised regarding the ambiguity of fans in the producer/consumer dichotomy and their emergence as political actors in cultural policy discourse.

Chapter 1: Research Problem

While issues related to fans and fan labour are nothing new, it is only, arguably, in recent years that they have been brought to the forefront of academic literature – in large part because of the accessibility of the internet. Through the internet and rapidly evolving digital technologies, fans are now better equipped than ever before to interact, mobilize, create, and share their productions with likeminded fans from all over the world. The emergence of the internet as more than just a communications tool, but as a medium of transference of literally every form of media imaginable – not the least of which include music, movies, television programs, and literature – has brought with it a number of challenges to policy makers and media producers alike. For policy makers, the internet has made it progressively more difficult for them to meet their “traditional cultural and social [policy] objectives” in the digital environment (O’Regan & Goldsmith, 2006, p.68). For producers, the internet – and, in particular, file and information sharing – has challenged their copyrights over their intellectual properties. Confounding these issues, arguably, are fans that often use copyright materials in their cultural productions (Jenkins, 2006, p.39). While, in the past, fan productions went largely unnoticed by media producers, the relative transparency of the internet has enabled producers to track the usage of their intellectual property and, in some cases, put a stop to its unauthorized usage. This stoppage has arguably put a strain on the relationship between fans and producers – a relationship that, in many respects goes beyond the consumer/producer dichotomy present in many cultural studies theories.

To perhaps best understand the issues surrounding the relationship between fans and producers, it is useful to conceptualize the relationship in terms of cultural policy and cultural studies. Generally speaking, cultural policy is considered “the sum of a government’s activities ‘with respect to the arts (including the for profit cultural industries),

the humanities, and the heritage” (Schuster, 2003, p.1, as cited in Mulcahy, 2006, p.320). These activities include, in particular, the promotion of “production, dissemination, marketing, and consumption of the arts” (Rentschler, 2002, p.17, as cited in Mulcahy, 2006, p.320). That being said, cultural policy extends beyond traditional definitions of art to include support for museums, visual arts, historical preservation, humanities programs, libraries and archives, zoos and aquariums, gardens and arboretums, parks, and various forms of community celebrations and activities (Mulcahy, 2006, p.321). In Canada, is centred on the “role of the state in mediating social relations and their representations” (Beale, 1999, p.435). To this extent, the government establishes cultural norms and institutions around which “ideas of culture are negotiated and cultural expression [is] realized” (p.435). In effect, cultural policy intersects with a wide variety of federal, provincial, and municipal policies that touch on virtually every aspect of Canadian society, and numerous areas of law including – but not exclusive to – constitutional division of power, free speech, censorship, labour, human rights, and copyright (pp.435-436).

In Canada, a comprehensive federal cultural policy does not exist, per se. Rather, cultural policy is diffused throughout a number of different policy fields, such as the Income Tax Act, the Copyright Act, the Broadcasting Act, and the Status of the Artist Act. From these various culturally related acts, four broad dimensions have been observed: a broad canvas of Canadian values and ideals; a physical and legislative infrastructure to “actuate” those ideals; measures to address the needs of “individuals and defined groups within society” that sustain and develop Canadian cultural expression; and a regulatory and financial framework that addresses issues of content and ownership, and mediates “the relationship between owners and users of intellectual property” (CCA, 2006, p.1). Inherent to cultural policy is the notion that owners produce cultural products and users consume them.

While consumers invariably develop relationships with the products or intellectual properties they consume, to use those properties for artistic or activist purposes is to evoke the ire of the producer/owner of said property and risk being brought to court on the grounds of intellectual property theft (Klein, 2006, p.176). Such legal action raises concerns regarding the fair use of copyrighted material – concerns that have been at the core of intellectual property laws, both domestically and internationally, since copyright first became a legal issue.

Historically, intellectual property and copyright law have existed throughout the world, in some legal capacity, for centuries. However, the modern conception of intellectual property is often traced back to the 1886 Berne Convention for the Protection of Literary and Artistic Works, and its subsequent revisionary and amending conventions – conventions which would later form the basis of more recent international copyright treaties, such as the World Trade Organization's 1994 Agreement on Trade-Related Aspects of Intellectual Property Rights, and the World Intellectual Property Organization (WIPO)'s 1996 Copyright and Performances and Phonograms Treaties. The Berne Convention, in particular, laid the framework for both domestic and international copyright law. It acknowledged the economic and social value of intellectual property – in particular the notion that copyright laws “encourage the production and dissemination of works thereby increasing access to information” (Wilkinson & Gerolami, 2009, p.322). Though technically bound to the Berne Convention by virtue of being a British colony, Canada officially signed the Convention in 1928. Since then, Canada has strived to build its domestic copyright law around the notion of balancing “the public interest in the encouragement and dissemination of works of the arts and intellect and obtaining a just reward for the creator” (p.323).

In 1931, in keeping with the Berne Convention, Canada was the first common law country to domestically introduce moral rights into its copyright law – rights which, essentially, acknowledge the authorship of an intellectual property, regardless of ownership, and allow the author to prohibit any changes made to the intellectual property that might be “prejudic[ial] to his honour or reputation” (Wilkinson & Gerolami, 2009, p.326). In 1988 moral copyrights were amended to acknowledge the integrity of an author and his or her work, and to acknowledge the possibility that associating an intellectual property “with a product, service, cause or institution” could prejudice the honour or reputation of an author (p.327). The introduction of moral rights into Canadian copyright law is a feat unto itself, as many countries – including Canada – have been slow to introduce moral rights into any of their laws, let alone copyright law (p.327). While moral rights have historically been looked upon as being less important than economic rights, particularly where copyright law is concerned, they have begun to gain traction in recent years. With the emergence of digital technologies that challenge the economic rights of copyright law, moral rights are beginning to play a more substantial role in the protection of intellectual property, particularly in the ever changing environment of the internet (pp.321-332).

Intellectual Property in the Digital World

Intellectual property has been a particularly topical issue in recent years, due in no small part to the advent of the internet and emergence of digital technologies. While new technologies have paved the way for amateurs to produce high quality and professional-like cultural productions, it has also facilitated the reproduction and proliferation of existing cultural productions – sometimes at the expense or in infringement of the original producer’s copyright. The emergence of the internet and digital technologies has brought with it a number of challenges for policy makers with regards to protecting intellectual property

through copyright law – in particular, in regulating the use and transmission of copyrighted materials online (Canadian Intellectual Property Office (CIPO), 2005, p.1). Many of the copyright issues arising as a result of the internet and digital medium have to do with the fact that copyright was designed to protect the rights of authors vis-à-vis paper-based formats, and “are are not easily transferable [...] to the digital world” (Subba Rao, 2003, p.264). This problem has been confounded by the fact that digital technologies have made it easier than ever to copy intellectual property – so easy, in fact, that many people are oblivious to the fact that they are even copying information, let alone infringing on copyright. Every time a person visits a website, a digital image of that site is copied to their computer’s random access memory. If the information posted on a website is copyrighted, then every time a person visits that site, they are potentially violating copyright law (p.270). However, it would be impractical – not to mention virtually impossible – to regulate copyright law to the extent of prohibiting access to websites. It is for this reason, however, that copyright law has often been described as “mismatched” vis-à-vis its application to digital technologies (Samuelson, 2001, p.68). According to Samuelson (2001), this mismatch is more than likely to be addressed in one of two ways: either the rights of intellectual property owners will be expanded to include all uses of their property – not just the reproduction and display of their works; or new methods of determining appropriate use of copyrighted material will be developed (pp.66-68).

In the United States, the mismatch between copyright law and digital technologies has been addressed, to an extent, through the introduction of the Digital Millennium Copyright Act (DMCA). Introduced in 1998 as a response to the United States obligations to the WIPO’s Copyright and Performances and Phonograms Treaties – obligations which Canada shares, however, but has yet to act upon (Canadian Heritage, 2009) – the DMCA

seeks among other things to curtail the digital pirating of copyrighted material (Electronic Frontier Foundation, 2008, p.1). With the DMCA, any and all acts of digital circumvention, and the tools used to facilitate circumvention – that is to say, any sort of action or tool used to override built-in mechanisms designed to stop the reproduction of a digital intellectual property – are prohibited. The DMCA, however, has not yielded the desired effects – at least not if one takes into consideration its purpose vis-à-vis the intentions of the United States Congress when introducing it. Instead of putting a stop to digital pirating, the DMCA has made many legitimate activities illegal. When purchasing a new CD or DVD, for instance, a consumer is well within their right to make a copy as a backup. However, making a copy of CD or DVDs is made illegal in the United States by the DMCA if the CD has copy-protection software built into it. Meanwhile, digital pirates continue to pilfer intellectual properties with as much (or as little) concern for the law as they did before the DMCA was introduced (pp.1-2). By making circumvention illegal, the DMCA has essentially given copyright owners “the power to unilaterally eliminate the public’s fair use right” (p.1).

Fair use or fair dealing, as it is referred to in Canada, allows people to use copyrighted material, without the consent of the author or owner, for the purpose of “private use or research, or for criticism, review or news reporting” – provided that the author receives due credit for their work (CIPO, 2005, p.6). In Canada, fair dealing also protects the right of citizens to make copies of copyrighted materials – such as movies or CDs, for example – that they or their friends have purchased (p.6). Thanks, in large part, to a 2004 Supreme Court of Canada ruling, fair dealing protection in Canada also extends to copyrighted material, such as music, found on file sharing websites such as BitTorrent or Kazaa (Webster & Muirhead, 2006). It should be noted, however, that there is a fine line between fair dealing and copyright infringement – one that is only determined by the courts,

on a case-by-case basis (CIPC, 2005, p.6). While not covered specifically by fair dealing, Canadian copyright law also includes a number of exceptions for certain users to allow them broader access to copyrighted material without obtaining consent from the author(s) or owner(s) of said material. These exceptions include, among others, the use of copyrighted material by non-profit educational institutions; non profit libraries, archives, and museums; and persons with perceptual disabilities (pp.6-7). Many opponents of the DMCA are concerned that by limiting fair use, the act overreaches to the point of hindering the rights of “innovators, researchers, the press, and the public at large” (Electronic Frontier Foundation, 2008, pp. 1-14). Consequently, the DMCA has been the target of much criticism – both in the United States and abroad (Khan, 2007).

Despite strong opposition to the DMCA, the federal government of Canada has proposed amendments to Canadian copyright law that would, in effect, mimic the DMCA. These proposals have been the result of “intense lobbying” by both the domestic and foreign music industry, international agencies such as the WIPO, and the United States, to update Canada’s copyright laws (CBC News, 2005, ¶6; Nowak, 2008; Canadian Heritage, 2009). The government’s proposed amendments would make downloading copyrighted material a criminal offense subject to fines and the circumvention of copy-protection software punishable by imprisonment (Nowak, 2008, ¶5). The proposed amendments would also limit the scope of fair dealing in Canada – to the point that Canadians would be limited in the number of copies, to what mediums, and in what capacities they would be allowed to copy and use copyrighted material they have legally acquired (Geist, 2008). While these proposed amendments have yet to make it past a second reading in the House of Commons, many consumer advocacy groups, artists, privacy watchdogs, and educational groups remain concerned that similar bills will be proposed and will eventually be passed. Among their

many concerns, these groups found the proposed bills to be unfair to consumers (Nowak, 2008, ¶4). What is more, according to Lévy (2001), the majority of information on the internet is produced by “American Institutions and Companies.” Consequently, there is a prevailing fear that the United States, particularly in its push towards stronger internet copyright law, is coming to dominate culture on the internet (p.223) – not just within its borders, but throughout all of cyberspace. The United States’ push for greater control over internet culture is undoubtedly influenced by the fact that the country’s industries lose more than \$9,143 million a year due to internet piracy – money which would have filtered through the economy and resulted in greater tax revenue for the government – despite the country boasting the lowest rates of internet piracy in the world (20 percent) (BSA, 2009, pp.6-9). In contrast, Canada’s industries lose approximately \$1,222 million annually. Despite criticisms from the United States and specialized industries, Canada’s rate of internet piracy – approximately 32 percent – is among the lowest in the world, albeit one of the highest rates in the developed world (pp.6-9).

More recently, efforts have been made towards introducing a more comprehensive international intellectual property law that would supersede both the WIPO and its existing treaties. These efforts have come in the form of the Anti-Counterfeiting Trade Agreement (ACTA). At the forefront of these efforts are major United States and European industry copyright groups that are seeking a greater degree of control over their intellectual property – both domestically and internationally (Electronic Frontier Foundation, 2010, ¶1-2; Geist, 2010, ¶1). The ACTA raises many issues regarding the privacy and civil liberties of consumers, innovation and the free flow of information via the internet, legitimate trade, and the rights of developing countries in choosing policy options related to copyright (Electronic Frontier Foundation, 2010, ¶4). While little has hereto been revealed officially as to what the

ACTA will entail, what has been leaked suggests that the agreement would give border guards the power to search laptops and MP3 players, and to seize any that contain copyright infringing material; grant internet service providers the power to discontinue services to customers on the grounds of alleged copyright infringement; limit the interoperability of legally acquired copyrighted material; and make copyright infringement a criminal offense (Nowak, 2010, ¶5). While much of what is being discussed in the ACTA represents nothing considerably new for the United States – as most of the aforementioned has already been implemented through the DMCA – it will represent new challenges for citizens/customers in Europe and Canada (Active Politics, 2009, ¶1-5).

The Ambivalent Fans

On the periphery of these discussions surrounding copyright law are the rights of fans and fan culture. For years, fans of media – in general – were taken for granted as being consumers or spectators of media. Fans watched television; they did not contribute to it. This view, however, has gradually changed over the years, and media producers now acknowledge that audiences are “active, critically aware, and discriminating” (Jenkins, 2006, p.135). With the emergence of the internet, fans were given a new and arguably more expressive venue in which to collectively produce, debate, and circulate “meanings, interpretations, and fantasies in response to various artefacts of contemporary popular culture.” In other words, the internet provides fans with a participatory medium in which they can interact in communities bound by interests and not by localities (p.137). Through the digital environment, the scope of fandom – a term used to describe the cultures that emerge from fan interactions and communications pertaining to a particular media, such as a television series (Nolan, 2006, p.533) – has expanded and continues to expand at an alarming rate, providing fans with literally up-to-the-minute information on their favourite media.

This, in effect, has also facilitated the emergence of fandom as a more effective platform for consumer activism. Thanks to the internet, fans are now able to mobilize around issues faster than they ever could before. In some instances, this can mean spreading news about, and developing fandoms around, as of yet unreleased media. In other instances, this can mean developing movements to protest the cancellation of a television show. As fandom proliferates throughout the internet, many fan groups cease to be cult followings and begin to permeate the mainstream of culture. Suffice it to say, the internet has provided fans with a medium through which to influence media producers; as the size of fandom increases, so too, arguably, does its influence (pp.141-142).

Milner (2009) notes that, in many respects, given the type of work fans produce, they represent the ultimate form of knowledge worker: fans' work relies on "information and interpretation to produce collectively for their favourite media texts" (p.492). This work often entails, among other things, summarizing and editorializing media texts, promoting – at times, religiously – the "merits" of media texts, evaluating media texts, and creating their own art based on media texts. Furthermore, fans have been known to modify computer games, altering the code in order to change various aspects of the game-play environment (p.492). Gaming fans, in particular, also develop unofficial guide books, "perform public relations functions, advertise, and test demos" (p.495). Interestingly enough, the work of fans is often "produced in a collective manner" (Abercrombie & Longhurst, 1998, p.126). While a single fan might start the creative process, that fan will, more often than not, open it up to his or her peers to build upon – particularly in cases of fan texts. In this respect, fan creations often emerge through shared authorship (p.126). Given the nature of fan work, it can be defined – albeit unofficially – as labour or, more precisely, *fan labour* (Milner, 2009, p.492). On one hand, the internet and digital technologies have facilitated the production and

quantity thereof of fan labour – in some cases, to the dissatisfaction of producers; on the other hand, the internet's facilitation of fan labour has provided opportunities for producers to use fan labour and fan productions to further their agendas – in many cases, in the form of viral marketing.

Commodifying Social Practices

While accelerating and proliferating the growth of fandoms throughout the world, the internet and digital technologies have also given fans new means through which to produce fanart and labour – and cheaply. In other words, the internet has made it possible for a greater number of fans to produce a greater number of works and distribute them to a considerably larger audience – for a fraction of the cost – than would have otherwise been feasible for the average fan more than twenty years ago. Inherent in these fan productions is the notion that they are vehicles for social interaction between fans – in effect they are a form of social practice (Jenkins, 2006, p.179). For instance, while fans used to publish their fan fiction – amateur stories written by fans, based on pre-existing creations or works of popular culture (Nolan, 2006, p.533) through “fanzines” (paper publications of fan fiction that sell for the price of publication) – they now use the internet as a vehicle to distribute their stories to a vastly greater audience (Jenkins, 2006, p.143). Fanzines began as and continue to be a means through which fans can interact socially and share their works with other fans (Spencer, 2006, pp.79-82). Similarly, digital editing programs, such as Photoshop, have provided fans with the means with which to create collages, mix and edit music, and create movies and videos based on their favourite media – either by editing actual footage from television programs and movies or by filming their own stories using characters and/or scenery from those programs (Jenkins, 2006, pp.143-144). Jenkins (2006) notes that many of today's popular movie directors and producers, such as George Lucas and Steven Spielberg –

whose work has been the subject of much fanart – started off producing amateur films akin to the works being produced by fans today (p.143). Furthermore, many recent advances in digital technology have allowed fans to reproduce the special effects of their favourite movies or television shows or create effects that rival those of film without multimillion dollar budgets (p144). The internet, as stated, allows for these productions to be shared with other fans, with websites such as youtube.com and DeviantArt.com – websites that host amateur videos and artwork respectively – acting as both hosts and communities for such productions. In fact, the internet hosting of amateur productions has become a lucrative business in and of itself, perhaps best exemplified by Google Inc.’s purchase – the company responsible for the google.com search engine – of youtube.com for \$1.65 billion in 2006 (MSNBC, 2006, ¶1).

With a burgeoning business catering to the hosting of fan works and communities, fan productions and labour are evolving from a social practice to a form of commodity. While fans might still see their productions and labour as a social practice, producers are beginning to see them as an opportunity to both promote and “test run” their own products without the costs. Monitoring technologies have become sophisticated to point that “mass” audiences are now visible and accessible to producers in ways which they previously were not; consequently, audiences are now being encouraged to actively participate in their viewing experience as a means to provide producers with instant feedback (Andrejevic, 2008, p.24). To further audience participation, producers are also creating message board forums – a form of online communication environment in which fans have been known to socialize – as a means to create communities and foster fan loyalty (pp.24-28). For fans, these forums provide them with a venue to have their voices heard publicly; for producers it is a means of monitoring and sometimes (anonymously) interacting with their audience

(p.28). To this extent, the emergence of fandoms online has provided producers with a unique opportunity to not only interact with their respective fan bases, but also to craft their productions around that interaction – in some cases to generate greater interest in their cultural product. Jenkins (2006) cites the example of *Xena: Warrior Princess* as a case where the desires of certain fans and the consequent production of fan fiction – in this case, centered on a lesbian relationship between the title character and her companion – led to the introduction of suggestive “subtexts” within the episodes (p.145). What is more, producers have used the internet as a vehicle to gauge the interest of fans with regards to the development of new productions: if fan interest is sufficient, producers can then use the fan buzz they generated as a justification to go ahead with their production (p.145). Consequently, many media producers have developed official websites where fans can read up on the latest news regarding their favourite media, interact with other fans on discussion forums (or, more colloquially, message boards) as well as leave feedback and recommendations on what they would like to see happen with those media. Taking fan interaction a step further, even, a number of competitive reality television shows have gone so far as to give their audience(s) the ability to determine the outcome of the show by phoning or text messaging their preferences (Andrejevic, 2008, p.24). These audience interactions, in many respects, have given fans the opportunity to actively participate in the production – or labour process – of their favourite media. Consequently, the “traditional” lines between consumer and producer have been blurred (Milner, 2009, p.492).

Taking advantage of this shift in relationship between consumer and producer, a number of media producers have sought to “link” fans not only to the production but also to the marketing of their media products. Referred to as “permission-based,” “relationship,” or “viral” marketing, this form of advertising involves word-of-mouth campaigns and the

promotion of brand loyalty. As fans and similar knowledge-based communities tend to “foster a sense of passionate affiliation or brand loyalty” they represent an ideal group through which media producers can market their productions (Jenkins, 2006, pp.147-149). Fan gatherings, such as conventions, are also proverbial hot spots for the proliferation of brand awareness, word of mouth marketing, and the engagement of new fans. Consequently, many of the major media producers have begun attending the larger and more recognized fan conventions in order to promote their products (Lieb, 2008, ¶8-9). This would also represent a form of what Milner (2009) refers to as fan labour (p.492). Underlying these activities, however, is the notion that media producers are using and monitoring fans to generate, among other things, market research. Andrejevic (2008) describes a growing perception that various forms of fan participation are used by media producers to “exploit the promise of an ersatz democratization” vis-à-vis the decisions and outcomes of media productions (p.33). Furthermore, many fans have become sceptical of how influential their input actually is. Given that media industries are, above all else, interested in making profits, many fans question the point of even having fan feedback when producers will invariably make their decisions based on sponsorship and advertisement revenue (p.37). Instead, fans participate not so much because they expect to influence the production of their favourite medias, but as a means through which to interact with other fans – at times productively, and at others argumentatively with the intent of being noticed (pp.37-38). However, Andrejevic (2008) notes that fan participation, even in the form of message board posting, is a type of fan labour that can be exploited – particularly in the instances where it does produce valuable insights (p.38). Because “network media” represents a medium of interaction between fans and producers, and because it is monitored by producers, it can also be said to be fan labour

in the respect that “the work of being watched doubles as yet another form of unpaid labour” (p.42).

The appeal of fan labour to media producers is, more or less, obvious: “fans work for the text.” Fans represent “active, creative, [and] productive” members of a media text’s labour system (Milner, 2009, p.494). It is the labour of fans, in particular, that forms the basis of fan culture, and it is fan culture and its “viable financial consequences” that interest producers. However, a noticeable tension exists between fans and some media producers vis-à-vis “the nature of fan contribution” (p.494). For all the producers who see advantages in collaborating with fans, there are just as many who see the contributions of fans and fandom as a “potential loss of control over [the producers’] intellectual property” (Jenkins, 2006, p.146). Efforts made by the recording industry in recent years, for instance – most noticeably their legal action to put a stop to file sharing sites such as Napster – reveal a certain degree of resistance vis-à-vis the emergence of new modes of digital media distribution. Similarly, a number of producers, studios, and publishers have sought to put a stop to fan sites by issuing “cease and desist” orders on the grounds that these websites contain copyrighted material. The argument made by these media producers is that they have their own official websites that contain “network approved content,” while fan sites are operated by persons not employed by the producers and therefore unauthorized to speak on behalf of the producers or their intellectual property (pp.146-147). According to Naomi Novik, chairperson for the Organization for Transformative Works (OTW), the problem with copyright law vis-à-vis fan works is that “marketers don’t understand fandom or fannish culture” (as cited in Lieb, 2008, ¶3). The OTW is a non-profit organization that aims to protect fan works from “legal snafus and commercial exploitation” (Lieb, 2008, ¶4). Organizations such as the OTW serve an important role in defending the rights of fans as most fans do not have the financial

resources to combat media producers legally, and will often comply with “cease and desist” despite having not infringed on copyright (Kendzior, 2000, ¶9).

According to Milner (2009), the reaction of media producers to fan labour often ranges from suppression to supervision. Ultimately, the goal of producers – regardless of their relationship with fans – is to increase profits and strengthen their brand (p.494). While it is easy to see the commodification of fan labour as exploitive – especially when one considers the reality that fans seldom, if ever, receive financial remuneration for their work – there has been little in the way of literature or research to see how fans perceive their labour, and whether or not they consider their work to have been exploited (p.492). While some authors suggest that the use of fan labour, without remuneration, is indeed a form of exploitation – one which raises a number of ethical questions, other authors are less quick to jump to the conclusion that “free labour” necessarily means “exploited labour” (p.494). Some fans willingly offer their labour for the sheer pleasure “of communication and exchange” (Terranova, 2000, as cited in Milner, 2009, p.494). Furthermore, the act of creative consumption almost invariably leads “to a degree of production [...] outside the realm of monetary gain” (Milner, 2009, p.494). For fans of video games, for instance – particularly fans of the series, *Fallout*, their labour works as a form of quality control, ensuring that the future instalments of their favourite media retain or surpass the standard they have come to expect. For these fans, the reward is not monetary but the satisfaction of having a final product that meets or exceeds their expectations. While some fans might consider their offerings to be “worthwhile” enough to merit some form of financial remuneration, many consider the possibility of turning their labour into a career “just a daydream” (p.499). And, for just as many fans, the notion of being paid does not even cross their minds; they are simply uninterested (Novik, as cited in Lieb, 2008, ¶6).

General Research Question

Where copyright ultimately leaves fans is between the proverbial rock and a hard place. While, once, many of the activities and labours fans enjoyed and took for granted went unnoticed by corporate entities, the advent of the internet has brought fans into the limelight. For many media producers, fans represent the ideal opportunity to advance their products and make a profit – and all too often, fans are willing to oblige if it means that the product in question will be to their specifications. However, just as many producers see fans as a threat to their right of ownership of intellectual property, and will stop at nothing to dissuade fans from using or consuming their products outside of the parameters they deem acceptable. Consequently, media producers have lobbied the government to change copyright laws in order to, amongst other things, gain greater control over their intellectual property. In the process, the rights that not just fans, but all citizens enjoy, are being put at risk. While groups have emerged to fight for the rights of fans – and consequently citizens, their numbers are small and their activities arguably remain at the grassroots level. Given the limited support and resources fans have at their disposal, questions can be raised as to whether fans have any rights at all with regards to their various labours – particularly when copyright infringement cases, all too often, seem to be determined not by the word of law but by those who have the deepest pockets.

Consequently, the purpose of this thesis is to explore the challenge that fans and fandoms represent, not only for copyright laws, but also for traditional conceptions of cultural policy as developed in social sciences and in the humanities. What is more, this thesis also explores how cultural policy represents a challenge to fans in terms of their productions and their rights thereof. This thesis explores the theoretical challenges that fans represent to the dyadic relation that is central to cultural policy: producer/consumer,

creator/public etc. Therefore, the research explores the question of boundaries as developed and reinforced through copyright laws. In particular, the objective of this thesis was to explore what discursive strategies have been mobilized and put in place to preserve the established position of producers and, conversely how fans have acted/reacted/adapted to said mobilizations through their own labours, productions, and mobilizations. While copyright law represents an important instrument/institution in the protection and reinforcement of the producer's position, its discourse is inherently challenged by fans through their various practices. Through cultural studies theories and the Foucauldian perspective, both genealogically and archeologically, this research looked at fans and fandoms in the context of copyright and cultural policy. Genealogical, this thesis explored the hierarchy of discourses and subjects that constitute the field of cultural policy. In the process, this thesis sought to make sense of the power relations between the dominant discourse and agents and the subordinate discourse in the field. Archeologically, and this is one of the contribution of this thesis, the research has sought to understand what strategies and social practices have been mobilized in order to "discipline" the resisting fandoms, to fashion fans as legitimate cultural policy subjects, and utilized by fans to resist/persist in the broader field of cultural and institutional forces. This invariably leads to the question, what are the discursive practices and strategies that enable fans to emerge as legitimate political subjects of their own discourse and in the broader discourse of cultural policy? To answer this question, this thesis looked at fan practices, fan communities, and fan mobilizations – in the context of cultural policy.

Ultimately, the goals of this thesis were, through fans and copyright discourse in the digital age, to explore the relationship between fans and cultural policy, and better define the place of fans in the producer/consumer dichotomy familiar to cultural studies theory. As fans

are both consumers and producers of cultural commodities, they arguably hold a unique place in cultural studies theory. Proposed amendments to cultural policy – copyright in particular – have put fans, as cultural and political entities, in a situation where their rights and status as producers are called into question by their use of copyrighted materials. As cultural entities that live under the proverbial shadow of copyright law, this thesis looks at how copyright and cultural policy have affected fan behaviours – how it has shaped and influenced practices, communities, and mobilizations. Understanding this relationship between fans and cultural policy is important because it furthers the understanding of the debate surrounding the cultural studies duality of producers and consumers from a hybrid position in one instance, and the effects of cultural policy on an unanticipated cultural group in another.

Chapter 2: Review of the Literature

Literature on the subject of fans and fandoms leaves much to the imagination in terms of understanding and appreciating the various discourses that surround fans as cultural entities distinct from *mere* consumers. While considerable effort and debate has been spent defining what constitutes fans and fan practices, little has been said on the subject of the rights of fans both as cultural and legal entities. In instances where the rights of fans have been taken into consideration, fans are often considered in terms of consumers, with their duality as producer of cultural commodities either subjugated or ignored. Although efforts have been made by a number of authors to conceptualize fans in terms of both producer and consumer, their discourse remains relatively marginal in the broader scope of cultural policy. Consequently, there is a relative lack of discussion, in cultural studies, specifically centered on the *rights* of fans. This lack of discussion is problematic. As society enters a digital age where the use of copyrighted material in cultural practices and in the creation of cultural commodities become progressively more controversial and suspect, many fans and academics are left questioning where fans fit in cultural studies and policy. That being said, it is important to acknowledge the efforts that have been put forth by academics (and academic fans) on the subject of fandom. These efforts, in large part, serve as a starting point from which to begin framing the discursive problems surrounding fans and fandoms.

To understand the problems related to the rights and ambiguity of fans as both producers and consumers, however, one must first conceptualize what is meant by “fan.” The terms “fan” and “fan labour” are perhaps among the most contested terms in fan-related academia today. Depending on whom one asks, the word *fan* can mean any number of things. According to Hills (2002), defining “fandom” is no easy feat. While people, generally speaking, have a broad, “everyday” understanding of what is meant by the term “fan,” to

define it in an academic context is a complicated exercise – one which is perhaps made more difficult by the “everydayness” of the term itself (p.ix). What is more, the term “fan” often carries with it negative connotations and stereotypes which are sometimes difficult – if not impossible – to divorce from the actual concept of a fan. Historically, fandoms and fan behaviour have been categorized as pathological in nature – stemming from alienation from modern society (Lee, Scott, & Kim, 2008, p.810). Jenson (1992) notes that fans are often characterized, in academic literature, as being “potential fanatic[s],” and fandom is often described as “excessive, bordering on deranged, behaviour” (p.9). While literature on fandom remains relatively sparse, what does exist tends to focus on the relationship between fans and celebrities. Consequently, a fan, in this respect, is defined as “a response to the star system” – that is to say that fans exist as a response to the “modern celebrity system” that has emerged through mass media (p.10). Similarly, Thorne and Bruner (2006) define a fan as being a person who has an “enduring involvement with some subject or object, often a celebrity, a sport, TV show, etc” (p.52). Some authors note that the “adulation and obsession” of fans towards subjects and/or objects is representative of “repressed desire” (Wolf & Taylor, 2004, p.669).

Despite the negative interpretations of fandom, recent fan-related literature has begun to approach fandom in a more positive light, viewing it, instead, as a “widely spread reality in post-industrial societies” (Lee, Scott, & Kim, 2008, p.810). Milner (2009) defines fans not as celebrity obsessed or pathological, but as “individuals with heightened intellectual and emotional investment in a media text who increase their activity surrounding the text to the point of being productive consumers” (p.492). Similarly, Abercrombie and Longhurst (1998) refer to fans as a “skilled audience” whose skills will often materialize in the form of things and meanings or in the form of identities (pp.121-122). Where much of the recent

definitional contention surrounding the term “fan” comes from, however, is arguably in the relationship that sometimes exists between fandom and cultism. Abercrombie and Longhurst (1998), for instance, define fans in terms of a taxonomy that includes cultists and enthusiasts. This taxonomy of groups falls along a spectrum of identities and experiences, which are differentiated by specialization of interests, social organization of interests, and material productivity (as cited in Hills, 2002, pp.ix-x). This definition, however, contradicts most other definitions of fandom as it tends to categorize what recent literature defines as “fans” into the cultist category. Consequently, this definition is seen as problematic by many fan scholars (Hills, p.ix). It should be noted, however, that Abercrombie and Longhurst (1998) are trying to reject the negative connotations surrounding the terms fans, cultists, and enthusiasts. Instead of suggesting that fans and the like are “in some way deviant or deranged,” Abercrombie and Longhurst take a similar approach to Fiske (1992), and suggest that fan activities are normal activities, akin to the activities of “ordinary” audience members (p.124).

Authors such as Tulloch and Jenkins (1996), however, choose to ignore the “cult” concept posited by Abercrombie and Longhurst, choosing to instead define fandom in terms of followers and fans, whereby fans claim “a social identity that followers do not” (as cited in Hills, 2002, p.x). Similarly, Pustz (1999) notes that “[b]eing part of a particular reading community allows readers to identify themselves as fans.” This identification serves to distinguish fans from “nonfans” (p.20). Other authors, however, are not so quick to dismiss the relationship between fandom and cultism. Brooker and Brooker (1996) note that cult followings tend to emerge in fan bases where fans are particularly “more knowledgeable and fan-community oriented” than their peers (as cited in Hills, 2002, p.x). These cult followings are, simply enough, referred to as cult fans. Hills (2002) notes that there is an overlap

between fandom and cult fandom, and that in most respects it is difficult to differentiate between the two. Where there is a distinction between the two, however, is not so much in how knowledgeable or community orientated a fan is, but by the duration of the fandom – that is to say, how long a fandom related to a specific subject or object has existed – and by the relative “absence of ‘new’ or official material in the originating medium” (p.x). It is in instances, for example, where shows have been cancelled yet have maintained a strong following – to the point where fans develop a “mythology of fan activism” – that the term “cult fandom” can be applied. By this definition, while shows like *Star Trek* or *Doctor Who* have developed cult followings and can therefore be described as cult fandoms – both for the fact that they have been cancelled and for the fact that subsequent fan activism and fan-based activities have resulted in the development of new canonical material – a show like *Lost* cannot be said to have developed a cult fandom by virtue of the fact that it is (at present) ongoing and has not attained the longevity required to develop a cult following (pp.x-xi). This leads to the notion that being a fan means “participat[ing] in a range of activities that extend beyond the private act of viewing and reflects an enhanced emotional involvement with a television narrative” (Bielby, Harrington, & Bielby, as cited by Costello & Moore, 2007, p.127). In other words, fans and fandoms are often defined by that they do in relation and “in conjunction with the consumption of media texts and related products of popular culture” Costello & Moore, 2007, p.127).

Fan-based activities tend to “materialize in community contexts,” uniting disparate people, and sometimes developing into intimate relationships on a small scale or full-fledged movements on a much broader scale (Wolf & Taylor, 2004, p.669). For many fans, the entry into fandom involved some form of movement from isolation into a broader community that accepted them and their cultural production(s). This isolation often came as a result, in the

case of women, of a patriarchal society and, in the case of seekers of alternative pleasures, the dominant media representations (Jenkins, 2006, p.41). Jenkins (2006) notes that becoming a fan is not simply a matter of regularly watching a television program, but involves “translating that viewing into some kind of cultural activity, by sharing feelings and thoughts about the program [...], and by joining a community of other fans” (p.41). Wolf and Taylor (2004) also describe fandom as a form of archival strategy used to “hold on to something that is otherwise lost” (p.664). The process of becoming a fan (or a cult fan, for that matter), however, begins with a passing interest – often in the form of either a real or fictional celebrity – that gradually develops into “an intense level of fascination” (Thorne & Bruner, 2006, p.51). Fandom is described as being selective in nature: it chooses certain performers, narratives and/or genres from “the repertoire of mass-produced and mass-distributed entertainment [...] and takes them into the culture of a self-selected fraction of the people” – in other words, fans “poach” from the various medias that interest them (Fiske, 1992, p.30; Jenkins, 2006, p.39). These entertainment selections are then reworked into something “intensely pleasurable” that is similar to yet somehow different than the culture of the popular audience (Fiske, 1992, p.30). Furthermore, these selections are often derived from cultural forms that tend to be “denigrated” by society’s dominant value system – such as certain genres of music, movies, literature, and just about any form of culture that is “associated with the cultural tastes of subordinated formations of the people” (p.30). From these selections, fans are often able to find meaning from which they can “produce a sense of subcultural identity and esteem for themselves” (Fiske, 1987, pp.69-70).

Inherent in most conceptualizations of fans and fandom is the notion that fans are perceived as inferior – either to producers or to “normalized” audiences. This perception, in many respects, is fuelled by cultural and social values that tend to undermine the practices

and interests of most fans. These social values, in effect, form the basis of what Fiske (1987) refers to as values systems. Value systems emerge as a result of culture, which “consists of the meanings we make of our social experience, [...] relations, [...] and the sense we make of our ‘selves’.” These meanings are situated within a social system that is, in turn, “held in place by the meanings that people make of it” (p.20). Consequently, culture plays an intricate role in the distribution of power within a society. Power relations, in effect, are determined by the meaning given to them by people. As such, while culture can be seen as a “struggle for meaning,” society can be seen as a “struggle for power” (p.20). The dominant value system, thus, represents the ideologies and values that are given the most meaning by society. These systems tend to favour certain social groups and, consequently, certain modes or forms of culture over others (p.20). By favouring certain social groups over fandoms, the dominant value system can perhaps be attributed – at least in part – to the subordination of fan rights vis-à-vis producer rights. Jenkins (1992b) notes that the media texts fans choose to follow are often denigrated by society at large. From comic books to cartoons to shows such as *Star Trek* and *Firefly*, the media texts and cultural commodities that fans follow are often deemed immature and deviant compared to works that conform to the dominant value system (pp.16-17). Furthermore, the dominant value system effectively undermines the cultural contributions of fans – both as consumers and as producers. Fans are, as Jenkins (1992a) puts it, “consumers who also produce, readers who also write, [and] spectators who also participate” (p.208). While many contemporary cultural theories acknowledge that all media spectators are essentially “active audiences,” they distinguish fans in terms of specific cultural activities that “result in [the creation of] material artifacts.” In this light, given the fact that fans are thought of “almost exclusively in terms of relations of consumption rather

than production” (pp.208-209), this arguably represents a shift in the understanding of fans, and effectively calls into question the relationship between fans and producers.

Many of the issues surrounding fan culture – including the relationship between producer and consumer – invariably relate to cultural studies and, more particularly, cultural policy. For many years, academics have been reluctant to define cultural studies as a discipline – instead often choosing to pair it with established disciplines within the humanities, such as history or anthropology. The argument often posited against establishing cultural studies as a discipline has been its mobility and adaptability, as well as its relationship to “social movements and constituencies outside the academy” (Bennett, 1998, p.530). However, in recent years cultural studies has gained the “institutional trappings” to be considered disciplinary – it has spread like proverbial wildfire throughout many of the universities in Western society, and is now offered as its own field of study (pp.528-529). Where the field of cultural studies has particularly differentiated itself intellectually from other disciplines is in its approach to analysing “the role of culture in relations of power and subjectivity” (p.528). While initially, the focus of cultural studies on power tended to look at the role of culture in propagating “relationships of social class,” in more recent literature the focus of cultural studies on power has broadened to include gender, race, sex, and post-colonial debate (pp.536-537). Bennett (1998) notes that “the manner in which culture operates in the context of particular power relations is always dependent on the ways it is inscribed within, and forms a part of, institutions” (p.537). From this point of view, various cultural forms and activities – such as production, dissemination, and effect – are seen as “interdependent components of a complex set of interactive processes” (p.537).

Power relations, thus, play an intricate role in the production of culture, and in the relationship between fans/consumers and cultural producers. Cultural production and

reproduction is structured in terms of “the distribution of available positions,” that is to say that artists/authors take position in relation to the position of other artists. These positions possess value which, when located in culture in a certain way, attribute to artists “certain effects in culture” (Bourdieu, as cited in Gelder, 1996, p.30). These positions can be categorized in terms of a binary opposition between artists who produce cultural goods for financial reasons and those who produce goods for recognition. This dichotomy is perhaps best illustrated by the difference between films and writing: while films tend to be large-scale productions, writing tends to be “restricted” (Gelder, 1996, pp.30-31). The relationship between these two positions, however, is relatively unclear – particularly in the context of popular writing. For the longest time, the role of the author had evolved in the direction where the author no longer necessarily wrote or created for him/herself, but for the profit of others; the author’s writing must satisfy the publisher if there is any hope of it being published (Weldon, as cited in Gelder, 1996, p.31). The advent of the internet, however, has made it easier than ever to self-publish one’s work. This, in effect, has diminished the control publishers have over the works of artists and arguably marks a shift in the power relations between artist and publisher.

Beyond this shift, however, the power relation between fans and producers has also changed as a result of the internet: fans – and consumers, in general – now have the ability to publish their work without the need of a publisher, work that is based on the cultural products of producers and that can potentially influence or undermine perceptions (and sales) of the original product. Because of this shift in power relations fans are arguably no longer seen as consumers so much as competitor. Klein (2000) notes that “a competitor is anyone doing anything remotely related [to that of a producer] because anything remotely related has the potential to be a spin-off at some point in the synergistic future” (p.177). Despite the

potential view of fans as competitors, there remains an underlying perception in the literature that fans remain a subordinate class to producers. This can perhaps best be explained through conceptions of power and power relations. Foucault, for instance, approaches the notion of power in terms of “the operation of political technologies throughout the social body” (Dreyfus & Rabinow, 1982, p.185). These technologies function as rituals of power which, in turn, determine the “nonegalitarian, asymmetrical relations” in society. While political technologies are not restricted to political institutions, and similarly cannot be identified or be specifically attached to any one institution, when applied or localized to an institution – such as academia or fandom – the result is that of bio-power – the order created in a “realm” through the promise of welfare (pp. xxii & 185). Foucault (1982) notes that power “only exists when it is put into action,” and the “exercise of power” constitutes both a relationship between people and “a mode of action upon the actions of others” (p.219-221). For Foucault, power is not a “monolithic force” that remains consistent throughout time and place, but rather differs depending on “place, location, and theoretical perspective” (Auslander, 2008, p.100).

Similarly, Fiske (1987) describes popular art – or cultural commodities – in terms of an “ephemeral, multifarious concept based upon multiple and developing relationships with the practice of the dominant ideology” (p.310). Furthermore, cultural commodities must meet the various interests of both consumers and producers in order to be popular. Consequently, popularity can be seen as “a measure of a cultural form’s ability to serve the desires of its customers” (p.310). Popular art, as such, can arguably be considered a form of technology through which the broad conception of media producers – as institutions – develops relationships of power with the general audience. This relationship, however, is arguably contingent on two things: the production of popular art by media producers, and the

consumption of said art by audiences. Once this relationship is established, however, action is required. Where producers, in some respects, hold an edge in their relationship with fans is in regards to intent: while producers will see the use of their commodities by fans as copyright infringement and will act accordingly, fans (and consumers) generally do not intend to infringe on copyright, and have no intention of passing their productions off as either comparable or as the “real thing” (Klein, 2000, p.176-177). Thus, fans will often “cease and desist” before issues of copyright law can be brought to court because they had no intention of causing trouble.

However, for a number of fans part of the appeal of creating fanart is the idea of evading the law, so to speak. Westcott (2008) notes that many authors of fan fiction work under the “rueful assumption that fan fiction does in fact infringe copyright” (§12). Foucault describes an interesting relationship between pleasure and power: there is pleasure in exerting power just as there is pleasure in evading it (as cited in Fiske, 1987, p.260). For fans, while pleasure can come in the form of activities that do evade the (legal) power of producers, the sense of pleasure is also created by producers. Consumerist culture – such as seen in television programs or movies – often depicts the “excorporation” or rejection of the notions of capitalism as pleasurable to societal subordinates – the audience (Fiske, 1987, pp.260-261). When popular art works in this fashion – that is to say in the interest of the subordinate – it provokes fantasy or the romanticism of resistance or anti-consumer ideology (Hills, 2002, p.28). This, in turn, often takes shape in the form of “power [...] to exert control over representation” (Fiske, 1987, p.318). These forms of empowerment enable subordinates to “produce resistive meanings and pleasures that are [...] a form of social power” (p.314). In this sense, the relationship between fan and producer is arguably one of cause and effect: producers create cultural products for fans that promote the rejection of capitalism; fans

consume these products and are empowered by them; from this empowerment, fans are motivated to produce cultural products of their own – such as fan fiction – which gives them pleasure (a concept which will be discussed in the forthcoming sections of this paper). This cause and effect works both ways, however. When fans take to a certain media production, it often empowers producers to produce more – effectively creating a cycle of “give and take” between producers and fans.

What the literature on fandom reveals is that the relationship between fans and producers is a precarious one. Many authors are quick to point out the parallels that exist between the fan/producer relationship and the more commonly conceived consumer/producer relationship found at the root of cultural policy. However, the fan/producer relationship is decisively more complex and has, arguably, more profound implications for cultural policy than does its counterpart. Consumers tend to be conceived as passive; they consume but they do not produce cultural commodities. Fans, on the other hand, are often conceived as being active (albeit sometimes pathologically so); while they invariably consume, they also mobilize and produce on a cultural level that *mere* consumers do not. The cultural studies conception of consumers (and producers) is useful in understanding an aspect of fans – the consumption aspect – but it does little to address the aspects of fans that make them *different* from consumers and *different* from producers. It is also not enough to suggest that fans are a hybrid of the consumer and producer and, as such, can be studied in light of both concepts. Fans are arguably a cultural entity that is at once both consumer and producer, yet at the same time neither – an entity which needs to be approached in a light all its own. While this, in itself, might sound like a contradiction, as Hills (2002) is often quick to note, the concepts of fans and fandoms are often wrought with obvious and sometimes irresolvable contradictions – both in terms of their production and consumption of culture (pp.28-29).

That being said, fans are slowly, but surely, appropriating a place for themselves within cultural studies discourse, one which recognizes the unique nature of fans as cultural entities that both consume and produce cultural commodities. What this discourse has hitherto neglected, however, are the rights of fans with regards to their cultural creations and labours.

Chapter 3: Conceptual Framework

When considering the issues and problems related to the rights of fans with regards to their work, as well as their relationship with producers, a number of theories stand out. In particular, this framework will focus on theories of fandom as both consumer and producer; theories of cultural studies and policy that discuss and relate to the relationship between consumer and producer, as well as the commodification of culture; and, using both genealogical and archaeological perspectives, the power relations between audiences and producers and, more specifically, the power relations between fans and producers. The links between these theories and their applications to fandom, in general, arguably help situate the problems surrounding fan rights in terms beyond the simple legality of fan works – and into more social and systemic understandings. It should be noted that this thesis, while rooted in the field of Public Administration (PA), is inspired by cultural studies. It draws on a number of theories and traditions in the social sciences that are of an interdisciplinary nature. That being said, the focus of this paper is very much on PA related issues. The rights of fans and, more broadly, copyright law carry with them a number of profound implications for the governance of cultural policy -- policies which are enmeshed in the field of cultural studies. Consequently, this thesis is positioned as a PA paper that builds off the theories of cultural studies to address issues that span both fields. The intention of such a position is to approach PA in a way that has seldom been done before.

Producers/consumers: The Discursive Economy of Cultural Production

Central to the relationship between consumers and producers in the cultural studies context – and incidentally the focal point of much of the contention that exists between producers and fans – is cultural production. More specifically, this relationship implies the consumption of cultural productions. It has long been established and accepted that

consumption, of any sort, is generally pleasurable in nature. While once the hedonistic behaviour of consumption (or over-consumption) might have been frowned upon, that is no longer the case in Western Society. The world has transitioned into a capitalist mentality where the central tenet of many governments' economic policy is to "maintain consumer spending levels," and where economic effectiveness is measured and contingent on "consumer confidence" (Gilbert, 2008, p.552). Furthermore, there is a strong tendency and pressure in Western Society to equate "every possible social relation to the norms of the consumer/provider transaction" (p.553). This tendency has led to the mentality that any and everything can be commodified, and that people will consume commodities provided that they are sufficiently pleasurable. Consequently, the marketing strategies employed by producers of cultural commodities aim to promote (among other things) the pleasurable aspects of consuming those commodities (Herman, Coombe, & Kaye, 2006, p.190). A strong link in cultural studies has therefore been made between consumption and pleasure.

Certain theorists, however, would argue that pleasure insofar as it relates to consumption is not necessarily a good thing – that it tends to subvert peoples' capacity to think. Adorno, for instance, sees pleasure as a "means not to think about anything, to forget suffering even where it is shown" (Bernstein, 1991, p.11). In essence, pleasure works as a form of liberation from "thought and negation" (p.11). In this respect, Adorno sees cultural industries as working to eliminate the thought of all other options save the status quo – which, in this case, would be pleasure (p.10-11). The culture industries, refer to the consumerization or commodification of culture. Along these lines, cultural products are manufactured according to a "plan" whereby they are "tailored for consumption." Furthermore, the very nature of consumption is also manufactured (pp.98-99). Culture commodities, thus, are measured not in terms of their content but in terms of their realized

value (p.99). Dávila (2003) describes the commodification of culture as a process in which culture is rendered into a thing – “an object or a piece of folk art” that is assigned an economic value. (p.302). In this light, according to Fiske (1992), culture can be described as a form of economy “in which people invest and accumulate capital” (pp.30-31). Generally speaking, when consuming culture and cultural productions, audiences, to some degree, partake in either semiotic and/or enunciative productivity. Semiotic productivity involves producing meaning and pleasure from the cultural object being consumed; enunciative productivity exists in the moment – through the immediate relationship and discourse between fans (or consumers) regarding a specific cultural production. While these forms of productivity tend to be internal and fleeting, fans will often externalize them in order to produce texts that can be circulated within the fan community – otherwise known as textual productivity. While many of these texts share the same quality of production with that of the “official culture,” they differ on one key aspect: fan texts are not created to make money – in fact, they often cost fans money to produce. Furthermore, fans have historically lacked the economic and productive resources to both professionally produce and circulate their work to an audience outside of the fan community (pp.30-37) – that is to say, until the emergence of the internet as both a tool for production and circulation.

The concept of semiotic productivity, in particular, is poignant when considering the relationship of fans to both the cultural commodities they consume, but also the commodities they produce. Semiotics, itself, is the study of signs – in this case referring to words, images, behaviours, and arrangements in which meaning or ideas are conveyed through manifestations that people can perceive (Fortier, 2002, p.19). More profoundly, Foucault defines semiotics as “the ensemble of knowledge and technical skills that enable us to perceive where signs might be, to define what constitutes them as signs and to understand

the relationship between them and the laws governing their interaction” (as cited in Pavis, 1982, p.13) According to Ferdinand de Saussure, signs have two parts: the signifier and the signified. The signifier refers to the sign in which people are able to perceive, and the signified is the meaning or idea evoked by the signifier. The relationship between signifier and signified is arbitrary. Because of this, the signifier is not grounded in anything firm. In this respect, relationships are relationships of difference: a “tree” is a tree because it is not something else; a jack of clubs in a deck of cards has value “because it is less than a queen but more than a ten” – without its relationship to the queen and ten, the jack is meaningless (as cited in Fortier, 2002, pp.20-21). According to Charles Peirce, the meaning perceived in signs requires an interpreter to perceive them. Acts of perception cause more acts of perception, in an endless cycle which he refers to as “unlimited semiosis” (as cited in Fortier, 2002, p.22). For Peirce there are three kinds of signs: iconic, indexical, and symbolic. There are also a number of classifications from which semiotics work: the differentiation between connotation and denotation; codes and the message(s) they transmit; paradigmatic and syntagmatic; metalanguages and polysemic signs; etc. These classifications serve to facilitate the study and analysis of text: it is only through the contrast and differentiation in text that people are able to perceive elements and meaning (as cited in Eagleton, 1996, pp.87-88). For Lotman, on the other hand, literature and poetry cannot be defined by their “inherent linguistic properties.” The meaning of text is relative, also, to its relationship with other texts, and to its interpretation by and expectations of the reader(s). Consequently, semiotics represents a literary criticism “transfigured by structural linguistics” (as cited in Eagleton, 1996, pp.88-89).

The use of semiotics in the discourse of the relationship between fans and producers is relevant insofar as it highlights the seminal role of audiences in attributing meaning to the

cultural commodities of producers. Without fans (or audiences) to interpret and consume the works of producers, those works arguably become meaningless. That being said, semiotics goes a step further in its analysis of cultural productions – calling into question the very ownership of said productions and, arguably, the very notion of copyright law. Roland Barthes (1977), in his seminal work, *The Death of the Author*, posits that the act of writing represents the destruction of “every voice, of every point of origin” (p.142). It is the neutral space where subject slips away and identity is lost – primordially the identity of the author. As soon as an author begins writing, he or she loses ownership (authorship?) of the work in question; it becomes a work of and for all people. It is only in modern times that the author has become a figure of eminence in literature and in society. Works are explained through and by their authors – the people who produce them. Despite the modern conception of the writer as central to the literary work, there are some authors who have attempted to “loosen” this perspective. Mallarme, for example, has tried to put an emphasis on “language acts” and on the writing itself rather than on the writer (p.143). Proust tried to blur the line between the writer and the characters he or she wrote by portraying the narrator as being not someone who had firsthand witnessed the events of the narrative, nor as a writer, but as someone who is intending to write (p.143). For Barthes, the writer represents no more than the instance he or she writes. Like a parent raising a child, once the work of literature is finished, it no longer belongs to the writer (p.144). Similarly, while the book is written, it is not meaningful or substantial until someone has read it – that is to say that the narrative of a book could be that of an infinite number of possibilities for a person up until that person reads it. In this respect, the reader is as much the author of the text as the writer is. To impose an author on a text is to effectively limit the possibilities of said text (pp.145-146).

Because all texts, in relation to each other, can be seen as intertextual, they form a part of a larger system of interrelationships between texts. A text, in effect, draws from many sources – textual and otherwise. The unity of a text, comes not from the author who strung all the different ideas and concepts into one work, but from the reader who interprets them as a whole (Barthes, as cited in Auslander, 2008, pp.47-49). Intertextuality refers to the notion that “all literary texts are woven out of other literary texts” (Eagleton, 1996, p.119). Eagleton, however, notes that the notion of texts being woven from others is not to be taken in the conventional sense that one can map out a work’s influences, but in “the more radical sense that every word, phrase or segment is a reworking of other writings which precede or surround the individual work” (p.119). In this respect, authors function as a “principle of unity” – their “work” unifies or weaves together texts (Ekegren, 1999, p.xviii). Fans arguably function in a similar fashion to the author. Taking this in the context of fan fiction and copyright law, for instance, semiotics and intertextuality suggest that as there is no such thing as an original idea or concept, the notion that producers can claim copyright infringement on fan fiction is without merit.

In many respects, fan or cult texts work under a similar premise as semiotics and intertextuality. Hills (2002) describes fan texts in terms of “family resemblances,” which come in the forms of “endlessly deferred narratives, hyperdiegesis, auteurism, and contingent denarration” (p.143). These family resemblances – the most prominent of which is endlessly deferred narratives – are characterized as having “no ‘author-function’” (p.134). Family resemblances tend to work as a form of linkage between “seemingly unrelated cult texts and icons” (p.143). The cult status of a text is often contingent on there being a degree of space for interpretation and speculation. Fan fiction, for instance, often revolves around unresolved storylines or plot points – deferred narratives – that have not been addressed

canonically in the source material. Even in certain instances where plot points have been addressed or resolved, fans still have the ability (and, arguably, creativity) to mine those works for “endlessly deferred narratives” (p.143). While the notion of deferred narratives provides the potential opportunity for media producers to fabricate plot holes in their medias in order to draw fans in, Hills (2002) offers a caveat: fans tend to avoid deferred narratives that are “too obviously ‘manufactured’ by producers” and will often retreat to the romantic notion of anti-commercialism (p.143).

The notion of fans as anti-consumerists is nothing new to fan related literature – however, this notion is full of contradictions. While fans are often described as an active audience – one which is dedicatedly committed to specific media products – they are also described as “resisting the norms of capitalist society” (Hills, 2002, p. 29). Fans’ dedication to specific cultural commodities – such as television or comic book series’ – often results in an emotional investment and an attention to detail that can sometimes be “at odds” with media producers’ needs and abilities to tell new stories. These characteristics, coupled with fans’ “expressed hostility” towards commercialization and commodification has led many theorists to define fans as anti-consumerist (p.28). Furthermore, fans have a tendency to censor other fans whose practices are “‘clearly linked with’ dominant capitalist society” (Cavicchi, 1998, as cited in Hills, 2002, p.29). On the other hand, however, fans are also often depicted in literature as being “specialist” consumers who “keep up with new releases of books, comics and videos” (Hills, 2002, p.29). In some respects, fans represent the ideal consumer insofar as their consumption habits are easily predicted and remain relatively constant. While fandom’s relation to consumerism is arguably wrought with contradictions, to conceptualize fans as being strictly anti-consumerists or opposed to consumers “falsifies the fan’s experience by positioning fan and consumer as separate cultural identities” (p.29).

A tendency in the literature has been to conceptualize fans as both consumers and producers. While this conception is not false, per se, it does tend to downplay the notion of fans as consumers. It stands to reason that not all fans are producers – despite what Fiske (1987) suggests with his notions of semiotic and enunciated productivity. By blanketing fandom with productivity without considering its consumerist aspects, many authors are effectively ignoring the dichotomous and contradictory nature of fans and fandom (p.30).

Underpinning the dichotomous nature of fandom is arguably a question of identity: how to identify fans in the broader spectrum of cultural studies. The problem with identity, however, is its ever-changing nature. Hall (1996) describes identity or identification in terms of being “constructed on the back of a recognition of some common origin or shared characteristics with another person or group, or with an ideal, and with the natural closure of solidarity and allegiance established on this foundation” (p.2). However, identity is a construct that is in a state of perpetual change – it is something that is continually in transition and subject to “radical historicization” (pp.2-4). Consequently, there is a need to position identity in the broader discourse of “historically specific developments and practices.” This is not so much a question of looking at the “who we are” and “where we came from” of history, but rather at “what we might become, how we have been represented, and how that bears on how we might represent ourselves” (p.4). Identities emerge within discourses and “within the play of specific modalities of power,” and are forged through difference and exclusion – and not so much from inclusion and sameness, as has traditionally been the understanding of identity. It is from these discourses and processes that individuals are called into place “as social subjects of particular discourses” – they are effectively subjugated (pp.4-6). Underlying the concept of identity, therefore, are notions of power relations and the discursive narratives that permeate them.

A Genealogy of Copyrights and Cultural Production

The power relations that are apparent in the relationship between fans and producers are, in large part, centred on cultural production. In many respects, this relationship is predicated on who has power over the cultural commodities both consumed and produced by fans. But what is meant by power? To approach this concept, it is perhaps best to take a step back and consider it from a Foucauldian perspective of discourse analysis – that is to say, from Foucault’s genealogy. At its heart, Foucault’s genealogy is interested in discourse, power, and knowledge – a “triad” of interconnected concepts (Carabine, 2001, p.267). For Foucault, discourse is not meant in the linguistic sense of “passages of connected writing” but in terms of a “group of statements which provide a language for talking about a particular topic at a particular historical moment” (Hall, 2001, p.72). Simply put, discourse is an activity of writing, reading, and exchange (Foucault, 1976, p.228). The production of discourse is “controlled, selected, organized and redistributed according to a certain number of procedures, whose role is to avert its powers and its dangers, to cope with chance events, to evade its ponderous, awesome materiality” (p.216). Elements of discourse can be found in literally every form of social practice imaginable. Social practices “entail” meaning – meaning, which, in turn, shapes and influences human activity. Furthermore, and similar to theories of semiotics, discourse also produces knowledge through language. In effect, discourse refers to both language *and* practice: it not only “constructs the topic, [...] it defines and produces the objects of knowledge” (Hall, 2001, p.72). It is in this respect that discourse, as conceived by Foucault, differs from semiotics: in semiotics, language is the producer of knowledge and meaning; in Foucault’s genealogy, discourse produces knowledge and meaning (p.73). Discourse is “fluid and [...] opportunistic” in nature, feeding off existing

discourses “to produce potent new ways of conceptualizing the issue or topic” (Carabine, 2001, p.269).

Discourses rely particularly on historical moments for their potency. Foucault had a tendency to radically historicize discourses. That is to say, Foucault believed the truth of something was contingent on its historical context. From one period in history to the next, discourses produce forms of knowledge, objects, subjects, and practices of knowledge that are particular to that time, and do not necessarily follow any logical progression or continuity from previous periods (Hall, 2001, pp.74-75). Shifts and changes in discourses throughout time, coupled with the emergence of new discourses, effectively change understandings of knowledge and what is accepted to be “true.” Inherent in the discursive production of knowledge and truth is power: knowledge is produced through discourse “by effects of power and spoken of in terms of truths” (Carabine, 2001, p.275). That is to say, power through discourse effectively creates knowledge and ultimately determines what is and is not true. Power, in effect, is “constituted through discourses” (p.275) – by determining truth, discourse creates/legitimizes power. To this extent, discourses can be said to be powerful – with certain discourses being more powerful than others by virtue of factors such as authority and/or validity. Discourse, consequently, is best understood in terms of being “intermeshed” with power and knowledge, whereby knowledge “constitutes and is constituted through discourse as an effect of power” (p.275). In this respect, discourse functions as a means through which knowledge and power are connected (p.280).

When considering fandom and the legal issues that accompany many fan practices and forms of cultural production, one can perhaps better understand and appreciate the discourses surrounding these issues in terms of knowledge and power. Fan production of cultural commodities arguably calls into question the legitimacy – the power – of the

producer/author's productions – their knowledge. While producers maintain a degree of authoritative power in the sense that they are the legal proprietors of their intellectual property, fan production and its proliferation through the internet has closed the proverbial gap in the power relations between fans and producers. To maintain the status quo of power relations, producers have consequently turned to legal discourses of copyright law to mitigate fan activities. As copyright law was created with the intent of promoting the spread, accessibility, and creation of new knowledge (Wilkinson & Gerolami, 2009), it is ironically fitting that it also serves the purpose of guaranteeing the power and legitimacy of said knowledge: it ensures, to a degree, that the producer – and only the producer – has power over the “truth” of their cultural production. In other words, it serves to ensure that the dominant discourses – the discourses of producers – remain dominant while the inferior discourses remain subordinate. This is not to dismiss the legitimacy of the dominant discourses with relation to copyright law, but rather to suggest that copyright law, in its support of the dominant discourses, is hindering the potential of fans and their discourses.

The connectedness between power and knowledge, through discourse, has a particular effect on Foucault's genealogy. By linking knowledge to power, knowledge is given an assumed authority of “truth” and the ability to make itself true. Once applied to the real world, knowledge essentially becomes “true” as it invariably has an external effect on society. If society, for instance, is told that delinquency and crime are a direct result of being raised by a single parent, and if society acts to punish single parents as a result, then there is a real consequence and the knowledge of delinquency – whether empirically true or not – will have become true “in terms of its real effects” (Hall, 2001, p.76). Given the fact that knowledge is always applied, in some capacity, to regulate social behaviour, relations of power invariably emerge as a result. To this extent, knowledge and power are inextricably

linked: one cannot exist without the other (p.75-76). Consequently, Foucault's genealogy is not so much concerned with truth as it is with the "procedures, practices, apparatuses and institutions involved in the production of discourses and knowledges[sic], and their power effects" (Carabine, 2001, p.276). Genealogy, thus, is a method through which to trace the historical developments of knowledge and power in order to "reveal something about the nature of power/knowledge in modern society (p.277). This is not to suggest, however, that genealogy maps out the "evolution [...or] destiny of a people," nor is it to suggest that genealogy is a "quest" for the origins of "values, moralities, asceticism, and knowledge" (Foucault, 1977 p.144-146). Rather, genealogy is an attempt to map the errors and deviations that have given rise "to those things that exist and continue to have value"; it seeks to unveil that the "truth" of knowledge is not at the centre of "what we know and what we are" (p.146).

It can be argued, genealogically, that the "truth" of copyright law is an effect of its application to the real world. Semiotics suggests that the author is dead and the meaning in works is interpreted by the audience in relation to other texts (Barthes, 1977; Eagleton, 1996); the discourse of copyright law, however, prescribes value to knowledge – it suggests that meaning and interpretation of a cultural production belong in the hands of the author, and any deviation from the author's view is potentially wrong and runs the risk of bearing legal ramifications. This notion is true only insofar as copyright is "true." Consequently, copyright law arguably has the dual effect of an apparatus that both produces and brings to a halt cultural production. On the one hand, copyright ensures that the rights of the producer are protected – that the producer can create (and continue to create) works without the concern that their work will be misappropriated or exploited for the capital gain of others. In this respect, copyright law works as an incentive to create new works – to create new

knowledge. On the other hand, by giving producers such power over their works, copyright law has also stymied the creation of new and evolution of existing discourses. As discussed, discourses build upon other discourses to create new interpretations of issues or topics. What copyright effectively does is limit the scope of discourses from growing or emerging. Or rather, it should be said, copyright limits the growth of subordinate discourses. It normalizes the behaviours of consumers with regards to both the consumption and production of cultural commodities.

Genealogy, it should be noted, also seeks to map out the normalization of individuals that occurs through discourse and relations of power in society. Normalization refers to the various modes and procedures through which individuals are “judge[d], measure[d] and compare[d]” (Carabine, 2001, p.278). Through normalization, people are measured in terms of whether or not they conform to social norms (p.278) – expected patterns of social behaviour (Johns & Saks, 2005, p.212). Disciplinary action, such as what is seen in prisons, for instance, has the effect of instilling norms into people and creating homogeneity (Foucault, 1995, p.295-296). Normalization works in a gradual, uneven, and “contradictory process” – it involves, on the part of the individual, the continued assessment and negotiation of one’s position vis-à-vis the norm in question (Carabine, 2001, p.277). That being said, normalization is a “means through which power is deployed”: it involves the dispersing of practiced and learned knowledge “through centres of practice and expertise” (p.278). Power, it should be noted, is not centred in a specific source, nor does it function solely in a top-down fashion; power circulates, and is “deployed and exercised through a net-like organization” (Foucault, 1980, as cited in Hall, 2001, p.77). Power permeates every level of society, working both up and down. While certain governments or social classes might hold positions of dominance, Foucault’s genealogy is concerned more with the way in which

power is deployed and circulated through society than it is with the “grand, overall strategies of power” (Hall, 2001, p.77; Carabine, 2001, p.277). In this respect, power is also considered in terms of the possibility or capacity to resist power: there is power in the very act of resisting power (Foucault, 1982, pp.210-211). From a genealogical perspective, the use of copyright law – in any capacity – is a form of normalization. Its existence is primarily a form of discipline – to extinguish certain behaviours and create consequences for the “illicit” use of copyrighted material.

What is more, however, Foucault (1995) found in his study of prisons that the normative act of measuring and judging prisoners through continuous surveillance – as opposed to corporal punishment – effectively provided the penal system with a greater degree of power in its relationship with inmates. Through rigorous surveillance, the penal system was able to normalize and regulate the behaviour of its inmates while simultaneously collecting a continuous body of knowledge regarding those inmates (p.294-295). The implications of these findings, particularly when applied to copyright law and the capabilities of the internet, are numerous. It goes without saying that the internet carries with it considerable potential in terms of its surveillance capabilities and its capacity to collect data/knowledge. If experts are correct in their concerns over the as yet un-tabled amendments to copyright law, the proverbial door will be made open for various authorities – in this case legal authorities, service providers, and producers – to monitor and collect data on individual citizens based on nothing more than suspected copyright infringement (Nowak, 2010). The question becomes: how does one suspect an individual of copyright infringement without first monitoring their activities? The internet activities of an individual (i.e. the volume of information being transferred to and from his or her computer) would first have to be monitored and compared to those of the “norm” before reasonable suspicion of copyright

infringement can be incurred. That is unless it is assumed that everyone is infringing copyright – in which case, any and everyone would be subject to potential surveillance. Consequently, citizens would arguably be normalized to not infringe on copyright law for fear of being monitored at any given moment and suffering the consequences. In this respect, the dominant discourse would be exercising power through knowledge – the knowledge that they can monitor internet activity and, consequently, control cultural production by consumers and fans. In a Foucauldian perspective, it is important to insist on the truth effects of these discourses (and their constitutive effects on culture). As Foucault (1975) notes, "[...] il n'y a pas de relation de pouvoir sans constitution corrélative d'un champ de savoir, ni de savoir qui ne suppose et ne constitue en même temps des relations de pouvoir" (p. 36).

Foucault posits that there is a pleasure that comes from “exercising a power that questions, monitors, watches, spies, searches out, palpates, [and] brings to light” the behaviours and activities of others (as cited in Fiske, 1987, p.314). Pleasure, like power, works multidirectionally: top down and bottom up (Dreyfus & Rabinow, 1982, p.185; Fiske, 1987, p.314). While there is invariably a degree of pleasure on the side of fans through the consumption (and production) of cultural commodities, producers undoubtedly experience a degree of pleasure in this transaction as well – if not for the financial gains they generate from the consumption of their commodities, then certainly from the ability to monitor the activities of fans and consumers. Notwithstanding the internet’s – a commodity unto itself – potential for monitoring, many other cultural products/commodities allow producers to survey, reveal, spy, and monitor consumers and consumer behaviour – and, consequently, fan behaviour (Fiske, 1987, pp.314-315). The very act of purchasing a commodity entails a degree of surveillance/monitoring: sales records indicate which commodities sell and which do not – information from which producers can glean knowledge of consumer preferences.

While this example perhaps goes a step beyond the necessary in illustrating the depths to which producers can monitor the activities of consumers and fans, the fact remains that the monitoring of consumption is something people take for granted: it goes without saying that producers monitor consumptive practices. Given that citizens are, more likely than not, willing to accept monitoring of consumption as a transaction cost, however, speaks volumes to the effects that normalizing practices, utilised by producers, have had on society.

An Archaeology of Fan Practices

While Foucault's genealogy provides insightful methods through which to conceptualize the discourses surrounding (and regulating) fandom, it arguably does not go far enough in getting to the root of these discourses. Genealogy aids in applying theory, but does little in the way of explaining the "why" or "what" of discourse – in particular what is a discourse and how does it emerge. To this effect, a different type of analysis is required. Related to genealogy, albeit sometimes contradictory to it, is Foucault's archaeology. Archaeology is a form of discourse analysis which aims to describe discursive formations and the relationships that exist between them. A discursive formation refers to a group of statements – discourses – which, albeit different in form and in time, speak of the same object. It should be noted that the unity of discourse comes not from the object – which is, itself, a part of the discourse which forms it – but the space in which the object emerges (Garrity, 2010, p.203). Unlike genealogy, Foucault's archaeology is not interested in interpreting or seeking meaning "beyond" the discursive formations themselves – it is interested in studying existence, or "what is actual rather than what is possible" (p.201). What is more, however, Foucault's (1984) archaeology is interested in the problematic that emerges in the subjugation of individuals through discourse:

Il me semble mieux apercevoir maintenant de quelle façon, un peu à l’aveugle, et par fragments successifs et différents, je m’y étais pris dans cette entreprise d’une histoire de la vérité : analyser non les comportements ni les idées, non les sociétés ni leurs «idéologies», mais leurs *problématisations* à travers lesquelles l’être se donne comme pouvant et devant être pensé et les *pratiques* à partir desquelles elles se forment. (p. 19)

For Foucault (1984), discourse functions as a means through which relations in society are codified. It is through discourse that subject positions are attributed, which are, in turn, propagated throughout society via social practices. Take the consumer/producer relationship, for example: this relationship exists and is perpetuated by the practices of production and consumption. Consumers pay for and consume the commodities that producers produce. Implicit in this relationship is the notion that producers are producing commodities that consumers want but are unwilling/unable to produce themselves. If consumers began producing their own commodities, on a wide scale, to the point where producers were no longer necessary in the same capacity that they are now, the relations of power between the two groups would shift. It is these discursive dynamics in which archaeology is most keenly interested.

Archaeology, however, is not interested in defining the “thoughts, representations, images, themes, [and] preoccupations” found in discourse; rather it is interested in discourse as a monument – something that stands the proverbial test of time (Foucault, 1976, p.138). According to Foucault (1976), archaeology is interested in defining discourses “in their specificity” – to deconstruct discourses to the point where the rules they set in play are “irreducible to any other [discourse]” (p.139). In this respect, archaeology seeks to diversify discourses – to find the differences, not the commonalities, which exist from one discourse to the next (pp.159-160). For archaeology, similarly to semiotics, the origin of the *oeuvre* and the authority of the creative subject – as “*raison d’être of an oeuvre*” – are of little concern.

The *oeuvre*, in essence, is relevant only insofar as it intersects with the rules for discursive practices, rules which sometimes govern the *oeuvre* entirely (p.139). Finally, archaeology, in effect, represents a form of rewriting of the *oeuvre*. It is not concerned with finding the original meaning of an *oeuvre* nor to approximate the meaning the author instilled in the *oeuvre* upon creation; instead archaeology is a “systematic description of a discourse-object” (pp.139-140). What is perhaps interesting and ironic about the discourse of producers in relation to Foucault’s archaeology is the fact that producers (through copyright law) are concerned with the *oeuvre* and its creative subject. Conversely, fan practices and activities are arguably archaeological in nature in so far as they often represent rewritings and reinterpretations of the *oeuvre*.

Of particular importance to Foucault’s archaeology is the space(s) in which the object(s) of discourse(s) emerge. In effect, it is in these spaces, and only these spaces, that discourse-objects exist (Foucault, 2003, p.9). Within these spaces and through the discourses that emerge within them, knowledge/power is created. Through observation of and practical training within these spaces, individuals and clinics (or institutions) can develop a gaze. It is from this gaze that discursive continuity exists. The underlying assumption, for instance, in the case of medicine, is that the doctor’s gaze can see the “truth” of disease. From experience and observation, it is assumed that the doctor knows and understands what he or she is seeing when examining a patient (pp.44-52). Through the gaze, discursive formations are carried forward through time. Changes in discourse effectively occur as a result of variations or changes in the gaze (i.e. variations in what doctors observe and/or how they perceive) (p.54).

Applied contextually to the discourses that have emerged within the space of fandom in relation to the consumption and production of cultural commodities, the gaze can arguably be seen from two vantage points. The first and perhaps most obvious is the gaze of the

producer: as author/owner of a cultural production, the producer's gaze emerges as a result of their perceived expertise (real or otherwise) of the cultural product they created – the discourse they have created. The gaze of the producer comes from experience: the producer partakes in the creation of culture and therefore arguably knows and understands the creation better than anyone. Copyright law, consequently, acts as a tool through which the gaze can, quite literally, carry forward the discourse of the producer; it ensures that the producer's gaze remains the only gaze of any merit or importance with regards to the cultural production. The second gaze is, arguably, that of the fan. Fans will often become immersed in the cultural product of their interest to the point where they arguably develop an expert knowledge on the production in question. The gaze of the fan is one of observation: they are familiar with a particular cultural production, sometimes to the point of intimacy. In this sense, copyright law acts as a barrier to the fan's gaze; it supposes that the fan's gaze is not expert, but amateur. That being said, the use of copyright, in and of itself, implies that the expertise within the fans' gaze is truthful enough to challenge the authority of the fan. Copyright assumes, among other things, consumers cannot differentiate between the "truth" of the producer and the "truth" of the fan and therefore must be told what is and is not "true." To this extent, the truth of discourse becomes muddled: is it the author or is it the fan who speaks "truth"?

Implicit in the notion of the gaze is that it is institutional in nature, and that any gaze that deviates from that of the institution is not authoritative or "true." To this effect, the gaze of fans is being repressed or, as was the case with Foucault's genealogy, normalized through copyright law. The dominant discourse – that of the producer – has outlined what it deems to be the "truth" of its knowledge; the institutional gaze, therefore, can arguably be perceived as

a form of power which influences/dictates the relationship between producer and consumer,
between consumer and fan.

Chapter 4: Methodological Framework

The objective of this thesis is to explore various fandoms and their social and political dimensions. A number of critical discourses have emerged in recent years regarding the rights of fans with regards to the use of copyrighted material in the production of cultural commodities and labours. These discourses have strong implications not just for the rights of fans but for the rights of all citizens. Implicit in the object of fandoms and the discourses that have emerged around them are theories and conceptions of cultural studies and policy. While this thesis is inspired by cultural studies – and has consequently borrowed from cultural theories and concepts in its analysis, the thesis itself is still very much grounded in the field of Public Administration (PA), and has consequently followed the framework of a case study analysis. It should be noted that, given the nature of culture and discourse, and the fact that this thesis has, in essence, sought to understand the social interactions and processes between fans and producers, the research behind this thesis has been of a qualitative nature. Qualitative research entails the gathering of data regarding a social phenomenon through “nonstatistical inquiry techniques and processes” (McNabb, 2002, p.267). The objective of qualitative research is to understand the event, circumstance, or phenomenon being studied (p.89). While a number of different qualitative research strategies exist, this thesis has primarily used the interpretive strategy in conducting its research. Interpretive research is used to help “understand people’s actions in social circumstances and situations” (p.271). The interpretive research strategy goes beyond mere description or explanation of a phenomenon – it interprets the phenomenon and what it means (p.271). It should be noted that this research was undertaken from the point of view of someone who is not a fan, in the sense and context defined in this thesis, but who has an appreciation for fan culture and the media texts and franchises discussed/researched.

Research Design

The design of this research was based on the case study approach of public administrative. In particular, it is based on the multiple case study approach. The case study approach – as the name implies – focuses on the particular case of an “agency, organization, person, or group” (McNabb, 2002, p.278). The case study serves as a means through which to definitively define the organization that is being studied (p.278). The category of case study that was employed in this research was the “collective case.” The collective case category looks at multiple cases, studied together with the intent of generating a “greater understanding of a phenomenon, a population, or some general organizational condition” (p.287). Meyer (2001) notes that case studies are “widely used in organizational studies in social science disciplines” (p.329). As predictive theories “do not and probably cannot exist” within the social sciences, its disciplines tend to focus on context-dependent knowledge – something that case studies can and often do amply provide (Flyvbjerg, 2006, p.223). Unlike other research strategies, the case study has “virtually no specific requirements” (Meyer, 2001, p.329). This is both a strength and weakness to the case study approach. This is a strength in the sense that it allows the design and data collection procedures to be specifically tailored to the research question. The lack of specific requirements allows for a more contextual approach to research, particularly when researching “contemporary phenomena in real-life contexts” (p.330). However, the lack of specific requirements in the case study approach can, at times, be a weakness in the sense that it can potentially lead to “poor case studies” – particularly where quantitative research is concerned (pp.329-330). When the case study method is used for the purpose of explaining, producing propositional knowledge, and creating law, it is “often at a disadvantage” (Stake, 1978, p.6). For this reason, the case study is often better suited for qualitative research. Stake (1978) notes that case studies work best

when their aims are “understanding, extension of experience, and increase in conviction in that which is known” (p.6). As the case study approach is a less constrictive method of research, it has an “epistemological advantage over other inquiry methods as a basis for naturalistic research” (p.7). Unlike other methods of research, the case study, particularly in the context of social science literature, tends to provide complex and holistic descriptions derived from data often partially collected through “personalistic observation,” and presented in an informal or narrative style (p.7). While hypotheses and themes might be an important element of the research, they are “subordinate to the understanding of the case” (p.7).

The choice of using the multiple case study approach was in large part influenced by the nature of the issues being explored in the research. There have hitherto been relatively few – if any – legal cases that specifically address the rights of fans with relation to their productions and labours. In the case of fan fiction, for instance, there are literally no recorded legal cases from which to infer a precedent, in large part due to the fact that fans have not challenged “cease and desist” orders (Goldberg, 2006, ¶2). However, there have been countless recorded instances of fans or fan communities clashing with producers over the use of copyrighted material(s) in fan productions. These productions are works of culture; they are types of expression that convey meanings and understandings that are often unique to the fandom from which they originate. In effect, fan productions are forms of discourse which through cultural studies and Foucauldian analysis are, arguably, better understood. Furthermore, there have also been countless instances of fan mobilization centred on specific media texts and cultural commodities. By examining multiple cases, this research was better able to find commonalities between fan communities – such as fan practices and cultures – and explore the discourses that have emerged surrounding their use of copyrighted materials. In this respect, fan practices are a form of discourse and have been treated as such throughout

this paper. Similarly, the emergence of copyright law in recent years as a normative tool for producers of cultural commodities, while well documented in the news, is still in its proverbial infancy and therefore has not been fully considered, academically, in terms of all of its potential social and cultural implications. As a segment of society that has and continues to use copyright, fans provided an ideal subject to explore in the wake of potential amendments to Canadian copyright law. More than that, however, fans and their productions challenge the very essence of cultural policy. Fans, by virtue of their productions, question the notion of cultural proprietorship – that is to say, can culture be owned and, if so, by whom?

Where the case study differs from other qualitative research designs is in its receptiveness to “theory or conceptual categories that guide the research and analysis of data” (Meyer, 2001, p.331). As discussed (and outlined) in the theoretical framework, the research of this thesis draws upon theories of cultural studies, as well as the Foucauldian genealogy and archaeology in its understanding of relations of power. Because this research was interested in exploring the emerging discourses surrounding fandoms and fan practices (with emphasis on fan productions), the case study method was well suited to address the objectives of this thesis. Furthermore, the case study method was adaptive enough to incorporate cultural studies theories and Foucauldian perspectives into the field of public administration without compromising the integrity of the theories or the discipline. As a method, the case study also facilitates the use of multiple sources of data collection – discourse analysis through the use of available data – which will be discussed at length in the “collection of data” section.

Sample

Because of the nature of the phenomena and given the polymorphous sociality of fans and fandoms, this thesis focused on a sample based on cultural actions and discourses around specific cultural works/fandoms. The sample consisted of the following three fandoms: *Star Trek*, *Firefly*, and *Harry Potter*. Emphasis was placed on specific fan groups and communities within each fandom. The rationale for the selection of these fandoms is as follows: they represent fandoms around which strong fan followings have mobilized and developed cultural traditions, practices, and productions. These fandoms have a material culture that is both visual and literal, which, when coupled with digital technologies (such as the internet), has facilitated the production/reproduction and distribution of cultural commodities based on the works in question. These fandoms – particularly *Star Trek* and *Firefly* – share similar histories in terms of their development and mobilization. These two fandoms also provide an interesting contrast to one another. The *Star Trek* fandom is a large, longstanding, and well-established fandom while the *Firefly* fandom is relatively new, small, and functions at the grassroots level. These fandoms were purposely chosen because of their similarities but also because of their differences. These similarities, which will be addressed at length in the next section, include type/genre of the fandoms and common histories of mobilization and activism. They fill theoretical categories that help explain the theories utilised – and, in this case, provide a better understanding of the emerging discourses. Similarly, the *Harry Potter* fandom was chosen as it is a fandom that has figured prominently in cases of copyright and plagiarism in recent years.

For the purpose of this research, an imbedded design was used in examining the phenomena in question. In the case study approach, there are two types of design: the imbedded and the holistic. While the holistic design is focused on the “global nature of the

phenomenon,” the imbedded goes one step further and also examines subunits (Meyer, 2001, p. 334). Although the research of this thesis focuses on the *Star Trek*, *Firefly*, and *Harry Potter* fandoms, respectively, it put emphasis on certain groups and communities within these fandoms – in particular, communities that are well established and vocal in the larger fan community. While a fandom, as a whole, might be interested in a specific cultural commodity or media text, it is often comprised of smaller communities which interact on a more intimate level. It was through these sub-communities that much of the discourse surrounding fan practices and mobilizations vis-à-vis the use of copyrighted material was observed. It was also through these sub-communities that, more tellingly, understandings of the respective fandoms as whole were arrived at. Furthermore, to complement the data collected from these fandoms and sub-communities, additional cases pertaining to fans and copyright law – cases which did not necessarily relate to *Star Trek*, *Firefly*, or *Harry Potter* – were consulted when deemed relevant and necessary.

Collection of Data

According to Yin (1989), the case study approach to research typically “combines data collection methods such as archives, interviews, questionnaires, and observations” (as cited by Meyer, 2001, p.336). For the purpose of this thesis, data collection was conducted, over the course of 10 months (between February and December 2010) through document analysis. The purpose of document analysis in this research is to complement the information that will be gathered through indirect observation. A number of advantages exist in using document analysis. The key advantage is that it is “unobtrusive and nonreactive” (McNabb, 2002, pp.295-296). Documents that were analyzed include Canadian Cultural Policy (which includes the Copyright Act, the Income Tax Act, the Broadcasting Act, and the Status of the Artist Act), court decisions pertaining specifically to copyright law, journal articles, and

media information – including press releases, information on producers and artists, official websites, and legal documents (such as court cases and cease and desist orders) (See Table A for examples of the documents used). The choice of these documents was in large part due to the nature of the research. Because recent issues and cases of copyright infringement have tended to be more prevalently based on the internet, coupled with the fact that the primary vehicle for fan productions is the internet, online documents and files was the logical (and most easily accessible) choice in examining fan discourses.

Many of the documents used in the analysis were found through extensive online searches. Beginning with popular and well established websites such as Wikipedia.org, the Internet Movie Database (imdb.com), and youtube.com, as well as popular search engines such as Yahoo.com and Google.ca, this paper followed links and search terms to various official and unofficial (fan) websites. One of the features of many prominent fan websites is the inclusion of networks, webrings, and link pages to other fan sites and communities within the particular fandom. These networks and link pages were particularly useful when searching for active fan communities with reasonably sized populations (communities with no less than 50 registered members) to observe and research. In total, close to forty unofficial fan websites and blogs were observed in this research, with an additional twenty official fan oriented sites and blogs consulted as well. The difference between an official and unofficial site is that an official site is recognized and administrated by media producers while unofficial sites are not recognized by producers and are administrated by fans. From these fansites, documents that were collected and analysed include rules and guidelines, copyright policy, and frequently asked questions. Certain fansites also featured histories, chronologies, and other forms of publication – such as fanzines and newsletters – that were used for analysis in this research. Similarly, official documents, of the governmental and legal

variety, were found through searches of government websites – such as Heritage Canada and the Department of Justice – and searches pertaining to court cases discussed in press releases. It should also be noted that the documents analyzed in this thesis, particularly those of the fan variety, were primarily chosen from the “digital age” – that is to say between the years 1990 and 2010. Particular emphasis was placed on documents (message board and blog posts, for instance) originating between the years 2000 and 2010.

Method of Analysis

There are a number of different methods of analysis that exist for the analysis of qualitative data. Invariably all include, to some degree, six broad phases: 1) organization of the data; 2) generation of categories, themes, and patterns; 3) codification of the data; 4) application of the ideas, themes, and categories; 5) search for alternative explanations; and 6) writing of the report of findings (McNabb, 2002, p.296). At each progressive step in the analysis, the volume of data collected is reduced in order to better and more precisely address the research question. As research is seldom a straightforward and linear progression of steps, it stands to reason that the order of these phases might not follow the “logical sequence” listed above (pp.296-297). Furthermore, certain steps, depending on the data collected might be unnecessary (i.e. the search for alternative explanations is primarily a contingency for if sections of the data collected leads to “dead ends” (p.296). For the purpose of this thesis, the following steps were taken in the process of analysing the data collected:

- 1) Chronology of Cases: The first step in the method of analysing the collected data was to establish the history of fandoms, and to establish a chronology of issues and events pertaining to fan mobilization, fan productions and their use of copyrighted material, and instances where fans – through their mobilizations and/or practices – came into conflict with producers.

- 2) Codification of Data: The second step of the method of analysis was to codify the data that was collected into categories based on the fandoms being studied. Four categories were established: one each for the *Star Trek*, *Firefly*, and *Harry Potter* fandoms, and a fourth for data pertaining to other fandoms. Once the initial round of codification was completed, data from the four categories were codified in terms of fan productions, mobilizations, and communities.
- 3) Description of Cases/Fandoms: Once the codification of data was complete, the aforementioned categories were then used as a basis around which descriptions of the fandoms in question were made. The codified data was also used to shed light on cases pertaining to the use of copyrighted material(s) on the internet by fans.
- 4) Application of Theory to the Cases/Fandoms: The fourth step of the method of analysis was to apply the theoretical framework to the fandoms under review. This entailed making connections between theory and practice, and approaching the data from archaeological and genealogical perspectives.
- 5) Comparison of Cases/Fandoms: The fifth step in the method of analysis was to compare and contrast the fandoms, finding commonalities between fan practices and discourses in order to better understand the phenomena at work and to extrapolate on trends in fan discourse in the digital age.
- 6) Analysis: The final step in the method of analysis was the analysis itself. This step entailed reporting on and making sense of the findings. With the analysis, interpretations and understandings of the issues surrounding copyright law and the rights of fans were proffered.

Limitations

Throughout the research of this thesis, a number of limitations were encountered. The following is a list of those limitations:

- **Access to Fan Productions:** While a considerable wealth of fan productions are available online and for free, there are some fan productions – particularly fanzines – that can only be acquired through paid subscription. Similarly, some fan groups, while not-for-profit organizations, require membership and dues before access to information and productions can be acquired.
- **No Funding:** As the research for this thesis was almost exclusively done online, a relative lack of finances was, for the most part, easily overcome. However, had financial resources been available, the research for this thesis could have been expanded to include the visiting of fan conventions and, potentially, in-person interviews. Furthermore, funding could have potentially extended the timeframe and scope of the research, resulting in a more in-depth analysis. However, the internet, as stated, provides a wealth of resources from which one can supplement attending conventions and conducting in-person interviews, such as videos, podcasts, message boards, and blogs.
- **Time/Timeframe:** Because issues surrounding copyright law are ongoing, new developments in terms of proposed amendments, advents in technology, and new (and sometimes more pertinent) cases related to fans and their use of copyrighted material were constantly emerging. In part due to the limited available to research the issues and in part due to the relative unrealism of tracking the ongoing developments in question without prolonging the research indefinitely, this research had to, at a certain point, limit its use and discussion of the most current developments.

- **Lack of Legal/Court Documents:** Because fan cases have never made it to a court of law, there is a lack of legal documents outside of cease and desist orders from which to infer precedence on the legal rights of fans. For this reason, an extended look at cultural policy coupled with an examination of court cases pertaining to derivative works was necessary to situate fans in a cultural-legal sense.
- **Finding Relevant Fan Discourse:** While copyright law is a prominent issue in most fan communities, it is an issue that is, more often than not, implicit and does not factor into the daily discourses of fans. To address this issue, extensive searches through message board and blog archives were performed, using search terms such as “copyright,” “illegal,” “fan productions,” and “activism,” to name a few.

Ethical Considerations

In compliance with both the University of Ottawa’s Ethical Booklet and the moral standards of Public Administration research ethics, a number of ethical concerns were considered and addressed in the research of this thesis. This thesis, to the best of the author’s knowledge and ability, complies with the principles of truthfulness, thoroughness, objectivity, and relevance. This means that the research did not purposefully lie, deceive, or employ fraud. The research did not harm any participants and did not cut corners: all findings, whether good or bad, were reported. Furthermore, as much of the information on the internet is susceptible to falsification and/or fraudulent reproduction and circulation, particular care was taken to ensure that any and all information collected was done legally. Because the research conducted was through analysis of documents that are publicly available, approval from the Research Ethics Board was unnecessary as there were no human subjects involved. This was confirmed through the ethical literature provided by both the

University of Ottawa and the Social Sciences and Humanities Research Council of Canada (SSHRC), as well as through exchanges with relevant authorities, such as thesis supervisors and school administration. That being said, efforts were made to follow and uphold the ethical standards of the University of Ottawa and the SSHRC as they pertain to all forms of research – including human research.

Chapter 5: Fandoms Under Review: Conceptualizing Fans

For the purpose of this thesis, “fans” will be defined in terms of an active audience whose activities specifically include, but are not necessarily limited to, creating cultural artefacts based on cultural commodities – or, more specifically, media texts – that they have consumed and/or actively participating in fan communities. Active participation in fan communities, in this case, refers specifically to fans that contribute to fan websites/communities – either by providing content to the communities or through communications via newsletters, forums, or chat rooms; that frequent or have frequented fan conventions and gatherings; and/or are members of a fan club or fan related organization. Jenkins (2006) perhaps best summarizes the definition of fans that will be used for this thesis:

One becomes a “fan” not by being a regular viewer of a particular program but by translating that viewing into some kind of cultural activity, by sharing feelings and thoughts about the program content with friends, by joining a “community” of other fans who share common interests. For fans, consumption naturally sparks production, reading generates writing, until the terms seem logically inseparable... (p.41).

Emphasis will be placed on fans that both produce cultural artefacts (such as fan fiction, artwork, fanzines, toys, costumes, etc.) and are active members of a specific fan community or fandom. Elements of previously discussed definitions of fans will be considered as characteristics that can be found in fans but are not definitive or absolute – that is to say, for instance, that while fandoms might share similarities with cults, this paper will not treat fans as cults. While this paper acknowledges that many fans – and will, indeed, argue that they are fans – consume cultural commodities without producing artefacts or actively engaging in fan communities, it would be difficult to analyse their activities (or “inactivities,” as it were) in the context of this paper. More importantly, the focus of this thesis is not so much on the

fans themselves, per se, but, rather, on their activities and their cultural productions vis-à-vis copyright law.

Similarly, for the purpose of this thesis, “fandom” will be defined in terms of a collective of fans – a fanbase – interested in a specific cultural commodity. In the case of *Star Trek*, for instance, fans of the franchise – often referred to as “Trekkies” or “Trekkers” (Jenkins, 2006, pp.38-40) – would form the base of the *Star Trek* fandom. Of particular interest for this thesis are the fandoms surrounding the television series’ *Star Trek* and *Firefly*. These fandoms share a number of similarities in terms of genre, media type, online presence, mobilization, and fan production. These fandoms also share similar histories – in both cases, the television show in question was cancelled, which ultimately proved to be a rallying point for fans. More than their similarities, however, these two fandoms provide an interesting contrast to one another. The *Star Trek* fandom is well established, having existed, now, for over 40 years. *Star Trek* fans have experienced much success, over the years, in terms of fan activism and mobilization. The longevity and size of the fandom, coupled with the success of the recent reboot of the series, almost assuredly means that *Star Trek* and its fandom will continue strong for years to come. The *Firefly* fandom, on the other hand, is entering its seventh year of existence, and while it has experienced some success in its activism, the fandom is still very much at the grassroots level. *Firefly* fan communities are finding themselves slowly, but surely, dying out. In the absence of new source material, and in order to generate continued interest in the series, many *Firefly* fan communities have turned to fan productions as a means of creating new and ongoing material based on the show – material that uses copyrighted characters and settings. Similarly, a number of fan cases pertaining to the use of copyrighted material will also be examined. As the *Harry*

Potter fandom has figured prominently in the news in recent years for its controversial use of copyrighted materials in fan productions, an emphasis on the fandom.

When discussing fans and fandoms, it is sometimes difficult to not consider them in terms of culture – after all, inherent in most fandoms is some form of consumption or production of cultural commodities. According to Jenkins (1992b), fandoms possess “particular forms of cultural production, aesthetic traditions and practices,” which, through fan appropriation of “raw materials from the commercial culture,” creates a contemporary folk culture (p.279). Inglis and Hughson (2003) broadly define culture as being comprised of six parts. The first component of culture is that it consists of “patterns of ideas, values and beliefs common to a particular group or people,” that exist over time, and are subject to change (p.5). The second component of culture is that each group has its own culture, and it is this culture that “differentiates it from other groups” (p.5). This is to say that each group has its own set of ideas, values and beliefs – some of which are shared or overlap with the values and beliefs of other groups, but which, when held together, distinguish a particular group from all others (in some instances, these might be referred to as subcultures). The third element of culture is that it contains meaning. It is through the meaningfulness of culture that people are able to “comprehend, make sense of, and respond intellectually and emotionally to the world around them” (p.5). The fourth part of culture is the notion that groups embody their ideas, values, and beliefs in symbols and artefacts. These symbols and artefacts are often tangible representations of a group’s values and beliefs. The fifth part of culture is that it is learned. It is transmitted “by one generation of people to the next,” to the point where culture becomes habitual and is “experienced” as a “natural” occurrence (p.6). The sixth and perhaps most controversial element of culture is that it is arbitrary – it is the “result of human

activities,” and could differ depending on the environment and conditions of life of a group (p.6).

Although the specifics of one culture might differ from another, all share four common components: symbols, language, values, and norms (Kendall, Linden, & Murray, 2008, p.36). Fan communities, like any other cultural group, share those four components. Where fan cultures undoubtedly differ from most other cultures and cultural groups, however, is in their usage of, and devotion to, cultural commodities and media texts that are both, broadly speaking, consumer oriented and privately owned – at least insofar as the concepts and ideas surrounding the cultural commodities are concerned. What the following sections will look at is the history of modern fan communities, the various types of fan practices, and the emergence of fan cultures – with particular emphasis in the latter section on the *Star Trek* and *Firefly* fan communities. The objective of the following sections is to understand fandoms as cultures that have developed around specific media texts and rely on the use of copyrighted material for their continued existence. More than that, however, the following sections will explore the discourses that exist in fandoms today. It should be noted that when one discusses culture, one is inherently discussing administration, for the concepts of culture and administration are both intricately and paradoxically enmeshed (Adorno, 1991, p.107). On the one hand, culture is inherently damaged when planned and administered – and not allowed to manifest naturally; on the other hand, culture ceases to exist without administration. Culture loses its effect without some form of administration there to purvey cultural norms based not on quality but on abstract standards (pp.108-113). It is these standards that ultimately determine what constitutes high and low culture – concepts which will be addressed in later chapters. It is with this thought in mind, however, that this thesis

will explore the rights of fans in the context of copyright and intellectual property law – an administrative policy tool designed to control aspects of culture.

Fandomonium: Fandoms Under Review

The following section provides a brief overview of the three fandoms selected for consideration in this thesis – the *Star Trek*, *Firefly*, and *Harry Potter* fandoms. While a number of other fandoms and cases are discussed in this paper, emphasis – as mentioned – was placed on these three fandoms for reasons of community and sub-community size, longevity, prevalence of online productions, and history of mobilizations. More than that, however, these three fandoms provided a frame around which to build the analysis of the research. In effect, it was easier to build an understanding and appreciation of fandoms in general through the specific cases of *Star Trek*, *Firefly*, and *Harry Potter* – all of which, while unique fandoms in and of themselves, share similarities from which one can extrapolate.

Boldly Going Where No Fan has Gone before: the *Star Trek* Fandom

Among the most widely documented and recognized fandoms in the world is that of *Star Trek*. Since its beginnings in 1966, the *Star Trek* franchise has ballooned from a television show that was cancelled after its second season (and again after its third) into a franchise that spans six television series (with more than 725 episodes between them) and 11 movies (with a twelfth in the works) (Eberl & Decker, 2008, pp.267-277; imdb.com, 2010). Countless novels, comic books, and games have also been created based on the franchise, and a *Star Trek* entertainment attraction was hosted at the Las Vegas Hilton Hotel from 1998 to 2008 – featuring live and interactive performances and “4-D” simulations. Suffice it to say, *Star Trek* has become one of the most successful entertainment franchises in the world. Much of this success can be attributed to a strong fanbase that has been steadfast in its

support of the franchise and relentless in its pursuit of new and original *Star Trek* material. Fans, through their mobilizations and productions, have helped keep the franchise alive during its less productive years, and have made it a stalwart of the science fiction genre in its more successful times. Through their shared interest in *Star Trek* and their desire to keep the series alive, fans have also developed communities and cultures around the series – producing, in the process, a variety of cultural commodities based on the series, the likes of which have been described by some critics as rivalling or even surpassing the official productions. Fan pursuits, however, have at times put fans at odds with producers of the *Star Trek* franchise. The sometimes liberal use of copyrighted *Star Trek* characters, settings, and materials by fans in their productions has been a point of contention with producers at various points in the fandom’s history, and has served to challenge the producers’ ownership of the franchise – both tangibly and socio-culturally.

Still Flying: The *Firefly* Fandom

Originally envisioned as a mélange of “the past and the future [...] put together by making them feel like the present,” *Firefly* sought to provide its fans with a science fiction television show “that people could relate to as opposed to aliens or bumpy foreheads or ambassadors or things that are not part of everyday life” (Whedon, as cited by Browncoats.com. 2007, ¶5). When the television series, *Firefly*, was officially cancelled on December 12th, 2002, few could have imagined the fan outcry that quickly ensued. Despite having aired only eleven of its fourteen produced episodes – many of which aired out of chronological order – *Firefly* developed a large enough fan following to successfully mobilize and lobby producers to continue development of the series – albeit in the format of comic books and a feature film (Browncoats.com, 2009). Unfortunately for fans, the *Firefly* film – *Serenity* – was considered by producers to be a financial failure, and no new material

has been produced since. The ensuing years have seen the *Firefly* fandom has continued its efforts to bring the series back in some capacity – using both the fandom’s past success and the success of other fandoms (notably *Star Trek*) as motivation to continue pursuing new official material. The *Firefly* fandom continues to persevere and grow, albeit modestly, thanks to the efforts of a community that has created a wealth of fan productions – many of which use copyrighted material – to fill the proverbial void left in the absence of new official material. These productions have not gone unnoticed by media producers, however, and fans have, at times, been left in position of contention with media producers vis-à-vis the use of copyrighted material in their productions.

When Harry Met Sally: The *Harry Potter* Fandom

Since the publication of *Harry Potter and the Philosopher’s Stone* in 1997, the *Harry Potter* franchise has ballooned from a novel that received just 500 prints in its first run to a series of seven novels that have sold more than 300 million copies worldwide, and a multi-billion dollar movie franchise that is among the most successful in cinema history (Atkinson, 2007, ¶5 & 33-34). With the widespread popularity and success of the *Harry Potter* franchise, its fandom has grown into one of the world’s largest – rivalling, and perhaps even surpassing that of the *Star Trek* fandom. Fans of *Harry Potter* are among the most prolific producers of fan-created culture commodities in the world. The volume of *Harry Potter* fan fiction found on the internet alone surpasses that of any other fandom – including *Star Trek*. This rapid fan production has left a number of copyright holders concerned that their brand might become diluted (Hurd, 2007, ¶1-3). Not surprisingly, *Harry Potter* fan productions have been at the centre of a number of controversies vis-à-vis copyright and cultural policy – both in terms of fans in relation to producers and copyright holders and in terms of fans in relation to other fans and the fandom as a whole.

Chapter 6: The Emergence of Fandoms – A Brief History

Chapter six provides an overview of the history of modern fandoms. This chapter begins with the emergence of the modern fandom in the 1920s, in large part through letter pages in magazines and fanzines, and briefly traces their evolution to the digital age of the 2000s and onward. From the digital age, this chapter explores the impact the internet has had on the formation of fandoms and fan communities, and the relative ease in which fans can now share their productions. This chapter also touches on the socio-cultural effects the internet and digital technologies have had on fan communities, particularly insofar as mobilization is concerned. Along the way, this chapter discusses the importance of mobilizations and activism to fandoms in general, looking at reasons for and instances where activism has brought fans into direct contention with producers.

Stranger Than Fiction: The Modern Fandom is Born

To begin, it is important to conceptualize fandoms in terms of their origins. While many of the developments surrounding fandoms and the emergence of fan communities can nowadays be found primarily on the internet, the origins of modern fan communities and fandoms can perhaps best be traced back to the emergence of science fiction magazines in the late 1920s and early 1930s, and, more specifically, to the science fiction community. These magazines sought to provide readers with actual scientific information through fictional stories – thus the term “science fiction” or “sci-fi” was born. One science fiction magazine in particular, *Amazing Stories*, made what was, at the time, an unprecedented decision to introduce letter pages into their publications. The letter pages in *Amazing Stories* were intended to provide readers with an outlet in which to submit feedback and insights on the magazine’s content. This decision proved to be successful, and many other magazines soon followed suit (Spencer, 2008, p.79). However, at the time, *Amazing Stories* also printed

the names and addresses of those who contributed letters. Consequently, the letter pages in the magazine began to serve as a means through which fans could correspond directly with each other. It was through these correspondences that fans began to organize into groups and clubs, and it was not long before fans began producing their own science fiction magazines – “fan-magazines” or “fanzines” (as they were later dubbed in the 1940s) (p.80). Fanzines, for fans, became a means through which not only to “talk about their passion” but to communicate with each other on a wider level than they had hitherto been able to through magazine letter pages (Sawyer, as cited in Spencer, 2008, p.82). In some instances, fans began using the letter pages in magazines as a vehicle to promote their fanzines and create interest around their works. For some fanzines, their popularity quickly grew, and demand began to become greater than the production and distribution capabilities of their authors and editors (Pustz, 1999, p.44). Many of the early science fiction fanzines proved to be quite successful, with some of their creators/contributors going on to become prominent authors in the professional science fiction community – such as Arthur Clarke, author of the seminal 2001: *A Space Odyssey*, and Ray Bradbury, author of *Fahrenheit 451* (Spencer, 2008, p.81). For some fans, fan publications represent a proverbial “training ground for professional writers and editors” (Jenkins, 1992b, p.47).

Defined as “uncommercial, nonprofessional, small-circulation magazines” produced, published, and distributed by their editors, fanzines – or zines – tend to focus on fantasy and science fiction literature and art (Wertham, 1973, p.33) – though the popularity and early success of the science fiction fanzines, coupled with the creation of peer-reviewed fanzine lists in the 1980s (which helped open up the world of fanzines to a much wider and broader audience) (Spencer, 2008, p.33) has led to the spread of fanzines into virtually every subject and genre imaginable. No longer are zines solely about a particular fandom or genre; people

have begun using them as a mode of expression – in whatever form expression might take. Piepmeier (2009) describes zines as “sites” where people “construct identities, communities, and explanatory narratives from the materials that comprise their cultural moment: discourses, media representations, ideologies, stereotypes, and even physical detritus” (p.2). Less abstractly, Zeisler (2009) explains zines, in modern terms, as what it would be like “if you wrote a blog on paper, and you photocopied it and mailed it to people” (p.xiv). Considering the various definitions of “fan” that espouse the notion of fans as pathological and alienated from society (Lee, Scott, & Kim, 2008, p.810), coupled with the concept of fans as active audience members who use their skills to formulate things, meanings, and identities (Abercrombie & Longhurst, 1998, pp.121-122), it seems logical that many fans would have chosen the fanzine as their vehicle for both expressing themselves and for reaching out to other fans: at a time when there was no internet, fanzines provided both a means of communicating with others and a means of expressing oneself artistically and intimately. And, not unlike the internet, fanzines offered a degree of anonymity to its authors: fan authors, like their professional counterparts, had (and continue to have) the option of publishing their work anonymously or under pseudonyms.

From Fanzines to E-zines: The Emergence of the Internet and Digital Technologies

Unlike books and other print media, however, fanzines provide a more intimate experience for their readers; there are fewer “layers of separation between the reader and the creator [of a zine]” (Piepmeier, 2009, p.73). While some fanzine authors would contend that the production and distribution of zines is inherently motivated by self-interest – that is to say that they are produced to satisfy the author for the sheer joy of producing and having others experience their work – many more would argue that the “fundamental purpose of zine-making” is to find and connect with like-minded people (Spencer, 2008, p.31). Fanzines

represent a medium in which fans can create dialogues with other fans about their favourite hobbies and interests (Pustz, 1999, p.45). For many authors, the strength of a zine's community stems from the zine's ability to facilitate communication between fans, provide resources, and share knowledge with others – with the ultimate goal of helping other fans create their own zines (Spencer, 2008, p38). While the production of fanzines had become less common towards the beginning of the 1990s (with many of them serving more of “nostalgic” purpose than necessarily as a means of building and developing communities) (Pustz, 1999, pp.184-185), the emergence of the internet has arguably reinvigorated the medium to some extent, and has made it easier than ever for fans to produce zines, and communicate and interact with each other. The internet, in many respects, has facilitated the processes of communication, resource allocation, and knowledge sharing between fans. Furthermore, advances in technology have made it easier and cheaper than ever to create and publish fanzines and fan work – both in paper and digital forms (Jenkins, 2006, p.143). This has led to the emergence of e-zines and blogs (short for “web log”) (p.179) – distinguished from fanzines by most fans, as fanzines are still published in a paper format whereas e-zines and blogs tend to be exclusively published on the internet.

E-zines and blogs function in relatively the same capacity as their paper counterparts: providing a venue in which to showcase fan work and as a vehicle through which to build communities. In fact, blog hosting websites (such as *blogspot.com*) include a “followers” feature which allows individuals to sign up, acknowledging to the world that they are a “fan” of the blog, and receive notices when the content of the blog is updated. Similarly, blogs now provide their users the option to connect to social networking sites, such as *Twitter* and *Facebook*, which ultimately allows for greater exposure of the blog. Where e-zines and blogs perhaps differ most from fanzines is in respect to their scope and potential to reach a greater

audience – and consequently build a bigger community and have a larger influence. Jenkins (2006) postulates that “bloggers are [...] potentially increasing cultural diversity and lowering barriers to cultural participation (p.180). Blogging has the potential to give its communities influential power over the information environment – rivalling the power of corporate media (p.181). That being said, while the internet has “extended the reach of former fanzines in sharing [their] ideas,” corporate censorship has made such practices considerably more difficult, and it is not unusual for websites to simply disappear without notice – particularly when they showcase material that is copyrighted (Short, 2008, p.184).

The internet, in particular, has served as a driving force in the development of many fan communities in recent years. Community-building features are present on many of today’s blogs, e-zines, and fan related websites. Among the most prominent of these features are link pages. A number of fan-sites even function as directories to other fan sites, providing nothing but links as its form of content. The *Great Mutant X Fan site Directory*, for instance, is devoted solely to providing links to various *Mutant X* (a science fiction television series that ran from 2001 to 2004) fan sites, and features contributions from hundreds of fans of the series (Mutant-X directory, 2005, ¶3). *Browncoats.com*, a fan-built website devoted to the cult series *Firefly*, also provides links to other fan websites and fan message forums, albeit as only a small fraction of the site’s vast content. Interestingly, many of the websites that *Browncoats.com* links to also link back to *Browncoats.com*, creating a sort of network between sites. Incidentally, networks and webring tend to be a popular feature on most fan sites, serving as a means through which to boost traffic and more proficiently direct people to similar fan sites without them having to filter through the results of a search engine (Mieszkowski, 2001, ¶3-5). *KAG.org*, the homepage of the Klingon Assault Group, for instance, is part of a webring of sites that are either affiliated with the group or are Klingon

related. To this extent, networks and webrings also serve as a means for fan sites to stay connected with each other and, in some instances, as a means of pooling their resources together and ensuring the continued existence of a particular fandom. This has notably been the case for the *Firefly* fan community, which has, in the past, seen a number of its fan sites close down due to lack of traffic and necessary resources to prosper. In a bid to see their fandom grow and prosper, *Firefly* fans have made concessions to help fan sites out when help is needed (Browncoats, 2010, ¶8). While the *Firefly* fandom continues to face what can perhaps best be described as an upward battle in terms of maintaining its core fan base and ensuring the continued growth of the fandom, it has seen relative success in terms of its mobilization and fan activism – activities which have served to keep existing community members active and engaged in the source material but to also advertise and introduce *Firefly* to an entirely new audience. What is perhaps a testament to *Firefly* community's success is that despite the show having been cancelled since 2003, many fan sites are still “regularly updated with news and new content” which serve as the focus of the community (¶5).

Mobilization and Activism

Mobilization and activism are not new concepts to fan communities. Jenkins (1992b) notes that the history of media fandoms “is at least in part the history of a series of organized efforts to influence programming decisions – some successful, most ending in failure” (p.28). Perhaps the most well documented case of an organized effort by fans to influence programming (and which will be discussed at length in a later section of this paper) came in the 1960s when the original *Star Trek* series was cancelled and fans, through an organized letter writing campaign, sought to save the show (Scardaville, 2005, p.882). This fan action arguably set the precedence for most future fan mobilizations and is frequently cited by fans

of shows that have been cancelled. Over the years, however, organized efforts by fans have evolved beyond influencing television programming, and now address a variety of social and legal issues. While the case of *Firefly* fans can be considered a relative success in terms of fan activism, the case of Fandom.com provides a particularly interesting example of how fan mobilization can, as Jenkins (1992b) suggests, end in failure. A website developed in the late 1990s with the initial intent of protecting fan websites from being censored by media industries, Fandom.com worked as a sort of umbrella for independent fan sites that used copyrighted material (Kendzior, 2000, ¶7-8). In a digital world where individual fans often find themselves at odds with large corporations when using copyrighted material, Fandom.com provided an opportunity for the “little guy” to pool his or her resources together with other fans, to form an “institution” that could effectively stand up to the “heavy hitters” – corporate producers (¶9). Initially, Fandom.com proved to be a successful venture, providing fans with the backing they needed to produce fan sites without the fear of being shut down by producers. Promoting itself as a “down-to-earth,” low-key enterprise, Fandom.com slowly built itself a small empire by assimilating its competition. It eventually got to the point where it could financially compete with the corporations whose copyrighted material Fandom.com and its subsidiary fan sites were using (¶11-22). However, the success of this fan institution was short lived. Fandom.com began, ironically, accusing fan sites – using the term fandom in their name, though not associated with Fandom.com – of violating their trademark. It was not long before Fandom.com began sending out “cease and desist orders” to the violating websites, demanding they shut down their sites or risk legal action (Kendzior, 2000, ¶9; Jenkins, 2006, p.147). Fandom.com’s explanation for their legal tactics was that as a business that operates under the name “Fandom.com,” sites operating under similar names might “cause some confusion among our audience and concern for us” (as

cited by TrekToday.com, 2000, ¶4) – an argument that has often been evoked by media producers in response to their copyrighted material being used by fans (Jenkins, 2006, pp.146-147).

The case of Fandom.com is ironic in the sense that the company built its reputation as a protector of fan sites and their use of copyrighted material – such as trademarks. More than that, however, the case is ironic inasmuch as the word “fandom” had not actually been trademarked by Fandom.com (the term having been deemed by courts to be too well-known and widely circulated for trademarking) (Kendzior, 2000, ¶9). Kendzior (2000) notes that, at the very best, Fandom.com’s claim to the word “fandom” was “tenuous,” and describes their actions towards competing fan sites as “cyber-bullying” (¶37). While the “cease-and-desist” orders filed by Fandom.com proved meritless in the court of law, it did serve to further open the eyes of fans to their relative powerlessness when dealing with claims of potential copyright infringement. The act of legally battling “cease and desist” orders can be financially crippling for the creators and administrators of small, independent fan sites, and many will often choose to close down instead of fight for their site – despite potentially being well within the limits of the law in their use of copyrighted material (¶38-39). Carol Burrell, one of the recipients of Fandom.com’s “cease and desist” letters noted that her first reaction upon receiving the letter was worry because of the knowledge that “once a corporation send out its lawyers, the outcome might hinge entirely on who can afford the most legal fees” (as cited by TrekToday.com, 2000, ¶9). This case does, however, have somewhat of a silver lining. After receiving a second letter from Fandom.com’s lawyers, Burrell sent out a letter (e-mail) of plea for moral support to her friends. From this plea, word quickly spread within various fan communities of Burrell’s plight. Fan groups from various fandoms, across the net, quickly mobilized in a campaign to boycott Fandom.com

(TrekToday.com, 2000, ¶11-13). Similarly, when Fandom.com's claim to the term "fandom" proved to be without legal merit, many fans began registering web domain names with the word fandom in them as a means of protesting Fandom.com's bid to gain exclusive rights on the term (Murdoch, 2008, ¶2). While one can only speculate to what extent these fan mobilizations affected Fandom.com's business, it is interesting to note that the company – Fandom Inc. – shut down its online operations in April of 2001 – six months after the boycott began, citing a "depressed marketplace" as the reason for the site's closure (The Write News, 2001, ¶1-5).

The history of most fandoms is marked with instances of mobilization and activism not unlike those seen in the case of Fandom.com. This should come as little surprise given that the very notion of a fandom is underscored by the idea that fans congregate around a shared interest or interests. When those interests are threatened, fans will often take measures to protect them. The fact that most instances of fan activism – at least the most prominently recorded instances of fan activism – tend to be centred around media texts that are either in danger of being cancelled or have been cancelled speaks volumes to the discourses that have emerged around fans and their use of copyrighted material in their productions. If one considers Foucault's notion that discourse relies on historical moments for its potency (Hall, 2001, pp.74-75), then the major instances of fan activism are among the most potent moments in fan history, and have set the tone for fan discourse within modern fan activism and mobilization. The discourse surrounding fan mobilization is often one of preservation – the idea that fan activism can and does make a difference in influencing media decisions and, in the process, preserves a cultural commodity that would otherwise be discarded and relatively forgotten. To this extent, fan mobilization speaks to the power relations that exist between producers and consumers. While, historically, producers have generally been the

ones in control of their cultural commodities and media texts – producing not so much for the needs or desires of society but for their own profit (Bernstein, 1991, p.5) – fan activism has challenged that control in the way in which it seeks to subvert the natural order of cultural consumption and production. Advancements in technology have also done their part in moulding the way in which fans communicate and interact with each other, and have been central to both fan mobilization and the creation of fan productions in recent years. The following chapters will look more closely at fan communities and productions in the context of their use of copyrighted materials, and will discuss more at length their implications to cultural policy in the digital age.

Chapter 7: Mobilizing the Troops – Fan Communities and Activism

In this chapter, emphasis is placed on fan activism and mobilization. Closer attention is given to the reasons why fans form communities and why they choose to mobilize. In the process, this chapter looks at cases where fan mobilizations have both succeeded and failed and at instances where fan mobilization has led to confrontation with media producers – particularly in cases where copyrighted materials were used. A number of fan communities within the *Star Trek* and *Firefly* fandoms are discussed, with emphasis placed on their community cultures, mobilizations, productions, and use of copyrighted and/or derivative materials in those productions. This chapter also explores the notion that fans are trying to socially rehabilitate their image of being inept social misfits with pathological tendencies – as discussed in Chapter 2 – and, in the process, reassert themselves in dominant social discourses. Beyond the fandom itself, this chapter explores the broader social reasons why and around which fans sometimes choose to mobilize, such as charitable causes.

Free Forming: Why Fan Communities Mobilize

What has perhaps been one of the most well documented characteristics of virtually all fandoms is the community nature that emerges within fandoms and around specific cultural commodities or genres. Jenkins (2006) notes that fans tend to “characterize their entry into fandom in terms of a movement from social and cultural isolation [...] towards more and more active participation in a ‘community,’” one which is both “receptive to their cultural productions” and provides them with a “sense of belonging” (p.41). Part of the appeal of being a fan, according to Brooker (2005), is “the sense of being part of a community, of sharing an enthusiasm with others who will understand” (p.863). From the experience of consuming a cultural commodity or media text – whether it is through watching a television series or movie, reading a comic book or novel, or partaking of any

other number of forms of cultural consumption – fans will often seek out likeminded individuals, who have shared the same experience, to interact with. From these shared experiences, fans will often form relationships with one another and with the source material of the cultural commodity, sometimes leading to the development of communities – of which some even go so far as to adopt cultural elements or artefacts from the media text in question – elements and artefacts that are, for all intents and purposes, copyrighted. In media studies, fan communities are often seen as a type of “interpretive community” – communities of audiences who “share common traits, like similar uses of media, similar practices, shared meanings, and interactions about the [media] texts” (Costello & Moore, 2007, p.126). Fan communities, while perhaps the most studied category of interpretative communities, are also the most “scandalous” as their activities and behaviours tend to go well beyond those of “normal” audiences or communities (p.126). It is perhaps for this reason that many fan communities can be described as “neoreligious” (Hills, 2002, p.129). This is not to suggest that fans and fan communities are overtly religious in nature, but rather that they display a strong sense of devotion to, or faith in, source material and media texts – a devotion that has often been compared to religious fervour (pp.129-130). Part of that comparison invariably comes from the fact that “fanatic” – the root word of fan – was historically associated with “excessive forms of religious belief” (Jenkins, 1992b, p.12). These religious connotations have never truly been dispelled from fans (pp.12-13).

The devotion fans exhibit towards particular cultural commodities is often quite strong. When the media text in question is threatened or endangered, fans and fan communities will often mobilize, in some way or form, to ensure the continued existence of said cultural commodity. In some instances, fans will mobilize through letter writing campaigns to producers or studios, advocacy, protests, boycotts, petitions, and/or mailing

lists to generate interest around the media text and hopefully ensure its continued existence. Less “immediate” fan practices and mobilizations, such as communications via message board forums and chat rooms, production of fan sites, fan fiction, fanart, and fanzines are also sometimes employed by fans as a means of enshrining the media texts they follow, keeping them alive in some capacity (Costello & Moore, 2007, pp.135-136). But more than that, however, fan communities are also attuned with the rest of society, and have been known to mobilize around charitable causes (Mackellar, 2008, pp.7 & 14). The degree (and relative success) of a fandom’s activism and mobilisation is often contingent on its ability to organize its members – something that is greatly facilitated when a fandom has fan groups and communities to draw upon (Scardaville, 2005, p.883).

When the original *Star Trek* series was cancelled in 1968, for instance, fans were able to successfully mobilize and “pressure NBC to keep and later return their show to the airways” (Jenkins, as cited by Scardaville, 2005, p.882). Through a letter writing campaign, which received support from a number of prominent science fiction authors such as Harlan Ellison and Isaac Asimov, fans were able to “initiat[e] a new level of audience feedback that defied the numerical data provided by relatively poor Nielsen ratings” (the rating system used to measure television audience sizes) (Short, 2008, p.178). Incidentally, the notion that *Star Trek* fans can influence mass media and have a voice in what happens in their favourite media text has influenced the fandom’s culture (p.179) – and, in many respects, been the rallying point for other fandoms whose favoured cultural commodity has been put in danger. The success of the *Star Trek* fans’ mobilization came in large part because fans of the science fiction genre – many of whom, incidentally, were fans of *Star Trek* – had developed groups and communities with a history of fan activism long before *Star Trek* had seen the proverbial light of day. It was therefore a relatively easier process for *Star Trek* fans to

mobilize and save the show than it is for fans of other genres and media texts (Scardaville, 2005, p.883). The success of *Star Trek* fans in saving the series – albeit temporarily, as it was, again, cancelled, the following year – also speaks volumes to the longevity and staying power of the science fiction fandom. It is perhaps little wonder, then, that the “large-scale organized fandom [saw] its birth” in the science fiction community (p.883). But more than that, however, the successful mobilization of *Star Trek* fans speaks volumes to what extent *Star Trek* was (and still is) important to its core group of fans.

Fan Communities: Rehabilitating Social Perceptions

The history of the *Star Trek* fandom has been largely defined by its instances of fan mobilization. While the fandom can be said to have come into existence in 1966 with the premier of the first episode of *Star Trek*, the fandom arguably only truly came into its own when the series was cancelled. As previously discussed, when the original *Star Trek* series was cancelled in 1968, fans of the series mobilized around a letter writing campaign and “pressure[d] NBC to keep and later return their show to the airways” (Jenkins, as cited by Scardaville, 2005, p.882). Although the show’s revival lasted only one season, the event marked a turning point for both the *Star Trek* fandom and for fandoms in general: the success of the letter writing campaign showed that fans can and do have an influence over the decisions producers make – that the power relations between fans and producers are not entirely unilateral. If not the first instance, the letter writing campaign has certainly been the most well documented instance of successful fan mobilization in the history of modern fandoms, and has been the standard for many subsequent fan mobilizations. This knowledge has arguably shaped the culture and communities that have emerged in and around the *Star Trek* fandom over the last 40 years.

Over that span, the *Star Trek* fandom has grown into one of the largest fan communities in the world. Not a weekend goes by that a *Star Trek* convention is not being held somewhere on the planet (Border & Nygard, 1997). Despite its widespread appeal, however, *Star Trek* has often been the subject of media ridicule. Fans are often referred to, pejoratively, as “Trekkies” by the media and in popular culture. From the now infamous William Shatner “Get a Life!” rant, in which Shatner (famous for playing Captain James T. Kirk in the original *Star Trek* series) derides *Star Trek* fans for being obsessed with a television show, to the portrayal of *Star Trek* fans as gawky, foolish, and inept in the comedy movie, *Fanboys* (Astrowsky & Newman, 2008), Trekkies have seldom been characterized in a positive light (Jenkins, 1992b, p.10). The stereotype of *Star Trek* fans as nerds hiding out in their parents’ basements, “unable to live in the ‘real world’” prevails despite the wide-scale acceptance of the series and its ideals by people from all walks of life (Short, 2008, p.174). In response to the negative stereotypes, many fans have opted to rebrand themselves as “Trekkers” (Jenkins, 2006, p.40). This rebranding, however, has been a source of contention within the *Star Trek* fandom: some fans prefer to try and reclaim and rehabilitate the term Trekkie while others prefer to distance themselves from its negative connotations through the adoption of Trekker (Border & Nygard, 1997).

Given the contentious nature of the terms Trekkie and Trekker within the fan community, this paper has chosen not to use either nomenclature when discussing *Star Trek* fans. That being said, the existence of both terms and their use by fans provides interesting insights into the *Star Trek* fandom and its genealogy and archaeology. From a Foucauldian perspective, when one considers the term Trekkies in its negative connotations, relations of power can be inferred: a Trekkie is, in some way, inferior to a non-Trekkie. This inference has, in large part, shaped perceptions of *Star Trek* fans vis-à-vis their relationship to the

media text and its producers. Trekkies are often seen as obsessive and as slaves to the *Star Trek* media next (Zoglin et al., 1994, pp.1-2); the power in this relationship is perceived to be predominantly in the hands of the producers and the term Trekkie, insofar as it is a derogatory word, serves to promote this perception. In essence, the term Trekkie serves as a form of discourse which, archaeologically, codifies *Star Trek* fans into a subject position. The act of reclaiming the term Trekkie, therefore, subverts this relationship, shifting power from producers – and society at large – to *Star Trek* fans. Similarly, the use of the term Trekker circumvents the power relations that circulate “Trekkie.” The use of the term Trekker arguably distances fans from the connotations surrounding Trekkie without disassociating fans from the *Star Trek* fandom.

Star Trek fans are not the only fans who have sought to rehabilitate their nomenclatures. In recent years, many fan communities have made an effort to reclaim the terms “nerd” and “geek” – terms that are often associated or synonymous with the term fan. The fan community, Geekvolution (wearegeeksnotnerds.com), has embraced the term geek – as both their community name and internet address imply – and use it not as pejorative but as a point of pride. Similarly, members of the Citizen Purple Comics community refer to themselves as Role Playing Game (RPG) nerds and will, albeit facetiously, take issue if someone refers to their collective by any other name. This reclamation of terms and nomenclatures that had previously been pejorative to the fan community speaks volumes to the notion, posited by Tulloch and Jenkins (as cited in Hills, 2002, p.x), that fans stake claims to social identities that non-fans do not. This social identity, while acting as a form of discourse, enables fans – particularly in an internet environment where individuals can self-identify in relative anonymity – to develop relationships and communities and sub-communities. From an archaeological perspective, the reclamation and rehabilitation of

nomenclatures can be seen as means of codifying or, perhaps more accurately, re-codifying their relationships in society. To this effect, fan practices can be seen as a means through which fans can socially propagate their re-codified status.

Communities Within Communities: The KAG and StarFleet

Perhaps taking the reclamation of the term Trekkie a step further, *Star Trek* fans continue to strive and build communities around the media text they adore despite the persistence of stereotypes and unappealing media portrayals. Many of these communities actively engage with the source material, producing various forms of fanart (fanfiction, fanzines, illustrations, costumes, etc.) and, in some cases, adopting cultural elements from the franchise into their practices and daily lives. One such community of *Star Trek* fans is the *Klingon Assault Group* (KAG). This community has embraced and adopted the fictional Klingon culture – a group of warrior aliens from the various *Star Trek* series’ – into its group practices and, in the process, has incorporated derivative and copyrighted material into their productions and websites. To best understand and appreciate the KAG and its devotion to all things Klingon, however, it is perhaps best to briefly explain the origins and history of the fictional alien race. Originally conceived as villains at war with Earth and its United Federation of Planets, the Klingons were largely treated as allegory to the Soviet Union during the Cold War, with their relations with the Federation being a commentary on United States foreign policy of the time (Sarantakes, 2005, pp.78-80). According to the *Star Trek* writers’ guidebook to Klingons, when initially conceived, their only rule of life was that “rules are made to be broken by shrewdness, deceit, or power” (as cited by Sarantakes, 2005, p.78). However, with the introduction of the second *Star Trek* series, *Star Trek: The Next Generation* (ST: TNG), and the end of the Cold War, the Klingons have been re-imagined as a race of alien warriors and hunters, with a strict code of honour and an appetite for blood

and battle (StarTrek.com, 2010, ¶1-15). The aggressive and violent behaviour of the Klingons is no longer seen as an antithesis to the Federation's benign code to do no harm and to not interfere in the cultures of less advanced civilizations; instead it is appreciated as part of their nature and culture (Kraemer, Cassidy & Schwartz, 2001, p.60). This reimagining also includes a rich culture and language which has grown in popularity, in recent years, to the point that institutions have been established to teach the language. The Klingon Language Institute notes that the Klingon language is one of the few languages created for fiction that has called upon trained linguists to not only develop the vocabulary, grammar, and usage of the language, but to teach it to people outside of actors of the television shows or movies (Shoulsin, 2010, ¶1-3). Not surprisingly, classic literature, such as William Shakespeare's *Hamlet* and Charles Dicken's *A Christmas Carol*, has been translated into Klingon, with live adaptations presented at community gatherings (Saler, 2004, p.137; Mindscanner, 2008, p.4).

With chapters or "fleets" of the group located all over North America, Australia, and Europe, KAG (2010) is perhaps one of the largest fan communities in the world – and certainly one of the largest to share in "the richness of Klingon culture and language" (¶2). To foster and enforce a sense of community, the KAG has introduced a global set of rules and codes of conduct to be followed by all of its chapters. These codes speak of honour, respect, duty, and glory – all traits associated with Klingons and Klingon culture (StarTrek.com, 2010). Because of the size of the community, the KAG has introduced a militaristic structure of command similar to the one utilized by the Klingons (a primary difference, however, is that while the Klingon hierarchy tends to be gendered in favour of men (Kramer et al., 2001, p.178; StarTrek.com, 2010), the KAG holds no scruples towards women being commanders of their fleets). While anyone is free to join the KAG – the

community's founders make it explicit that the KAG is a non-profit organization that does not collect dues from its members – in order to advance in rank, members must purchase or assemble a Klingon costume or “uniform.” While the KAG takes its rules and codes seriously, the community acknowledges that it is primarily a social network meant for fun. In fact, the first rule of KAG is to “Have Fun” (KAG, 2010, ¶2). When it comes to being part of a fan community, one KAG member notes, “A lot of fan clubs take it way too seriously. But how can you take it seriously when you're wearing a rubber head and wig? We know we're silly and we love it” (as cited by NBC News, video found on KAG homepage). This sentiment is also reflected in the KAG's newsletter, with one contributor commenting, “If you're not having fun, there are loads of other activities you could be doing instead” (Mindscanner, 2010, p.6).

While the KAG represents only one community within the *Star Trek* fandom, it serves as a positive example of the cultural communities that can and do exist within the fandom. Other communities within the *Star Trek* fandom exhibit similar traits to that of the KAG – most notably in their practices, adoption of elements of the *Star Trek* culture, hierarchy and chain of command, forms of community service, and being non-profit organizations. Starfleet: The International *Star Trek* Fan Association, for instance, parallels the community and cultural nature of the KAG, albeit from the perspective of the peacekeeping and space exploration armada of the fictional Federation of Planets (StarTrek.com, 2010b, ¶1-2). Like the KAG, Starfleet is a non-profit, international fan community, with hundreds of chapters covering 20 regions all over the world. The group was designed to unite fans of *Star Trek* and to pursue “the future envisioned by [*Star Trek* creator] Gene Roddenberry as depicted in the *Star Trek* television series and movies” (Malotte et al., 2003, p.2). Members are expected to conduct themselves legally and

ethically, and to be courteous and respectful to fellow members (Lane, Blaser, & Stimpson, 2010a, p.6). Ranks within the organization are determined by a system of vote and appointment: the commanders and vice commanders are elected by the members of the chapter, with the remaining chief officers receiving their rank through appointment by the commander (Lane, Blaser, & Stimpson, 2010b, p.7). Where Starfleet perhaps differs most from the KAG, however, is in its use of membership fees. These fees, in large part, serve to cover the expenses of producing and distributing membership cards and certificates, handbooks, and bi-monthly communiqués (Starfleet, 2010, ¶1-3). The money raised by Starfleet also goes towards academic scholarships for its members who are enrolled at fee-based educational institutions (¶3). Because Starfleet maintains that it is a not-for-profit organization, its bylaws strictly prohibit its members from benefiting from the organization's net earnings (Lane, Blaser, & Stimpson, 2010b, pp.14-15). Any excess funds are donated to charity (p.15).

The existence of communities within the *Star Trek* fandom, such as the KAG and Starfleet, points to the development of a culture or subculture outside of the consumerist culture in which *Star Trek* was originally conceived. *Star Trek* fans are not simply consumers, who happen to like *Star Trek*, but are individuals who actively engage the source material and have adopted elements of it into their routine and day-to-day lives. For some fans, *Star Trek* and its culture have become so enmeshed in their lives that it almost seems foreign to them not to express it openly (Border & Nygard, 1997). This presents a challenge to copyright holders and, more broadly, to cultural policy as it calls into question the legitimacy of owning a cultural commodity. While its producers might own the commercial aspects of the *Star Trek* franchise, they cannot be said to own the social and cultural aspects of *Star Trek*. However, because copyright law grants copyright holders rights over derivative works

(Québec Court of Appeal, 2002, p.71), it essentially gives producers a degree of control over the cultural practices and productions of the *Star Trek* fandom. This invariably raises the question of whose rights take precedence with regards to cultural policy – the copyrights of producers or the rights to cultural expression of fans. Given that the courts have routinely ruled in favour of producers (Craig, 2006), it would seem that expressive rights are subordinate to commercial rights – which, in itself, represents a challenge to *Star Trek* fans, both in terms of their practices but in terms of their productions.

The Social Fan: Fans in the Broader Social Community

Many of the sub-communities within fandoms describe themselves, among other things, as being social groups. Many of their community activities extend beyond the fandom itself, into the broader community. As a social group, for instance, the KAG has taken interest in broader community and social issues. The KAG actively participates and promotes various charities and not-for-profit organizations, such as the Red Cross, the Walk for M.S., the American Heart Foundation, and the American Breast Cancer Foundation, among others. One KAG faction is even devoted specifically to coordinating the community's charitable activities. As the real Klingon culture is depicted as blood thirsty in nature, so too is the KAG: the group has adopted (and modified) the Klingon bloodlust into something positive: blood drives. Dressed in their Klingon garb, the KAG has been known to challenge other fan groups and clubs to see who can donate the most blood to the Red Cross – and, as a point of pride, the KAG has never lost. One KAG member jokes, “normally, we take the blood from our enemies, put it in buckets, [and] then give it to the Red Cross” (as cited by NBC News, video found on KAG homepage). While the KAG might be a fan group in nature, they are also active members of society, members who positively contribute to worthwhile causes. One can only speculate how many of the KAG's members would participate in charities and

not-for-profit organizations if they were not first part of the KAG and the much broader *Star Trek* community. Everett (2008) notes that one of the longstanding themes in *Star Trek* has been the notion of an “improved humanity” – a theme and ideal which many *Star Trek* fans have taken to heart and tried to make a reality (pp.192-193). Although it would be farfetched to suggest that the KAG has necessarily improved society in any grand scale, the argument can certainly be made that their mobilizations have done more good than bad – and have certainly served to rebuke the stereotype that *Star Trek* fans are social misfits confined to their parents’ basements for fear of the outside world.

Similar to many *Star Trek* fan groups, *Firefly* fans – often referred to as Browncoats – have also applied and mobilized their efforts around charitable causes. These campaigns serve both as means for Browncoats to keep the *Firefly* fandom active and in the minds of fans, but also as a means to productively use their resources for what they believe to be just causes. Since 2006, Browncoats have held screenings of the *Serenity* movie, followed by auctions of fan memorabilia and official merchandise based on the series at an annual charity event, Can’t Stop the *Serenity*. The money raised from this event goes towards Whedon’s favourite charity, Equality Now – a charity dedicated to protecting the rights of women around the world. As of 2009, the event has been hosted in 56 cities across the world. The City of Ottawa’s chapter of Browncoats have also begun raising money for the Canadian charity, iSisters Technology Mentoring, a charity that seeks to assist women in need in the Ottawa region (Ottawa Browncoats, 2010, ¶1-5). Since 2005, the Browncoats have raised more than \$300,000 for Equality Now, through Can’t Stop the *Serenity* (Unofficial Mutant Enemy, 2010, ¶4). Recently, Browncoats have also actively supported the International Association for Human Values’ (IAHV) disaster relief fund in raising money for Haiti “in the wake of the recent earthquakes that have devastated the country (Browncoat Events,

2010, ¶1). Previously, Browncoats have assisted in raising money for charitable events such as the 2009 Michael Muhney's L.A. Cancer Challenge (Michael Muhney being an actor who is also a fan of *Firefly*) (Browncoat Events, 2009, ¶1-3).

Social forms of mobilization and activism – such as supporting charities and non-profit organizations – are, in many respects, a form of politics. They act as a means through which fans can generate goodwill towards their communities. Many producers engage in similar activities – some of whom even go so far as to encourage their fans to participate or donate to non-profit organizations. The popular video game-inspired webcomic Penny Arcade has even gone so far as to start its own charity – Child's Play – which donates money, games, movies, toys, and video games to hospitals, around the world, for the benefit of children staying in hospitals. The creators of Penny Arcade encourage the video game community – not just their fans – to contribute to the charity and have raised more than \$5 million since 2003 (Child's Play, 2010). In the case of Child's Play, fans and producers have set aside the dichotomy that exists between the two factions and are working together for what they deem to be a good cause. This is perhaps facilitated by the fact that the creators of Penny Arcade are themselves video game fans: the Penny Arcade comic strip began as (and continues to be) a humorous commentary/critique of video games and the video game fandom.

The Big Damn Fandom: *Firefly* Today, Gone Tomorrow

While *Star Trek* fans' degree of devotion to their favoured media text is not necessarily typical of most fan communities, *Star Trek* fans do typify the average fan community's use of copyrighted material in their various productions to some degree. When examining other fan communities, via their websites, online communities, and productions, similar trends and usages of copyrighted material tend to emerge, based on the respective

fandom of interest. Fans of the cult television series, *Firefly*, and its movie sequel, *Serenity* (often referred to by fans as “The Big Damn Movie”), for instance, draw upon a variety of material – both official and fan made – when building websites and producing commodities. *Firefly* fans take their name – Browncoats – from the nickname given to the Independence Faction of a civil war that takes place within the series’ continuity (Browncoats.com, 2010, ¶2). *Firefly* fan sites, such as *Fireflyfans.net* and *Virtual Firefly* (Stillflying.net), like KAG.org, feature both fan created works and official material on their websites. *Virtual Firefly*, in particular, has devoted itself almost exclusively to the “virtual continuation” of *Firefly* through fan-written scripts (Krubski, 2010, ¶1). To date, the *Virtual Firefly* community has written 29 virtual episodes of the series (¶2). Like the KAG, *Virtual Firefly* uses a modified version of the official “*Serenity*” logo from the *Firefly* series as its logo (see Images 7.1 and 7.2) – a symbol, it should be noted, that is frequently modified and used in the logo of *Firefly* fan-related websites: Browncoat Events (browncoatevents.com), *Serenity Tales* (Serenitytales.typepad.com) and *Firefly RPG* (Fireflyrpg.aokforums.com) are all communities that use modified versions of the symbol (*Fireflyfans.net* uses the image of an actual *Firefly* enclosed by the words “Joss Whedon’s *Firefly*” – Joss Whedon being the creator of the series).



Left: Image 7.1, Virtual *Firefly* Logo, Retrieved from the Virtual *Firefly* Website: <http://stillflying.net/>
 Right: Image 7.2, The Official *Firefly* Logo, retrieved from the *Fireflyfans.net* Website:
<http://www.Fireflyfans.net/bluesunimages/93887AD564F7D3DCBE506412A3FA219C.jpg>

Still Flying, a fanzine created by Browncoats, features many of the same types of content as the KAG's *Mindscanner*, such as fanart and fan fiction based on the series, quotes and interviews by cast and crew members, as well as official images and stills from the television series – material that is, again, either copyrighted or derived from copyrighted works. A common feature that is also found in both *Mindscanner* and *Still Flying* are humorous advice columns, answered by the editors as the characters from the respective media texts (See Images 7.3 and 7.4).



Dear Captain Tightpants...

It was looking scary there for a moment. The show has been cancelled, everyone was off doing new things and then even the board was shut-down. How do we keep strong in trying times?

Reply:

Gorramit soldier! You should know we're too pretty to die! We're all Big Damn Heroes – make sure you remember that! Little challenges like these make us mighty! Don't worry – we will rise again!

Respectfully,
Cap'n Tightpants

Image 7.3, Excerpt from the Still Flying Advice Column, retrieved from Still Flying (2003), issue 1: p.3

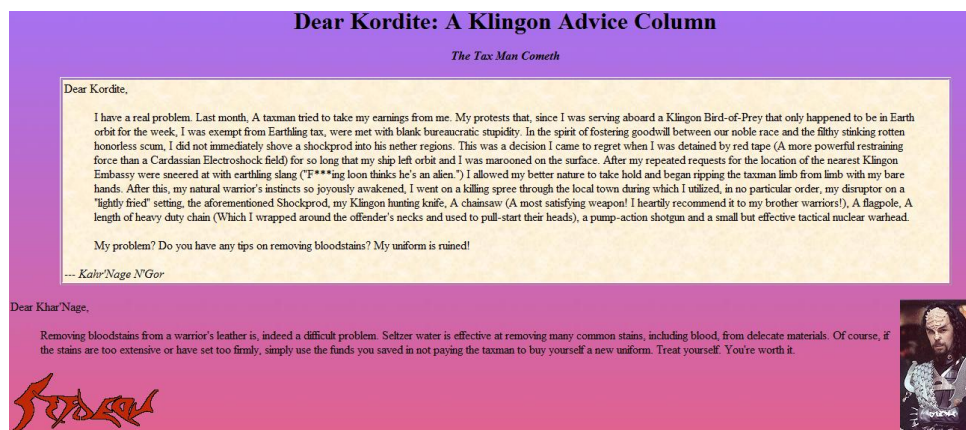


Image 7.4, Excerpt from the Mindscanner Advice Column, retrieved from Mindscanner (2009), Issue 76, p.9: <http://kag.org/ms/ms76/index.html>

Of the *Firefly* fan sites and communities on the internet, however, *Browncoats.com* is perhaps one of the largest and most well known. An unofficial fan site, *Browncoats.com*

features, among a myriad of other things, images and quotes taken directly from the series and movie, fanart, fan fiction, and an online role playing game (RPG) based on the series. The website's logo features images of the cast members from *Firefly*. The primary purpose of Browncoats.com, according to the site's editors, is "to offer as complete a resource to all things *Firefly* as we can" (Browncoats.com, 2010, ¶1). Because the editors felt that the *Firefly* fandom was somewhat dispersed throughout the internet, they have taken it upon themselves to catalogue the various *Firefly* websites they come across. This helps provide a resource to fans looking for additional information and content, but also helps to provide traffic to other *Firefly* related websites (¶2-7). It is noted that many fan sites have closed down due to lack of traffic, and by generating more traffic for other fan sites – some of which are perhaps on the cusp of closing due to lack of traffic and interest, Browncoats.com hopes to ensure their survival and perhaps find other fans who might be willing to help out with those sites (¶8). Furthermore, in the absence of new source material, the editors of *Browncoats.com* hope to maintain the fandom by hosting fan productions and cultural commodities – material that they hope will continue to breathe life into the fandom. Ultimately, however, the editors of *Browncoats.com* hope, through their site, to foster a greater sense of community in the *Firefly* fandom (¶7). This sentiment is also shared in a number of other *Firefly* fan communities. *Fireflyfans.net*, for instance, has a section of its message board forum devoted to the "*Firefly* Fanbase," and includes discussion on upcoming Browncoat events, guerrilla marketing campaigns (which, incidentally, is a category that appears frequently on *Firefly* fan message boards), memorabilia and merchandise trading, and a help forum for Browncoats who need help of any kind (one forum thread asks for advice and assistance on finding a job). Suffice it to say, while *Firefly* fan community might

have started off as a group of individuals with the same interest – *Firefly* – it has evolved into a community of friends who strive to look after each other when possible.

When Browncoats Attack: Fan Mobilizations

Among the features found on Browncoats.com is a chronology of the major events of fan activism that have occurred in the fandom since before *Firefly* was cancelled. Between October 2002 and January 2003, Browncoats staged a number of campaigns to save the series and support the production companies involved with the series “in any way possible” (Browncoats.com, 2009, ¶3). Among the most prominent and effective of these campaigns was a postcard writing campaign designed to demonstrate to 20th Century Fox Studios that there was “an enthusiastic audience full of consumers” ready and willing to support *Firefly* in any way possible. Following, the postcard campaign, a group of Browncoats began raising money to purchase an ad in *Variety* magazine to support the show and thank the creators and producers for their efforts. Browncoats were able to raise approximately \$4,500, and the ad in question appeared in the December 9th, 2002 issue of *Variety* (¶4). Of the ad, one fan noted that as *Variety* magazine “is ‘the’ industry rag for the entertainment industry [... t]he main target is the folks in the biz – to get execs and the sponsors’ attention. [...] The ad pretty much tells those folks that the show is that good and that the fans are maniacal enough to put an on their turf thanking them for the show” (*Fireflyfans.net*, 2002). A subsequent ad was purchased and featured in the October 14th, 2005 issue of *Variety* Magazine, thanking the producers of *Serenity* for their work (Image 7.5) Similarly, fan site “Big Damn THANK YOU to Universal Studios” (*bigdamnthankyou.com*) was also created as a means of thanking the producers for their efforts in producing the movie, and showing their support for the continuation of the series. Despite fan enthusiasm these initiatives did little to alter the inevitable cancellation of *Firefly*. The ad, along with the various fan campaigns, did,

however, serve to help foster a greater sense of community in the *Firefly* fandom. The editors of Browncoats.com (2010) believe that it was through that sense of community – that emerged through fans posting on message board forums, various “meet-ups” and get-togethers, organized campaigns, and guerrilla marketing – that fans were successful in lobbying the producers of *Firefly* and *Serenity*, 20th Century Fox and Universal Studios respectively, to, at the very least, release the series on DVD and develop and produce the movie (not to mention the production a tie-in comic book miniseries) (§7). It should be noted, however, that while fans were successful in having a movie produced, the box office draw of the film was deemed insufficient by Universal Studios to warrant the production of future movie instalments (Empire Online, 2006, ¶1-3). Despite this setback, *Firefly* fans have, nevertheless, remained diligent in their pursuit to have the *Firefly* and *Serenity* saga continued.

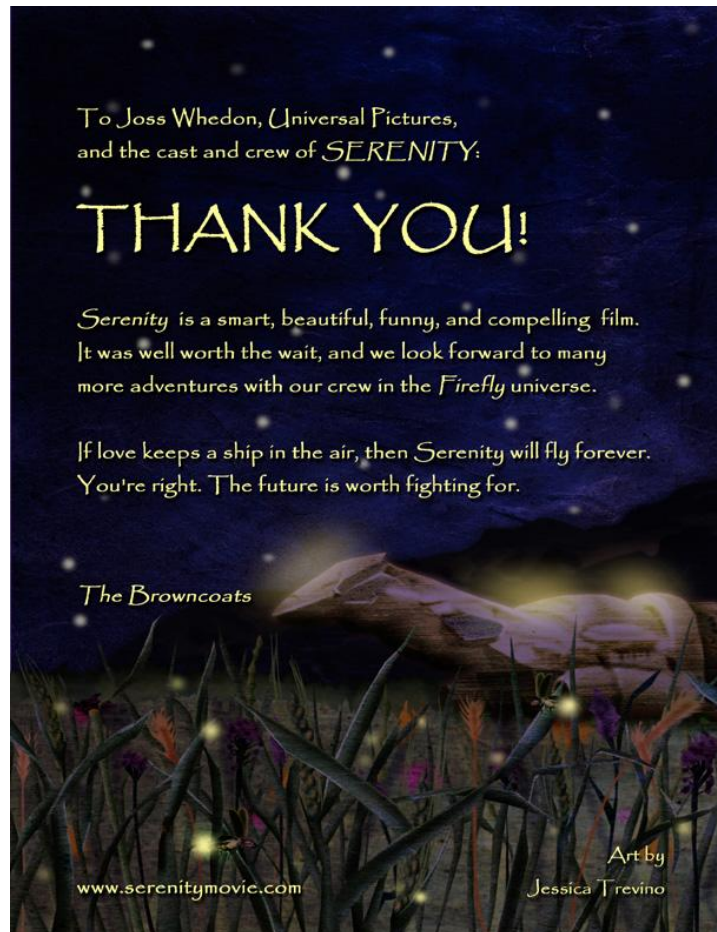


Image 7.5, Retrieved from the Whedon World Website website: <http://www.whedonsworld.com/pix/news/2005/october/varietyad.jpg>

The relative success of the Browncoats' lobbying of both 20th Century Fox and Universal Studios can be, in large part, attributed to the dedication of the *Firefly* fan community to the media text in question, and to their perseverance in wanting to have additional material produced. Much of the community's success has come as a result of organized campaigns and fan mobilization. Almost from the onset of its existence, the *Firefly* fandom has been centred on fan activism. The *Firefly* series was cancelled after only 11 of its 14 episodes were aired (Russell, 2005, p.1), and from that point, *Firefly* fans have arguably been in a perpetual fight to keep the series alive in some capacity. The history of the Browncoats features a wide variety of fan actions and campaigns to keep the program alive and running – such as postcard mailing campaigns and viewing parties (Browncoats.com,

2009, ¶2). Consequently, a culture of activism has developed in the Browncoats community. A fan is not considered a Browncoat unless he or she has partook in some form of fan activism to keep the series alive. In defining what it means to be a “Browncoat,” one fan remarks, “a Browncoat (in my mind, anyway) is much more of a fan activist, someone who has sent postcards and e-mail or has written a review or donated money for something *Firefly*-related, etc,” (Browncoats.com, 2010, ¶3). It is not enough to have simply watched the show and lament its passing, a Browncoat “takes action to make things the way s/he wants them to be” (¶3).

Contentions with Media Producers

While fan activism has been central to the Browncoat community and culture, it has also been the subject of some legal controversy related to copyright infringement. Looking to capitalize on the strong support of its following, Universal Studios – while still in the midst of producing *Serenity* – allegedly encouraged fans to create fan-based content to promote *Serenity* (Wilson, 2006, ¶1). Utilizing the internet as its vehicle, Universal Studios sought to tap into the cult following surrounding *Firefly*, and create word of mouth marketing and promotional materials such as bumper stickers and gift cards (Affinitive, 2010, ¶1-4). However, when, in an effort to promote the movie, fans began producing and selling merchandise with official or derived *Firefly* imagery, Universal Studios took notice and began issuing “cease and desist” orders. Many of those fans, who had supported *Firefly* and *Serenity* from the show’s beginnings, were left in the precarious situation of having to dispose of the merchandise they had created – such as T-shirts, posters, and bumper stickers (¶2-4). One of the recipients of Universal Studio’s “cease and desist” orders, Susan Renée Tomb – a fanartist, known in the fan community as 11th Hour, who, through her website and CafePress.ca store, has (and continues at the time of this writing) to promote *Firefly* and

Serenity fanart and works – posted excerpts from the order she received. Among the demands made in the cease and desist order were that, within 72 hours, Tomb “[was to] agree to pay a \$8,750 licensing fee; the permanent closing of [the CafePress] shop; turn over any merchandise referring to the Universal Property; and provide the last 12 months complete sales records” on top of a threat of a potential federal court hearing for copyright infringement and damages of \$150,000. Universal Studios also requested a written agreement that Tomb would “permanently cease and desist from the advertising, promoting, marketing, sale or distribution of any products bearing or referring to Universal Property.” Having submitted an agreement to cease and desist, and having complied with the removal of the infringing material, the fan in question notes, in a later posting, that Universal Studios dropped its financial demands. While the fan in question found it ironic that Universal Studios would frown upon her guerrilla marketing of *Serenity*, she does reference the Browncoats community as being a strong supporter of her actions and that the whole ordeal has left her with a renewed interest and appreciation for *Firefly* and its fan community. Incidentally, as of this writing, Tomb continues to produce fanart based on *Firefly* (hosting it on her website, 11thhourart.com) and sell merchandise which, while not specifically referencing *Firefly*, evokes the aesthetic of *Firefly*. Tomb has also contributed artwork to the official *Firefly* role playing game.

Not all Browncoats, however, were as understanding and compliant of Universal Studio’s “cease and desist” orders as was Tomb. One group of fans opted to create a retroactive invoice of their own to charge Universal Studios for the marketing work they had done for the movie (Slashdot, 2006, ¶1). Chris Bridges (2006), a blogger and fan of *Firefly*, took Universal Studio’s issuing of “cease and desist” orders as a challenge “to create artwork and graphic designs that represent what *Serenity* means to us without actually referencing the

movie or its characters” (§3). Bridges also notes the irony of the “cease and desist” orders given that they caused “backlash” from the fan community and overall lose of good will – unnecessary “hassles” that will undoubtedly cost Universal Studios much more than the revenues they were losing through unlicensed fan merchandise (§1). Some fans have gone so far as to suggest that Universal Studios has irreparably damaged its relations with fans, and it is unlikely that any fan group would be willing to cooperate with them on future viral marketing campaigns. Fans argue that while its perfectly reasonable for the studio to want to protect its intellectual property, when it sends out images and materials to fans, expecting them to use it to promote the film free of charge, the studio should relax its stance on copyright – particularly considering that fans, in their promotions of the movie, were doing Universal Studios a favour (Reynolds, 2006, §1-2). For a number of fans, the issue was not so much the fact that Universal Studios had issued “cease and desist” orders, but that they were seeking retroactive and punitive damages as well (Van Oosten de Boer & Vermeulen, 2006a). Interestingly enough, the creator of *Firefly* seems to side with fans on the issue of fan merchandise. In an interview with a fan site, Whedon refers to said merchandise as “free advertising” and compares its influence and marketability to that of fan fiction and online communities. Whedon notes that such fan productions are “important to [fans] and they wear it – and that makes me proud. And I don’t give a goddamn who’s making money off of it” (as cited by Van Oosten de Boer & Vermeulen, 2006b).

Despite issues with Universal Studios with regards to the use of copyrighted material, the *Firefly* fan community has continued to remain active and devoted in their efforts to bring *Firefly* back to either the small or big screen. Presently, the Browncoat community is in the process of organizing a fan mobilization, referred to as the “Blue Glove Assault,” to mail blue gloves to Universal and 20th Century Fox studios in the hopes of reviving the series

(Browncoats.com, 2010b, ¶1). Taking its inspiration from the fans of the short-lived television series, *Jericho*, *Firefly* fans will mail out blue gloves – a cryptic symbol from the series – accompanied by a card, reading “Can’t Stop the Signal,” in the hopes of convincing producers that the *Firefly* franchise still has a strong and viable market and fan base to warrant new productions. In 2007, fans of *Jericho*, upon receiving news that the show had been cancelled, staged a mail-in of bags of peanuts – an offer of surrender used in the *Jericho* series – to the producers of the show, CBS. After more than eight million bags of peanuts were mailed to CBS, the studio relented and renewed the series for an additional season – proving the fan campaign to be a success (¶2-5). Incidentally, a similar mobilization campaign occurred when the Warner Brothers series *Veronica Mars* was cancelled. Fans sent thousands of Mars Chocolate Bars to producers in the hope of saving the series (Harnick, 2003, ¶6); however, unlike the *Jericho* fan campaign, the *Veronica Mars* campaign has yet to yield results outside of rumours that the series, like *Firefly*, might be continued in theatres and through comic books. But what of the *Firefly* campaign? To date, the official Blue Glove Assault webpage boasts more than 380 members from all over the world. Additionally, a Facebook group titled “Bring Back *Firefly*” counts more than 17,000 members and, like the Blue Glove Assault (and as its name implies), aims to bring the world of *Firefly* back in some capacity.

Looking Forward: The Future of the *Firefly* Fandom

Although it has now been more than seven years since new episodes of *Firefly* were produced, and five years since *Serenity* was in theatres, the Browncoat community continues to maintain hope that the series will be renewed in some capacity. That being said, when rumours of new episodes or a new movie periodically circulate the Browncoat message board forums, many fans greet them with a degree of scepticism. Longstanding fans of the

show have heard an endless litany of rumours since the show was cancelled, and will no longer accept anything short of an official announcement from Whedon himself. On the fan message forum, *SerenityMovie.net*, one fan notes that the television network, CW, is streaming episodes of *Firefly* on their website, and ponders if, perhaps, this is a sign that the network is considering producing new episodes. While a number of other fans voice their optimism that this might be a sign that the series could be renewed, a few are quick to direct them to links of recent interviews where Whedon dispels any notions of a future *Firefly* series. A similar discussion thread discusses the legal boundaries that might impede the production of future *Firefly* episodes or movies. The general consensus was that in dealing with both 20th Century Fox and Universal Studios, Whedon had to agree to a statute of limitations on when or if he could produce more episodes of the series. One fan notes that because Fox studios went through a similar situation with the popular television series, *Family Guy* – a show that, like *Firefly*, was cancelled due to poor ratings, but was renewed almost three years later after strong DVD sales (James, 2005, ¶1) – it would be reluctant to let a second season of *Firefly* be produced for fear of “look[ing] foolish” for having cancelled two commercially successful shows. What is perhaps most interesting about this observation is that 20th Century Fox’s revenue model now places greater emphasis on the sale of DVDs and merchandise than it does on ratings (James, 2005, ¶5). Given the success of *Firefly* DVD sales, many fans feel that it stands to reason that the series, were it to be given another chance on television, would perform much better than it did before.

An overall sense of resentment from *Firefly* fans towards 20th Century Fox is inherent in much of the community’s discourse, and is reflected in various fan productions. The *Firefly* fan documentary, *Done the Impossible: The Fans’ Tale of ‘Firefly’ and ‘Serenity’*, reveals the incredulity fans, as well as cast and crew members, felt when they found out Fox

studios decided to air the series out of order and without airing the pilot episode – a decision that is widely felt by the *Firefly* community to have contributed to the show's failure. In the documentary, many fans note that when they first watched the series on television it was sometimes difficult to follow the story because key elements of the plot had only been introduced in the pilot episode (Hadlock et al., 2006). Similarly, the fan produced parody, *Mosquito: Behind the Scenes Preview*, mocks Fox's decision not to air the pilot episode. On the fan forums at *Fireflyfans.net*, one fan comments that "Fox should go to hell" for having cancelled the series. These sentiments reflect a disdain towards the Fox network that goes beyond mere disappointment at having their favourite media text cancelled: it speaks volumes to how personalized fan attachment to a media text can be. In the case of *Firefly*, fans feel personally slighted by the treatment the series received from the network. "*Firefly* and *Serenity* might have been mere entertainment to some people, but for us it's become so much more. We've all become part of *Serenity*'s onboard family [...] this is our story, the story of the fans of *Firefly*" (Adam Baldwin, actor and fan of *Firefly*, as cited by Hadlock, 2006). A sense of cultural proprietorship over *Firefly* is inherent in the fan discourse – a proprietorship which, in this case, is at odds with the producers' legal ownership of the franchise. While cultural policy and, more specifically, copyright law aim to protect the legal (and fiscal) rights of producers, they ironically neglect the cultural impact commodities and media texts have on society and, in particular, on fans. Although the average consumer's attachment to a media text might begin and end with its consumption, for fans, consumption is only the beginning. As the cases of *Star Trek* and *Firefly* fans have illustrated, an element of production is inherent to being a fan.

Chapter 8: Transformative Works – Fan Productions

Chapter eight explores, in depth, various forms of fan production and their relation to copyright law. To begin, the chapter looks at websites devoted to hosting fan productions and communities. It explores how these websites and communities approach the issue of copyright, providing examples of cases where fans have, in some way, violated copyright and how the communities addressed those violations. This leads to a discussion on the emergence of fan communities that explicitly police fan productions as a means of controlling copyright infringement and plagiarism in fan communities. Next is a discussion on producer reaction and action (or inaction) to fans' use of copyrighted materials in their productions. A number of cases are examined where producers either accepted and encouraged or dissuaded and took action against fan productions. This is followed by a discussion on the legality of fan productions and the emergence of groups and organizations – such as the Organization for Transformative Works – that advocate for the rights of fans with regards to their use of copyrighted or derivative materials in their works. This chapter is then concluded with a discussion on the legitimization of fans and fan productions in academia.

Fan Websites & Copyright

As previously discussed, a fan is someone who does not just watch or consume a media text or program, but who translates the experience of media consumption into a cultural activity (Jenkins, 2006, p.41). Although fans and fan communities might and often do partake in a wide variety of cultural and communitarian activities, it is the production of cultural commodities that is perhaps the most prevalent, recognized, and consistently practiced form of fan activity – practiced in virtually all fan communities, regardless of genre or media text. One needs only type the name of a television show or movie, accompanied by

the word “fanart,” into an internet search engine to find hundreds and sometimes thousands of websites hosting various forms of fan production related to that media text. From illustrations and artwork, to fiction and fanzines, to music and videos, fans have produced countless cultural commodities, spanning every form of cultural production imaginable, based on their favourite media texts. Where once these productions might have seemed amateur or of poor production quality, advances in digital technology, in recent years, has opened the door to fan productions that have both a professional look and feel to them. These productions serve a variety of purposes, though, amongst them, the most important is, sometimes, the continuation of a media text – particularly in instances where no new official material is being produced. Many fandoms have, in fact, survived and flourished in the absence of new official media text thanks in no small part to fan productions which have generated continued interest in the commodity.

Facilitating the distribution of fan productions are websites specifically devoted to the various forms of fan production. While a considerable number of personal fan sites exist with the sole purpose of promoting the work of the site’s administrator or that of a specific fan artist, many fan sites devoted to fan productions tend to be community based. What is perhaps most interesting about fan sites that host fanart and fan productions in any of their forms, however, is that many of them openly acknowledge that copyright infringement might occur – or already has – on their site. Copyright is taken seriously by many fansites, and they will often take measures to minimize (or eliminate) the use of official material in the fanart they host – ensuring that, while the works they host might be derivative of copyrighted material, they are not plagiarised. The fanart-hosting website, fanart-central.net, is an “online art community” designed to provide fanartists with a venue in which to exhibit and discuss their work. While the site is primarily geared towards hosting fanart, the site’s hosts

welcome original submissions from their users (Fanart Central, 2009, ¶1). To ensure that the art submitted to the site is, indeed, fanart – and not official content from a producer’s website – Fanart Central has instituted an approval panel to review submissions (¶5).

DeviantArt.com also functions under a similar capacity to fanart-central.net, providing a venue for artists to post their artwork and “art-lovers” to follow and track their “favourite artists” (DeviantArt, 2010a, ¶1). Although DeviantArt.com is not specifically oriented towards fanart in the way fanart-central.net is, it does provide its users with a section for fanart. Incidentally, much of that fanart tends to be based on popular characters and franchises and drawn in the style of manga and anime – the Japanese forms of comics and cartoon shows, respectively. That being said, DeviantArt.com is well aware of the probability that copyright infringement can and most likely does occur on their website. The hosts of DeviantArt.com have put up an extensive copyright policy which, among other things, outlines what legally constitutes copyright law and how the site proceeds when informed of copyright infringement on their site (DeviantArt, 2010b, ¶1-9). Unlike, fanart-central.net, DeviantArt.com does not screen submissions by its users – undoubtedly, in large part, because DeviantArt.com boast over 12 million users compared to the “over 50,000” registered at fanart-central.net, and screening the over 100 million works of art it hosts would be unrealistic and undoubtedly unfeasible (Fanart Central, 2009, ¶3; DeviantArt, 2010a, ¶1). Interestingly enough, however, the terms of service on DeviantArt.com notes that they are, unless otherwise stated, the owners of all copyrighted data on their website. While they do not claim ownership rights on the works posted by their users, by posting artwork on DeviantArt.com users are giving the site “a non-exclusive, royalty-free license to reproduce, distribute, re-format, store, prepare derivative works based on, and publicly display and perform Your Content” (¶16).

While fanart-hosting sites are concerned and take steps to avoid hosting overtly copyright infringing works or limit their liability in the eventuality that they will host copyright infringing works, such concerns are not always obvious to the fan artists/fan producers themselves. In many instances fans do not always take into consideration the potential legal consequences of their works or productions. Confounding the situation often is the fact that fans are not always aware of where their boundaries lay, both in terms of using copyrighted material in their productions and in creating derivative works. When a fan of the popular web comic Applegeeks (applegeeks.com) blogged about having printed off issues of the series from the official website and published them in a single volume, for his own personal use and not for retail, as a means of testing the quality of a self-publishing printing-house, the creators of the comic became quite distraught (Bailey, 2005, ¶1-2). The creators of Applegeeks, while content with fans printing their comic strips – “all of them” – and posting them on the wall at home or at the office, felt that the fan in question had crossed a line (Hague & Panagariya, 2005, ¶2). The fan apologized repeatedly, noting that he thought he was well within the legal parameters of copyright law when he produced the volume in question. Although the issue was resolved relatively amicably – without the need for legal action – fans of the series were left visibly divided on the matter (Hague & Panagariya, 2005, ¶1).

Some Applegeek fans felt that Hague & Panagariya – the creators of Applegeeks had overreacted – particularly in a case where the fan in question had only made one copy of the book and for his own personal use, and had made it explicitly clear in his blog that he would not make additional copies for others nor provide them with the digital version he had printed from. One fan argued that the original fan’s printing of the comic series was a sign of true dedication to the oeuvre, especially when one considers the cost of printing and the fan’s

desire to have a copy of the series in book format where no official copy existed. Other fans, however, argued that the printing of the book was selfish and not “an act of fandom.” One fan even went so far as to suggest that what the original fan did was “devoid of all creativity and skill” and the exact opposite of what it means to be a devoted fan. The same fan also argues that a true sign of fan devotion would have, essentially, amounted to the creation of something – whether that is in the form of fanart, costume, or bronze statue in effigy of the comic strip’s characters. The fan debate surrounding the unauthorized fan-publication of the Applegeeks comic offers a poignant insight into the world of fandoms. Inherent in the works and productions of fans is the notion that there is an element of altruism in fan productions: fans produce for the joy and entertainment of other fans. While self-satisfaction can certainly be garnered from one’s own fan production(s), the objective is to produce something that will appeal to other fans. When the Applegeeks fan produced an unauthorized version of the comic strip in print format, he produced something for himself and only for himself – and in so doing, missed the esprit of being a fan.

According to Jenkins (1992b), “fanartists, writers, videomakers, and musicians create works that speak to the special interests of the fan community” (p.279). When a fan writes a fan fiction story and publishes it on the internet, for instance, they do so with the intent of reaching the fans of a particular media text. After all, who else would be more interested or likely to read a *Harry Potter* fan fiction story, for instance, than fans of the *Harry Potter* franchise? And, with *Harry Potter and the Deathly Hallows* slated to be the last book in the *Harry Potter* series, what better way for fans to continue the *Harry Potter* saga than through fanart and fan fiction? While fans of the *Harry Potter* series are certainly not the only fan base that produces art and fiction, they are among the largest and most prominent on the internet. Even the construction of a website – or fansite – can be considered a form of

production, and if one considers some of the *Harry Potter* related fansites in circulation, a considerable amount of production time and effort has been put into creating an interactive environment for both fans and casual viewers alike. With more than 90,000 and 75,000 members (and counting) respectively, Mugglenet (mugglenet.com) and the Leaky Cauldron (the-leaky-cauldron.org) are two of the largest and well known *Harry Potter* fan communities on the internet – not to mention, perhaps, two of the largest fan communities of any genre or media text on the net. Mugglenet even boasts that it is the #1 *Harry Potter* site in the world. Endorsements and words of praise from *Harry Potter* author and creator J.K.Rowling have certainly helped garner followings for these sites, as both have become proverbial one-stop-shops for all things *Harry Potter* – including news and rumours, interviews, and various forms of fanart and fiction (Mugglenet has even developed its own social network similar to that of Facebook). Of particular interest, both sites feature artwork from literally thousands of fans – some of which, arguably, has a quality and production value that rivals that of official merchandise and imagery. The Leaky Cauldron provides users with albums in which to post and manage their artwork. Other fans are then invited and permitted to peruse the work and rate it on a scale of “not great” to “amazing.” Mugglenet features a similar system for fans to post their artwork, and a rating scale of “rubbish” to “great.” While the use of such rating scales is questionable, particularly given the subjectivity of art in general, it does provide fans with almost instant feedback on their work. Furthermore, the rating scale gives fans the opportunity to engage the fan work – to not just observe it, but to comment on it. Implicit in the act of submitting a work of fanart to a website like Mugglenet or the Leaky Cauldron is that that work will be shared with others and will – for good or bad – be the subject of scrutiny.

Police State: Fan Policing

Interestingly enough, it is fan scrutiny towards the works of other fans – and not the crackdown of producers – that has led to a number of allegations of copyright infringement and plagiarism. Fans have taken it upon themselves to police their own activities to ensure that, while the works they produce might reference or make use of copyrighted characters/materials, they do not explicitly plagiarise works. Fans note that the disdain for plagiarism that permeates their communities stems from “a paranoia of having the corporation accusing us about things that are not true about us” (as cited by Brown, 2009, p.8). There is a sense that media industries perceive fans as “losers who live in our parents’ basement and thieves” (p.8). Consequently, fans police the works submitted to and distributed within their communities as a means of combating the perception that fans do not take copyright seriously. One fan describes how the modes of communication often employed by fans – such as mailing lists, message boards, and personal websites – has enabled fan communities to quickly spread the word when someone is found to have plagiarized a work. From that point, justice is either served formally by site moderators or informally by “vigilantes” – whose methods differ from one fan community to the next (as cited by Brown, 2009, p.9). Without some measure of fan justice – either in the form of moderation or vigilantism – fan communities have a difficult time of sustaining themselves, and will oftentimes “implode and disappear” due to the lack of control (p.9). For this reason, fan communities specifically devoted to stopping fan plagiarism have emerged. The *Stop Plagiarism* community, for instance, started off as means of addressing plagiarism in *Buffy the Vampire Slayer* fan fiction, but has grown to cover virtually all fandoms and forms of fanart (with exception to video theft). When a work of fanart is suspected of being stolen – either from an official media text or from another fan – members of *Stop Plagiarism* will

post links to the work along with evidence that suggests the work has been stolen. If a work of fanart is found to be plagiarized, *Stop Plagiarism* will blacklist the “author” as a “known plagiarist” (Stop Plagiarism, 2010). With detailed information on copyright and plagiarism and a list of offending fans spanning in the hundreds and dating back to 2005, Stop Plagiarism acts as both a resource for fans but also a deterrent to would-be thieves – the logic being that no one wants to be put on display as a thief and plagiarist within the community.

Perhaps the most well-known and controversial instance of fan policing within the fan community is the case of fan author turned professional Cassandra Claire (nom de plume: Cassandra Clare). Best known for her *Mortal Instruments Trilogy* of teen novels, Claire gained infamy in the fan fiction community in the early 2000s for her novel-length *Harry Potter* fan fiction trilogy, the Draco Trilogy. According to fan accounts, Claire “borrowed” a number of passages from various media texts and incorporated them into the series. Sometimes these borrowings were overt, as was the case when Claire would insert dialogue from popular novels and television shows such as *Buffy the Vampire Slayer*; however, oftentimes Claire’s borrowings were covert, paraphrasing sequences from more obscure fantasy genre novels that the average fan would be unfamiliar with (Fanlore, 2010, ¶1-12). Where some fans took issue with Claire’s work, however, was not so much with regards to the borrowing itself, but in the lack of citation. The lack of proper citation eventually led to the removal of Claire’s work from prominent fan fiction hosted websites, such as fanfiction.net – a decision that led to much fighting within the fan community (The Cassandra Claire Plagiarism Debacle, 2006, p.5). Fans were divided on the issue in part because the series had been popular in the *Harry Potter* fan fiction community and in part because plagiarism is an issue that, as stated, is taken seriously in the fan community. Subsequently, since becoming a professional author, Claire has reportedly removed her fan

fiction from the internet – though copies of the stories can still be found in circulation (Fanlore, 2010, ¶5). Furthermore, fans note that when the topic of Claire’s purported plagiarism is brought up in fan discussions on public forums, it is usually not long before Claire’s attorney joins the proverbial foray and threatens to sue fans for libel – though most fans now consider the threats idle (particularly considering the number and frequency of said threats, coupled with evidence they believe sufficient to prove unequivocally that Claire stole passages from various media texts (Bad Penny, 2006). Because her name tends to evoke strong reactions, Claire has been notoriously christened “She Who Must Not Be Named” in many *Harry Potter* and fan fiction communities – a name that plays on the main antagonist of the *Harry Potter* novels (Pottersues, 2003, ¶30). Similarly, to ensure that Claire’s story is not completely forgotten or glossed over in the fan community, many fans have developed websites to host the evidence they have found against her. The *Cassandra Claire Plagiarism Debacle*, for instance, provides fans with the history of the case as well as screenshots, conversations, and examples of the allegedly plagiarized passages of Claire’s work.

Whether or not Cassandra Claire actually plagiarized or infringed on copyright is a moot point, and beyond the scope of this paper. Her case does, however, shed light onto the degree in which fans are willing to go to ensure perceived justice within the fan community. The case of Cassandra Claire also raises a particularly strong caveat for fans: when submitting a work of fanart to a host website, fans must invariably contend with the knowledge that their work is potentially in violation of copyright law. Generally speaking, fan productions are legally considered derivative works – which, by default, legally belong to the author/owner of the original work (Bailey, 2005, ¶7-11). Notwithstanding cases such as the illicit Applegeeks printing – which serves to illustrate, if nothing else, how ill-informed fans and people in general can sometimes be with regards to copyright law – many fans seem

to have a general understanding that their productions deal with materials that belong to someone else. Oftentimes, when a fan has a concern regarding the copyrights related to a fan production, they will consult the community for advice or assistance. When asked about the legality of using sound clips from the *Firefly* and *Serenity* television and movie franchise in the fan produced podcast, *The Signal*, the creators' response was that "[w]e're gambling [...] we're risking [being sued] because *Serenity* is worth fighting for." That being said, the fans and producers of *The Signal* feel relatively confident that they will not be sued anytime soon. Citing the fan backlash 20th Century Fox experienced when they began sending out "cease and desist" orders and shutting down *The Simpsons* fansites in 1999 for using copyrighted material (Basile, 2000), *Firefly* fans believe that it is unlikely Fox would risk the same bad publicity again – especially for a television show that ceased production more than seven years ago.

Production Value: When Producers Take Notice

Not all fans have been as fortunate in their use of copyrighted materials as have the creators and producers of *The Signal*. In 2007, *Harry Potter* fan Steve Vander Ark was set to publish a book version of his online *Harry Potter* Lexicon when Rowling and Universal Studios filed a lawsuit against his publisher, RDR Books, for copyright infringement. Rowling's lawyers argued that the book was a gross misappropriation of her work and circumvented her plan to release an official lexicon of her own (BBC, 2008, ¶1-15). Ironically, Vander Ark's online lexicon had previously received considerable praise from both fans and professionals alike. A number of insiders working on official *Harry Potter* productions, including Rowling and producers at Universal Studios, cited consulting the lexicon to verify facts and timelines within the *Harry Potter* universe when writing/producing official material (United States District Attorney, 2008, p.7-8). However,

in their official complaint Rowling and Universal Studios described Vander Ark's lexicon as being "comprised of widespread misappropriation of Ms. Rowling's fictional characters and universe, including list after list of spells and potions, imaginary places, fantastic creatures and invented games" (Cendali, Schmitt & Bradley, 2007, p.2). As a countermeasure, RDR Books sent a "cease & desist" letter to Universal Studios for having "misappropriated" elements of Vander Ark's online lexicon for use as bonus material in the DVD releases of the *Harry Potter* movies (United States District Attorney, 2008, p.13). Furthermore, RDR Books argued that the lexicon represented a derivative work and fell within the guidelines of fair use, comparing it to a number of other lexicon and companion novels that had been released for other literary works – most notably Paul F. Ford's companion novel to C.S. Lewis's the *Chronicles of Narnia* (p.45). While the court acknowledged the usefulness and benefit of companion books and lexicons, noting that in general terms such volumes do not constitute copyright infringement, it felt that Vander Ark's lexicon used "verbatim copying in excess of what is reasonably necessary" (p.49). Furthermore, because of its exorbitant use of verbatim copying, Vander Ark's lexicon could not be considered a transformative work. Consequently, the court ruled in favour of Rowling and Universal Studios, stating that the lexicon would be "permanently enjoined," and citing damages to be paid to the plaintiffs of \$6,750 – or \$750 per infringed work (pp. 67-68).

The case of Vander Ark is interesting in the sense that it draws upon the notion of fans being the ultimate form of knowledge workers and, more precisely, the irony of being a *fan knowledge worker*. As Milner (2009) notes, fans can in some cases be described as knowledge workers because their work relies on "information and interpretation to produce collectively for their favourite media texts" – work which often entails, among other things, summarizing and editorializing media texts, promoting – at times, religiously – the "merits"

of media texts, evaluating media texts, and creating their own art based on media texts (p.492). As a knowledge worker, Vander Ark's work was appreciated by the *Harry Potter* producers as a resource they could call upon when working on new productions. However, the moment Vander Ark sought to benefit from his work, he ceased to be a knowledge worker in the eyes of the producers and became a copyright infringer – someone who was unlawfully copying the work of another. Perhaps the greatest irony of Vander Ark's case is that the work he did willingly and for free on the internet is undoubtedly work that Rowling and/or Universal Studios would have paid someone to do had Vander Ark's lexicon not already existed.

According to Bailey (2005), while some producers – particularly those of more popular franchises – have taken a “very strong stand against fan creations” many more have been lenient and even receptive of fan productions (§10). Author Neil Gaiman (2002), for instance, has no problem with fans using his creations in the use of their productions, provided they are not profiting from the work or commercially exploiting his characters or settings. Gaiman adds that fan productions such as fan fiction is “a good place to write while you've still got training wheels on” (§3-4). Some producers even encourage fan works, and make certain forms of media available to fans for the use in their productions (§10-11). For instance, Hasbro Toys produces a line of action figures known as “Mighty Muggs.” Mighty Mugg are essentially morphed or deformed versions of popular characters from the Star Wars, Marvel Comics, G.I. Joe, and Transformers franchises. The popularity of these toys has spawned a fandom of collectors and customizers who take existing Mighty Mugg toys and transform them – with paints and various model-kit tools – into characters that have not yet been produced or released by Hasbro. What is more, fans will also customise Mighty Muggs into characters that are unlikely to ever be released by Hasbro, presumably due to

licensing issues. Seeing an opportunity to grow its market, Hasbro has begun releasing blank Mighty Muggs to facilitate the customization process for fans (Hasbro, 2010, ¶1). Whereas fans initially had to paint over and customise the official Mighty Mugg characters, with blank muggs they now have the opportunity to work from a clean slate. To showcase (and sometimes sell) their works, Mighty Mugg fans have developed websites, such as mightymuggs.net and custommightymuggs.net. These sites, like many other sites devoted to fan productions, provide users and fans with the option to comment and critique works. While fan productions, such as Mighty Muggs, are generally well received (and sometimes, as the case of Mighty Muggs suggests, encouraged) by media producers, Bailey (2005) does offer a caveat to fans: producer approval tends to lull fans into a “false sense of copyright security” (¶11). Given that copyright laws “prohibit the commercial distribution of fan materials” (Jenkins, 1992b, p.48), fans are at the mercy of producers when it comes to their productions. Furthermore, the actions of producers vis-à-vis the approval and promotion of fan productions is made suspect by the fact that, in the past, they have tended to “look upon organized fandom[s] less as a source of feedback than as [...] an ancillary market for specialized spin-off goods” (p.48) – of which Mighty Muggs, for instance, can assuredly be described as. Fans must, therefore, be cautious when producing and distributing their work.

In many instances, the reason media producers issue “cease and desist” orders are because of concerns that their intellectual property is being misinterpreted or profited on by fans. While creators and producers want and actively seek to attract fan attention for their productions, they are not always willing to do so at the risk of potentially damaging their image in the eyes of non-fans (Nolan, 2006, p.533). Because certain forms of fanart – such as fan fiction and fanzines – have the potential to misinterpret and misrepresent productions and producers alike, producers often seek protection through the only recourse at their disposal:

copyright. Although many fans are quick to justify their use of copyrighted material as fair dealing – particularly as a means of developing new ideas and concepts – few fans truly understand the nature of copyright law. In their discussion on the use of copyrighted material in the *Firefly* fan-produced podcast, *The Signal*, *Firefly* fans acknowledged their uncertainty vis-à-vis the use of copyrighted material, but speculated that it was legal because the podcast was being provided free of charge and only uses short sound clips from the series, akin to, as one fan put it, “quoting in newspaper articles.” The fan who printed an unauthorized book version of the Applegeeks comic strip argued that his use of the material was for educational purposes. The fan even went so far as to quote the fair dealing clause of the copyright act which grants exceptions to the use of copyrighted material for education purposes – though few fans were actually convinced this argument would hold up in a court of law.

Similar discussions surrounding the use of copyrighted material in fan works have also appeared on the fanart-central.net message boards. While many of these discussions address questions directly related to the use of copyrighted material, quite a few are devoted to “calling out” suspected “character” and “art” thieves. The issue of originality, perhaps ironically, is a serious issue at fanart-central.net, and fans do not hesitate to post warnings if they fear someone is stealing their work or that of others. Some fans even provide comparisons of multiple works to justify these claims, while others will post links to and consult the United States Copyright Act to verify that copyright infringement is, indeed, occurring. In one topic, a site administrator notes that while copyright is bestowed the minute a work is created, many people are unable to act upon it because the legal costs of pressing charges and bringing the perpetrator to court are “bigger than any settlement” one would get in return (Fanart-central message boards, 2005-2010). It should be noted, however, that many of these cases pertain to the theft of fanart, and, as such, raise the question of whether

or not fans even have copyrights to their works. As previously discussed, fanart, of any kind, is often considered derivative work – the rights of which belong to the original artist/creator(s). It is perhaps not surprising, therefore, that there exists a tension between the rights of creators/producers with regards to their intellectual property and the rights of fans with regards to their use of said property in the creation of their own cultural productions (Nolan, 2006, pp.533-534).

The Legality of Fan Productions

According to Nolan (2006), because fan productions, such as fan fiction, intersect “numerous interests and elements of copyright law,” they represent a distinct challenge for the courts – one which might invariably require a retooling of copyright law in order to properly be addressed (p.534). Among those interests is the fans’ freedom of expression. It goes without saying that when a fan produces a work of art or fan fiction, they are, in some way, expressing themselves. Craig (2006) contends that copyright law effectively works as a form of censorship, prohibiting the free expression of individuals in favour of the rights of copyright holders (p.77). Historically, freedom of expression has taken a backseat to the rights of copyright holders in legal cases where copyrighted material was used without the express consent of the copyright holder and was deemed to have or have the potential to damage the goodwill and/or impair the business integrity of the owner(s) of the copyrighted material – even in cases where the material in question was used in spoof or parody. The fact that, in such a case, the owner of a copyright would effectively be silencing the inherent criticism or parody is seen as inconsequential to the courts when the question of damaging the owner’s business integrity is at stake (p.85). This implies, according to Craig (2006), that the interests of business precede the expressive interests of citizens (p.85). While policy makers tend to assume that mechanisms built into copyright law to protect the rights of the

average citizen, such as the fair dealing clause, adequately serve the purpose of protecting freedom of expression, they tend to be complacent with regards to addressing the constitutionality of copyright law – particularly with regards to the issues of “fundamental constitutional significance” that copyright touches upon. Consequently, the argument has been raised that these issues need to be addressed in order for there to be a coherent understanding of how copyright law relates, constitutionally, to freedom of expression (pp.77-78).

Constitutionally, freedom of expression is a broad and arguably ill defined concept. Section 2(b) of the Canadian Charter of Rights and Freedoms guarantees that “everyone has the fundamental freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication” (Canadian Charter, 1984). In 1989, the *Irwin Toy v. Québec* case set the precedent for what the Supreme Court of Canada broadly defines as the coverage of freedom of expression. According to the Supreme Court, ‘if the activity conveys or attempts to convey a meaning, it has expressive content and *prima facie* falls within the scope of the guarantee’ (as qtd. by Craig, 2006, p.80). This means that all forms of art – whether it is literature, film, dance, music, etc. – are protected under the broad scope of freedom of expression. These forms of art are also protected under copyright law (Craig, 2006, p.80). However, in legal cases where freedom of expression has been pitted against copyright law, more often than not, Courts have ruled in favour of copyright law holders (p.82). According to Craig (2006), some commentators have postulated that given the Supreme Court’s broad interpretation of section 2(b)’s guarantees in the *Irwin Toy* case, it might no longer be feasible for the Courts to summarily dismiss “freedom of expression challenges to copyright law”; the Courts might have to change their approach to addressing

cases of freedom of expression as a challenge to copyright law (p.85). Despite commentator speculation, however, no such changes have been made (p.86).

The Supreme Court of Canada's tendency to rule in favour of copyright law over the right to freedom of expression, in some respects, seems to run counter to the original purpose of copyright. According to Wilkinson and Gerolami (2009), the "stated" purpose of copyright law has "long been taken to be to encourage the production and dissemination of works thereby increasing access to information" (p.322). Ironically, however, by invoking copyright law to suppress fan creations and expression, media industries are "preventing knowledge space from becoming autonomous, depriv[ing] the circuits of commodity space" (Lévy, 1997, as qtd. by Jenkins, 2006, p.147). "Knowledge space" refers to the emerging digital environment of the internet. This environment has facilitated the development of new modes of deterritorialized communication and interaction, which has, consequently, evolved into knowledge based cultures centred on the production and exchange of knowledge. In many respects, fan communities represent "some of the most fully realized versions" of knowledge space (Jenkins, 2006, p.137). Lévy (1997) describes knowledge culture as the "engine" for "the circulation and exchange of commodities" (as qtd. by Jenkins, 2006, p.147). By depriving knowledge space – in the capacity of fan based communities – its ability to freely disperse information online, media industries are limiting the potential commodification of their properties; their panic towards "interactive audiences [is] short-sighted" and is missing the opportunity to reach a greater consumer market (Jenkins, 2006, p.147).

According to Naomi Novik, chairperson for the Organization for Transformative Works (OTW), the problem with copyright law vis-à-vis fan works is that "marketers don't understand fandom or fannish culture" (as qtd. by Lieb, 2008, ¶3). The OTW, it should be

noted, is a registered non-profit organization that aims to protect fans and fan works from “legal snafus and commercial exploitation” (Lieb, 2008, ¶4). Amongst the many fan related legal cases the OTW has defended, perhaps the most publicized to date has been the case of *Salinger vs. Colting*. In this case, the estate of J.D. Salinger sued author Fredrick Colting – under the pseudonym “John David California” – for his unauthorized sequel to the novel *The Catcher in the Rye* (OTW, 2009, ¶2-3; US District Court, 2009). The defence argued that Colting’s novel was a work of parody and as such should be protected under fair use. The United States Federal Court eventually ruled against Colting, however, on the grounds that his characterization of the *Catcher in the Rye*’s protagonist approximated too closely Salinger’s and could not, as such, be considered parody. Consequently, the book has been indefinitely barred from publication in the United States (Chan, 2009, ¶1-9). Salinger, himself, was notoriously famous for suing writers/producers to protect his works from being used in any capacity other than in their original format, and it is for this reason that *The Catcher in the Rye* has yet to be adapted into a feature-length film or play (¶15).

A fan of author Neil Gaiman (and purported copyright lawyer) notes the main determinant of whether a work falls under fair use clause is the degree in which it is transformative vis-à-vis the original work. Copyright, in effect, falls along a spectrum of weak to strong – the more original a work is, the stronger a producers copyright claim is. In cases where a work has entered the public domain and has been transformed – such as the case of Disney’s *Alice in Wonderland*, for instance – copyright is weak and only applies to particular elements that have been changed from the original work. This means that anyone can produce an *Alice in Wonderland* movie. In the case of Disney’s *Alice*, the fan contends that the movie is “clearly a cartoon version of the public domain woodcut *Alice*” – meaning that little has been changed from the original character design. However, the fan also relates

that a weak copyright can be “pretty strong when owned by a powerful company.” Consequently, most producers (and fans) are likely to make considerable alterations to Alice and the characters/settings of Wonderland, if they so choose to use them, to ensure that they are sufficiently different from the Disney version – despite the fact that the Disney version is almost an exact copy of the Lewis Carroll version.

Fan Advocacy: The Organization for Transformative Works

On top of its advocacy for the rights of fans and their transformative works, the OTW is active in establishing fandoms as legitimate cultural groups and preserving the cultural legacies of those groups. For instance, the OTW is responsible for the production and development of the fan-based online wiki/encyclopaedia, Fanlore.org. The Fanlore.org website provides a place for fans to record and preserve the ongoing history of fandoms and fan cultures in a similar format to websites such as Wikipedia.org. Like other wiki-styled websites, Fanlore.org is a collaborative effort which allows the submission and editing of entries by virtually anyone – in large part to allow fans a degree of “control [over] their own representation” (Fanlore.org, 2008, ¶1-2; OTW, 2010, p.3). However, given the potential for individuals to post fallacious or fraudulent information, the OTW has introduced a review committee to ensure the relative validity and accuracy of information being posted on the site (OTW, 2010, p.3). Similarly, the OTW hosts the “Open Doors” project – a project geared towards preserving fan works and projects that are deemed “at risk” of disappearing either from the internet or in print format (p.3). The OTW also publishes the online, peer-reviewed academic journal, *Transformative Works and Cultures*, whose goal is to “promote scholarship on fanworks and practices” (p.3). To date the journal has published four volumes since 2008, with a fifth slated for release on September 15th, 2010. Accompanying the journal is a blog where articles from the journal are published and where fans can submit,

anonymously, non-peer-reviewed/non-academic articles and essays of their own. With the blog, fans are also welcome to comment on articles and create a kind of open dialogue with the peer-reviewed content that might not have otherwise been possible. The journal, however, has had a number of drawbacks in gaining legitimacy in academic circles. Because the journal's publishers made the decision to be an online-only publication, academics have shied away from submitting articles because most educational institutions do not recognize such publications when considering promotions (Hellekson, 2010, ¶1-2). (It should be noted, however, that *Transformative Works and Cultures* is recognized by and accessible through Scholars Portal – the Ontario Council of University Libraries' "digital repository" for scholarly articles).

While groups and organizations such as the OTW seek to foster legitimacy for fan productions and transformative works, they must invariably contend with both the realities of cultural policy and fans that, through blatant infringement of copyright, propagate negative stereotypes of fans. However, by advocating for the rights of fans with regards to their use of copyrighted material in transformative ways, the OTW is challenging the dominant discourses promoted by producers and protected by copyright law. Similarly, in publishing an online-only peer reviewed journal, the OTW is challenging underlying discourses in the field of academia: namely that online publications lack the prestige of paper publications – an assertion which ascribes value and, archaeologically, acts as a form of discursive subjugation. Furthermore, the OTW – through its publication – is exploring discourse through subject matter with which discursive analysis has seldom been applied. As Weldes (1999) notes, "most studies of discourse [...] tend to focus on elite (and academic) rather than popular sites of discursive practices (p.116). By focusing its literature on fan and

transformative works, *Transformative Works and Cultures* is arguably helping to direct academic interest and discourse towards popular sites.

In the grand scheme of things, the emergence of *Transformative Works and Cultures* is perhaps a small, but important, step in legitimizing fan culture and practices in academic discourse. Historically, fans and fan communities have been apprehensive of academics. According to Hills (2002), academia works as a form of value system which, when applied to fandom tends to create an imagined subjectivities – a “we are good” and “they are bad” mentality that emerges from the unavoidable participation of academics in their research (p.21). It is perhaps for this reason that a large body of fan related literature tends to regard fans with a degree of contempt and disdain. Similarly, fans have had a certain degree of weariness when it comes to academics specifically because fans are often forced to defend or justify their behaviours and activities in terms of what they see as a “‘common sense’ distinction between immediacy [and] over-rationalization” (p.21). Even pro-fan academics, such as Henry Jenkins, are not immune to fan apprehension. Jenkins has, in the past, come under fire from both the fan and academic communities for what they argue to be “misread[ings], misappropriate[ions], or unduly exagerrat[ions of] the power fans have” (Short, 2008, p.176). While fans certainly do have power of persuasion, particularly where mobilizations and activism are concerned, fans lack legal power and often – despite their numbers – monetary power. From a Foucauldian perspective, one cannot help but conclude that the power relations between fans and producers tend to favour the latter rather than the former. In the case of fans and academics, Hills (2002) suggests that fans and academics are more similar in nature than either community might be willing to admit (pp.21-22) – their differences lying primarily in their respective interests.

Chapter 9: Fan Communities and the Use of Copyrighted Material

Chapter nine provides a more in-depth look at the use of copyrighted material by fan communities. This chapter begins with a look at the modern production of fanzines – a form of fan production which largely began as (and continues to be) a sort of community oriented “underground” production. From there, this chapter moves into a discussion of fan devotion to particular media texts, and how devotions defy cultural class (i.e. high culture vs. low culture). In exploring the concept of cultural class, this chapter looks at various fan productions and practices – such as file sharing and bootlegging – and how they serve to defy producers. Next, this chapter examines fan discourse surrounding file sharing and bootlegging – practices which are, for some fans, embedded in their fan culture. Moreover, certain fan communities have gone so far as to adopt elements of certain media texts into the development of a community culture. This chapter looks at, in particular, how the Klingon Assault Group – a fan community based out of the *Star Trek* fandom – have adopted elements of *Star Trek* into their fan culture, and the implications such adoptions have to cultural policy. Remaining with the *Star Trek* fandom, this chapter explores the commodification of *Star Trek* culture by producers. Finally, this chapter discusses the theoretical implications of fan productions and the commodification of producer-created/owned fan cultures.

Underground Production

It is perhaps with a certain apprehension towards the possibility of being sued for copyright infringement that many fans have historically tried to produce and operate collectively, under the proverbial radar. This has been particularly true in the case of fanzines. Notwithstanding the prevalence of blogs and e-zines on the internet, fanzines have remained relatively underground in terms of their scope and accessibility. Even some of the

more prominent online fanzine communities see modest traffic, with relatively limited followings, compared to some of the other forms of fan production. For instance, *Efanzine.com*, one of the few websites which provide free access to fanzines from all over the world, has had just over 755,160 visits at the time of this writing (with at least a dozen coming as a result of this research) since the site's conception in December of 2000. Primarily focused on the science fiction genre, *eFanzines.com* provides fans with an almost daily updated library of fanzines from all over the world. While many fansites devoted to fanzines will sell and ship fanzines to interested parties (presumably to cover the costs of printing and shipping), few offer actual fanzines in PDF format the way *eFanzine.com* does. Fans who wish to have their zines featured on *eFanzine.com* can do so freely. On top of hosting fanzines, *eFanzines.com* also provides a directory to other fan related websites and fanzine-hosting sites. However, what is perhaps most revealing of the community nature that is fostered through *eFanzines.com*, however, is the site's links to various fundraisers established to assist fans in attending "[science fiction related] conventions in foreign lands" (Burns, 2010) – in other words, to facilitate fan exchanges. One such fan exchange, the Trans-Atlantic Fan Fund (TAFF) – and its affiliates, the Down Under and the Get Up-and-Over Fan Funds (DUFF and GUFF, respectively) – has been funding fan exchanges between the United States, Europe and Australia since 1953 and operates through a process of nomination and preferential balloting (Langford, 2010). The intended goal of sending fans to foreign conventions is to strengthen the bonds between fans globally. Fans that are sent overseas are expected to "meet as many [other] fans as possible," frequent as many fan events and conventions as possible, and report on their experiences through their fanzines (the organizers hope) and through travel reports (Lindsay, 2008; Langford 2010). These fan

exchanges also provide fans with the opportunity to meet people, see places, and experience cultures they might not have otherwise had the chance to.

What is perhaps more interesting about the fanzines hosted on *eFanzine.com*, however, is the fact that many of them are not only genre or topic specific, but region specific. In a digital age when fans are able to connect and interact with each other on a global level, many fans have sought, through their fanzines, to build communities and interact with other fans on a local level. The Science Fiction/San Francisco fanzine, for instance, covers fan-related news for the San Francisco Bay Area. Similarly, the BCSFAzine, published by the British Columbia Science Fiction Association, provides monthly updates, news, and stories for science fiction fans of the province of British Columbia. These fanzines cater specifically to the fanbases of their respective geographical regions: they provide an outlet for local fans to submit essays, stories, artwork, and reviews of movies and television. Furthermore, many authors/editors of localized fanzines also trade their zines with other editors – with some even devoting sections of their zines to the peer review and/or promotion of other zines. It should be noted that the practice of peer reviewing fanzines within fanzines is nothing new. The practice has long been held as a means by which to share and spread various fanzines within the fan community. To facilitate this process, some fans began cataloguing, critiquing, and listing fanzines by genre or category in the early 1980s. Fans needed only consult the lists, find a topic of interest, consult the reviews, and choose which zine best suited their interests. Because of the guaranteed boost in readership, many fanzine editors began submitting their zines to the list creators for review (Spencer, 2008, pp.32-39). Similarly, amateur press associations (APA) began to emerge as means through which fanzine writers/creators could have their fanzines published and reach a larger audience. APAs invite fanzine creators to submit their zines, which are then collected and published in

one large volume. A copy of this volume is then mailed to all of its submitters, plus those who have ordered (and paid for) a copy (Pustz, 1999, p.184; Interlac, 2010).

Defying Class: Fanart Versus High Culture

Not everyone, however, sees the production of fanzines and similar fan works – works which make use of copyrighted materials – as a positive thing. Some authors suggest that the motivation behind the creation of such works is of an entirely hostile nature. These productions and their use of copyrighted material act as fans’ way of defying the “dominant class” who created said material, and to “overcome feelings of subordination and powerlessness” (Tulloch & Jenkins, as cited by Costello & Moore, 2008, p.127). Many producers disapprove of fan productions because they tend to re-imagine the original works in contexts that the producers disapprove of. Furthermore, fans will often interpret meaning in original works that was not intended by the author – interpretations which producers will often seek to control or extinguish rather than have them compete with the original or desired intent of the work. This invariably raises the question of whether or not an author’s rights over their productions extend to fan understandings and interpretations of the work (Jenkins, 1992b, pp.30-32).

Rooted in this view of fans, as hostile to the original intent of the author, is the notion that cultural tastes are determined by the social elite – the bourgeoisie. As such, taste becomes a measure of “social distinctions” and a means of forging “class identities” (Jenkins, 1992b, p.16). From these social distinctions emerge inherent concepts of *good* and *bad* taste – or, more precisely, *high* (elite) and *low* (popular) culture. Mannheim (1956) defines high culture in terms of “the culture of the ruling classes” and low as the “culture of the lower class(es)” (as cited by Inglis & Hughson, 2003, p.35). This classification is often determined by the higher class(es), with little to no intrinsic merit (Inglis & Hughson, 2003,

p.35). Works that are deemed in good taste and of high culture, such as the works of *Shakespeare*, are often given a “privileged position within the institutional hierarchy” (Jenkins, 1992b, p.16). These works are often explored, scrutinized, critiqued, and interpreted on a number of “intellectual levels” (p.16). Works deemed of being in bad taste or of low culture, on the other hand, are not often afforded such rich readings and interpretations. Many bad tastes are seen as socially harmful and having the potential to negatively influence consumers. Those who enjoy bad tastes are seen as “intellectually debased, psychologically suspect, or emotionally immature” (pp.16-17). Consequently, bad tastes are often held separately from good tastes – low culture is viewed from a different lens than high culture. The cultural commodities that fans tend to latch onto are those of the low culture variety. When fans interpret and appreciate media texts – through their labours and productions – in the same way as high culture texts are treated, they are essentially “mudd[ying the] boundaries” between high and low culture, in the process calling into question the cultural hierarchies that have been put in place by the bourgeoisie (pp.17-18).

The concept of fans and fandoms defying the dominant class(es) – both in terms of cultural consumption and production – is not entirely without merit. The notion of fans as knowledge workers speaks to this defiance in many ways. The fact that fans hold certain cultural media texts in high regard – to the point where they analyse and interpret these works in the same way that society approaches works of “high culture” – speaks to the characteristics of fan knowledge workers outlined by Milner (2009) – that is to say, the interpretation, summarization, evaluation, and promotion of favoured media texts (p.492). A prime example of such work is the fan-made *Venture Brothers* Wiki. This wiki provides in-depth synopses of each *Venture Brothers* episode, including cast listings, continuity references, and pop-culture references. The pop-culture references, in particular, require a

degree of research and knowledge that extend beyond watching the show itself. One *Venture Brothers* fan comments that a line in an episode, spoken by a Spider-Man parody about having been “in the Sound of Music as a kid,” is an obscure reference to actor Nicholas Hammond who played Freidrich in the film, *The Sound of Music* (1965), and later went on to play Spider-Man in the short-lived *Amazing Spider-Man* (1977-1979) television series. This degree of devotion and knowledge is particularly apparent in fandoms of relatively obscure or short-lived media texts that develop a cult following – which the *Venture Brothers* can arguably be described as – which further speaks to the notion of fans defying high culture. After all, fan cult followings tend to “act against the expectations of a TV industry” (Hills, 2002, p.28) – one which tends to cancel programs due to lack of interest from the general public.

While fans’ defiance of high-culture can be expressed as a form of devotion to a media text – as is arguably the case of fans of cult television series – it can also come in the form of critique or satire of a producer’s work(s). *How It Should Have Ended*, a series of web-based animations created by Daniel Baxter, poke fun at movies by offering alternative endings to popular films and television franchises such as *The Wizard of Oz*, *Lost*, and *Star Trek* – among a host of others. While these videos are satirical in nature, they often reflect popular fan opinion of the media texts in question. When commenting on Baxter’s video of how the film “*Spider-Man 3*” should have ended, one fan notes “this video shouldn’t be a ‘How It Should’ve Ended,’ it should be ‘Everything That Was Wrong With’ [the film].” Similarly, the hosts of the fan community, *Geekvolution* (also known as *We Are Geeks Not Nerds*), provide critiques of movies, albeit exclusively of the superhero genre. Taking a more analytical approach, *Geekvolution*’s hosts discuss various elements of the movies they review, such as production value, storytelling, acting, and directing. In both the case of *How*

it Should Have Ended and Geekvolution, fans are using their productions to creatively critique media texts that they follow. Instead of accepting what producers have offered them, fans are making their voices heard and, in the process, gaining a strong fan following of their own. Baxter's videos boast an average viewership on youtube.com of more than a million – with some videos approaching 10 million views. While not quite as successful, Geekvolution has slowly but surely developed a strong following of more than 1,000 members.

Some fan productions go a step further in their critique of producers, taking issue not so much with the product, but with the very notion of high culture. Saturday Morning Breakfast Cereal (SMBC), a group that produces webcomics and short-videos, makes light in one of their comics (Image 9.1) of the fine line that sometimes exists between high and low culture. Image 9.1 illustrates that fans are aware of the cultural perception ascribed to the commodities and media texts they follow, and to the inherent ironies of cultural distinctions.

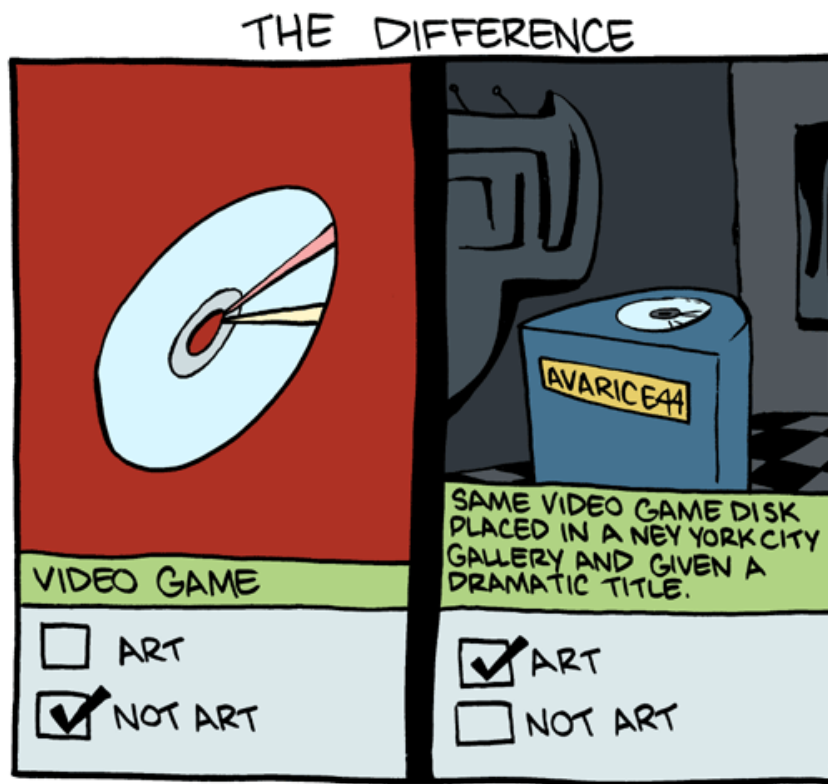


Image 9.1: Retrieved from the SMBC (2010) website:
<http://www.smbc-comics.com/index.php?db=comics&id=1860#comic>

While fan-favoured media texts might sometimes clash with those favoured by the dominant class(es), it is fan productions that often provoke the ire of media producers. In 2001, for instance, prior to the DVD release of *Star Wars: The Phantom Menace*, a fan edited version of the film – referred to as the Phantom Edit – began circulating fan communities. This version cut approximately twenty minutes of footage from the official version of the film – footage that many fans (and critics) had found offensive, asinine, and sophomoric in nature (Mann, 2001, ¶1-2). The “author” of the edited version, professional movie editor and *Star Wars* fan Mike J. Nichols (who, incidentally, originally released the edit anonymously under the moniker, the Phantom Editor), describes his work as a constructive criticism of the *Phantom Menace*, and notes that the exercise was not to “simply remove footage or make [the *Phantom Menace*] shorter,” but to bring the movie more in line with the directing style of previous George Lucas (director and creator of *Star Wars* and its sequels) films (as cited by the BBC News, 2001, ¶13; Kraus, 2001, ¶11). Both fans and critics, alike, applauded Nichols’ work for improving both the flow and sophistication of the film without compromising its story or overall integrity (Rodgers, 2001, Mann, 2001, ¶3). The success and notoriety of Nichols’ Phantom Edit helped popularize and proliferate fan edited movies – a form of fan production that had hitherto seldom been practiced, in large part because the technology to edit films had hitherto been unavailable to the average fan (Kraus, 2001, ¶20-26). With the popularization of fan edited movies, it was not long before fan sites and communities devoted to these productions began cropping up on the internet. At the time of the Phantom Edit, fan sites devoted to the discussion of the edited movie and speculation on the identity of the editor were particularly prominent. One popular rumour credited director Kevin Smith, a known *Star Wars* fan, as being the Phantom Editor (¶4). While it might be entirely related to the fact that these edits explicitly use (and circulate) copyrighted material,

most fan editors choose to remain anonymous and let their works speak for themselves (§26) – a practice that continues to this day and is considered, by some fans, to add to the mystique of the edited films and to the culture of the fandoms that surround them. Fan discussion boards, specifically related to fan edits, have also become proverbial trading posts for fan edited movies. Fanedit.info, for instance, is a website which hosts (and trades) hundreds of fan edited movies, while its sister site, Fanedit.org, reviews and catalogues fan edited films, and provides an outlet for fans to discuss and critique the works.

While initially open to fan edits of his films, Star Wars creator George Lucas quickly soured to the idea after copies of the edited version were being produced and sold in video cassette and DVD formats at movie theatres and fan conventions. Confounding the issue, within weeks of its popularization, a digital version of the Phantom Edit began circulating file sharing websites, such as KaZaA and BearShare, and began eating into potential video and DVD sales (Mann, 2001, ¶5-6). While hype surrounding the Phantom Edit soon died down, the incident opened the eyes of many producers to what degree the internet and digital technologies had empowered fans and the fan community. Notwithstanding the unauthorized distribution and sale of copyrighted material, the Phantom Edit served as a means for fans to not just vocalize their displeasure with the official movie, but to show producers how their product could be improved – and, in some cases, re-imagined (Kraus, 2001, ¶27). What is perhaps most ironic about the case of the Phantom Edit, however, is that Lucas is renowned for re-editing his original Star Wars movies and updating them with scenes and special effects that were not available to him when he first produced the movies. This practice has been met with mixed reviews by the fan community – with many fans preferring the original, unaltered versions of the original Star Wars trilogy. However, much to the disappointment of these fans, Lucas has resisted releasing the original, unedited trilogy on DVD because he

feels it does not reflect his original creative vision (Johnson, 2005, p.36). In protest, many fans have turned to bootlegging the original, unaltered trilogy – what is more, they produce and distribute the bootlegs for free in the hopes of ensuring that the unaltered trilogy does not die out completely (p.37).

File Sharing and Bootlegging

The practice of bootlegging and sharing videos has been a longstanding ritual in fan communities since the advent of the VCR. Jenkins (1992b) remarks that the exchange of videotapes is a practice that has helped “bind [fandoms] together as distinctive communit[ies]” (p.71). Thanks to video, fans are able to share their favourite television programs or movies – often of series or movies that are difficult (or almost impossible) to find for retail or on television in certain countries – with other fans, and form bonds and friendships that they might otherwise not have had. Some of these bootlegs even constitute works that have been lost or destroyed by their producers in their original form (Nowak, 2010b, ¶6). Fans will often make copies of their bootlegged videos free of charge, looking for nothing more than to share their resources and help out their fellow fans. More than that, however, the advent of video (and cassette) has given fans more control over programming choices: they can watch a television show whenever and as often as they like, “in whatever context desired” (pp.71-72). This culture of video trading has only been amplified by the respective advents of the DVD and the internet – technologies which not only facilitate the bootlegging process, but also facilitate the sharing of bootlegged materials. While the internet and, in particular, the application of file sharing have enabled fans greater access to a library of television shows and media texts that they were unable to acquire otherwise, it has also – in a much broader context – been the subject of much controversy. Studies (and rapidly decreasing record sales) have revealed that file sharing has caused “some reduction

on sales” of both videos and CDs (Zentner, 2008, p.289) – which is perhaps an understatement when one considers that there was a time when a record would sell over 20,000 copies a week for “months on end”; nowadays label producers “dance in the streets” if a record is able to sell 20,000 in its first week (Cross, 2010a, ¶1). This is not to suggest that fans – insofar as they are being discussed in this thesis – are the sole perpetrators of file sharing, but that as cultural groups that rely on the use of copyrighted material, discourse surrounding the practice invariably affects fans.

Confounding the issue of file sharing and copyright infringement is that fans are receiving mixed messages as to what they are and are not allowed to do with copyrighted material – partially as a result of what many feel is an outdated copyright law in Canada (Nowak, 2010b), but partially because fans have been given conflicting messages from creators and producers. Case in point: when the band Radiohead released the album, *In Rainbows*, in October of 2007, they offered it to fans in digital format through a “pay what you want” scheme. Incidentally, fans could also choose to pay nothing for the album – not unlike file sharing. However, when Radiohead struck deals with record labels to release the album on CD a few months later, they effectively gave distribution rights of the album to those labels. In other words, those labels now have the right to stop the sharing of *In Rainbows* – which is precisely what they have been doing. What is more, Radiohead has been “outspoken about industry organizations going after fans for sharing music” (Cross, 2010b, ¶6-9). Similarly, when the WB Network opted to postpone the airing episodes of *Buffy the Vampire Slayer* in the United States following the school shooting in Columbine, *Buffy* creator Joss Whedon pleaded to his Canadian fans to “bootleg” episodes onto file sharing sites so that their American counterparts could view them as well (Jenkins, 2006, p.146). While file sharing is technically not illegal in Canada, copying music from a CD to a

computer for the use on an MP3 player is. Incidentally, the illegality of format shifting – such as copying a music CD to a computer – is not even taken seriously by Canada’s elected officials: Canadian Minister of Industry Tony Clement has gone on record as having copied countless music CDs to his iPod, and boasts a playlist of more than 10,450 songs (Schmidt, 2010, ¶2-3).

When it comes to file sharing and the downloading of “pirated” material, however, fans tend to be on the fence with regards to its practice. Fans of comic book author and playwright, Grant Morrison, for instance, note the irony of crackdowns on file sharing. When an electronic version of Morrison’s comic series, *Flex Mentallo*, began circulating the net, his representatives began asking fans to take them down because it could potentially lead to a loss of earnings for Morrison. While many fans complied with the request – not wanting to financially burden their idol – one fan noted that the comic is out of print and, due to some legal issues, has never been collected in trade paperback format. Ergo, the argument is made that Morrison (and DC Comics – the rights holders to the comic and its characters) is not actually losing any money from the online distribution of the comic series. Furthermore, the fan argues that many fans who might read the series for the first time online will undoubtedly go out and purchase a hardcopy if one is ever made available because the quality and experience of reading a comic book (or book, for that matter) on a computer screen is not the same as reading a physical copy. In the same discussion, one fan adds that when it comes to music they tend to either download music that they would otherwise never buy or music that cannot be purchased anywhere (such as bootlegged recordings of live concerts). The same fan also notes that they frequently borrow music from the local library and making copies of that, which, in the grand scheme of things, is little different than were they to download the music online. In this respect, the fan argues that his downloading of music is not costing the

producers money, per se, because he would not have purchased the music to begin with. This is not to say, however, that all fans are in agreement with file sharing or bootlegging of copyrighted material without the producer's consent. Fans of *Firefly* have openly mixed feelings on the subject. When one *Firefly* fan asked if he was morally wrong for having downloaded *Serenity* after having paid to see the movie twice in theatres and having pre-ordered and paid for a copy of the movie, some fans were quick to label him a thief. Despite their apprehensions towards illegal file sharing, *Firefly* fans did feel that the business models employed by the music and film industries were outmoded and that amendments should be made to provide fans and users with a greater degree of flexibility when it comes to the media they purchase (i.e. having the right to burn a copy of a CD one has purchased). Similarly, one fan questioned whether, when purchasing a CD or DVD, if they are "paying for the medium or the right to listen to the music at will."

The Cultural Productions of Fans

Confounding many of the issues surrounding the use of copyrighted materials by fans has been the notion that fans are building communities and culture through their use of such materials. Incidentally, one of the key elements of community building is the production of cultural commodities by the community's members – in this case, fans. Cultural productions serve to create unity and a sense of identity within a community; they are the symbols and artefacts to which communities ascribe their values and beliefs, and around which members of a community can identify (Hiller, 2006, pp.303-305; Inglis & Hughson; 2003). The *Star Trek* fandom is among the richest fandoms as far as cultural production is concerned. From fan fiction to feature length films and videos, *Star Trek* fans' productions run the gamut of fan productions – drawing, in the process, from the original media texts. It goes without saying, for instance, that fan groups and communities, such as the KAG and Starfleet, derive

their names and productions from the *Star Trek* franchise. However, many of the cultural productions these groups produce make use of derivative or copyrighted materials. The KAG's logo (Image 9.2), for instance, is a modified version of the official Klingon symbol (Images 9.3) and features letters from the Klingon alphabet. When visiting the KAG website, the first thing one sees are the giant letters K.A.G. outlining pictures of Klingons from the *Star Trek* series. One of the videos featured on the KAG website's front page is of a community member, dressed as a Klingon, reciting official Klingon law at a masquerade contest (which he, incidentally, won).

To foster a greater sense of community amongst its members, the KAG releases an international newsletter, *Mindscanner*, two or three times a year. The most recent edition of *Mindscanner*, published in the summer 2010, features various letters from and photos of members of various KAG branches around the world, tips on how to make Klingon costumes and headpieces, a list of member promotions, and news from the various chapters of the community (some of which include discussions of events the various chapters have recently attended). Many of the members who submit material to *Mindscanner* do so under Klingon names – names that have been derived from the Klingon language and chosen by the respective members – and sometimes submit material written in Klingon. In previous issues, articles have touched on various issues from improving one's Klingon costume to what it means to be a Klingon fan to anecdotes pertaining to everyday-life on Earth as a Klingon. Some issues have showcased re-enactments of famous novels – translated to Klingon and performed by KAG members as Klingons (Mindscanner, 2008, p.4). Also featured in many issues of *Mindscanner* are stories and art produced by fans featuring *Star Trek* themes, designs, characters, and sometimes images from the various *Star Trek* series – in other words, derivative or copyrighted material.



Left: Image 9.2, Retrieved from the KAG (2010) Website: <http://kag.org/broch.html>

Right: Image 9.3, Retrieved from Wikipedia (2010): <http://en.wikipedia.org/wiki/File:KlingonInsignia.png>

The use of copyrighted material in fan productions is certainly nothing new for the *Star Trek* fandom and its culture. The continued existence and success of *Star Trek* is arguably due to ongoing fan productions. Before the emergence of *Star Trek* as a commercially successful franchise, *Star Trek* fans were producing new materials in order to keep the fandom alive. To distinguish true Trekkies from “bleary-eyed television omnivores,” *Star Trek* fans even developed their own language and terminology for discussing *Star Trek* (Green, 1992, ¶4). Author and *Star Trek* fan Michelle Erica Green (1991) notes that “we trekkies have never needed new trek material to keep us going. Our fandom thrived in the mid-70s, when no new episodes were in the works,” (as cited in Short, 2008, p.175) – in large part through the production of newsletters and fanzines, as well as through fan conventions and pen-pal clubs (Green, 1992, ¶3). It is perhaps for this reason that many *Star Trek* fans feel jaded that, since the onset of the 1990s, Trek culture has been prevailingly commercialized. Some *Star Trek* fans even feel betrayed that *Star Trek* has become a part of mainstream popular culture (¶1). The introduction of the second *Star Trek* series (ST:TNG), coupled with the success of the *Star Trek* movies led to the introduction of

the series to a whole new generation of fans who had previously never had much (or any) exposure to original series. With the advent of the ST:TNG series came a proliferation of *Star Trek* merchandise – merchandise fans were encouraged to purchase and “true fans” were expected to purchase (¶6). This expectancy stemmed, in large part, from the fact that throughout the 1970s and 80s *Star Trek* fans would often spend top dollar on rare *Star Trek* merchandise – not-so-much because they expected the retail value of the commodity to increase but because it brought with it a connection to a series which, at the time, was still very much in danger of becoming a footnote in the annals of media history (¶7). In this respect, rare *Star Trek* merchandise for fans became cultural artefacts to preserve and protect. While the purchasing of rare merchandise can be seen as a form of cultural preservation, its roots invariably lie in consumerism. After all, the original intent of these products was to make money for their producers. The fact that fans have adopted rare merchandise as cultural relics speaks to the transference that occurs when commodities become culturally iconic (much in the same vein as Andy Warhol’s painting of the Campbell’s soup can). This form of transference can be problematic for producers as it diminishes their ownership of the *Star Trek* fandom in a socio-cultural sense, and calls into question their marketing practices: producers are essentially contending with the notion of selling culture versus making a profit from what is obviously a profitable franchise.

The Commodification of the *Star Trek* Culture

The proliferation of *Star Trek* related merchandise was also seen, by some fans, as a means for Paramount Studios – the producers of *Star Trek* – to circumvent fan productions. The release of official *Star Trek* novelizations, soundtracks, episode guides, and magazines all mimicked the content found in fan produced material. These forms of merchandise essentially eliminated the need to “do it yourself” because Paramount Studios had

“effectively done it for you” (Gwenllian-Jones, 2003, as cited by Short, 2008, p.178). When fans began establishing a presence on the internet in the 1990s, producing unofficial *Star Trek* fan sites, Paramount and its parent corporation, Viacom responded with “cease and desist” orders, claiming that many of these fan sites illegally contained copyrighted material (CNN, 1997, ¶4). A consequent response from fans was to creation of the Online Freedom Federation (OFF) – a fan organization devoted to putting a stop to the creative monopolization Paramount and Viacom were exerting over what fans believed was fair use of copyrighted material (Short, 2008, p.179; CNN, 1997, ¶6-8). The argument made by OFF (through its legal counsel) was that in shutting down fan websites, Paramount and Viacom were being ungrateful to fans and “demonstrate[ing] an appalling lack of good business judgement” (as cited by Short, 2008, p.179). An online petition, organized by OFF, collected more than 10,000 signatures in a bid to stop Paramount and Viacom from shutting down *Star Trek* fan sites (CNN, 1997, ¶9). Since then, Paramount and Viacom have relented on shutting down fan websites, acknowledging that they do provide a measure of free advertisement. Similarly, fans of have begun adding legal disclaimers to their sites, acknowledging that the *Star Trek* and related material found on the sites are property of Paramount Studios (Short, 2008, p.179). Incidentally, OFF – now known as the Collective Against Cancer – devotes its resources and energy to raising money for research into finding a cure for cancer (OFF, 2007, ¶1).

Despite a seeming understanding between Paramount Studios/Viacom and fans with regards to the use of copyrighted material in fan productions and practices, however, an underlying concern remains in the *Star Trek* fan community that Paramount might renew its “web war” against fans for using copyrighted material (Short, 2008, p.184). Paramount’s official stance on the issue of fans using copyrighted material in their productions has been

that they will tolerate it provided fans are not profiting from their productions. Everett (2008) notes that while Paramount Studios owns the rights to the *Star Trek* franchise, the studio does not “‘own’ the greater cultural text that is *Star Trek*” (p.186). It is this logic which, for some authors, suggests that *Star Trek* should be approached as a “shared possession” by both producers and fans – a shared possession which has both “legal and social aspects” (p.186). This sense of fan ownership has grown over the years, and has been the catalyst around which the *Star Trek* fan community and fan base has built itself – a fan base which, it is noted, will readily consume official merchandise and media, but which is also quick to vocalize its dissatisfaction when producers release inferior or subpar productions. The *Star Trek* series and films produced in the late 1990s and early 2000s, for instance, saw dwindling support from *Star Trek* fans to the point where Paramount ceased production on new *Star Trek* media for almost half a decade after the cancellation of the television series *Star Trek: Enterprise* in 2005 (though, interestingly enough, like the original *Star Trek* series, *Enterprise* was renewed for one last season after its initial cancellation due to a letter-writing campaign by fans) (Short, 2008, pp.184-85; Everett, 2008, pp.186-87). While fan dissatisfaction can manifest itself in low ratings or poor box office return, it can also manifest itself in the form of production. Many fans have opted to create their own *Star Trek* series’ and movies as alternatives to what Paramount Studios has been producing in recent years – such as is the case with the fan produced *Star Trek* webseries, *Star Trek New Voyages: Phase II* (Everett, 2008, pp.186-87).

Star Trek New Voyages: Phase II, a 2008 Hugo Award nominated series (an award of excellence given to works of science fiction) (World Science Fiction Society, 2010) created by and starring actor/producer James Cawley, follows the ongoing adventures of the original *Star Trek* series. Using sets and costumes virtually identical to those of the original

1960s series (thanks in large part to Cawley's acquisition of the series' blueprints), Phase II is arguably one of the more ambitious fan productions of recent years. While the series borrows story elements from official *Star Trek* canon, it primarily focuses on new stories and ideas written by fans of the series as a means of filling the gap in *Star Trek* history that exists between the end of the original series and the first movie (Cawley, 2010, ¶1). Some of the storylines and concepts introduced in Phase II are reminiscent of fan fiction. For instance, Phase II introduces the nephew of Captain Kirk, Ensign Peter Kirk – a character who acts as a sort of “Mary Sue” – a new, often idealized, character created specifically for a fan fiction and sometimes serving as a “subaltern critique” (Chander & Sunder, 2007, p.597). (One fan defines the Mary Sue as “beautiful, powerful, has a perfect personality, falls in love with the author's favourite canon character, and generally pisses the reader off” (Pottersues, 2003, ¶1). Through Peter Kirk – acting as a substitute to the Captain – the authors/creators of Phase II are able to explore sexual relationships with other auxiliary characters (Peter Kirk has a relationship with the ship doctor's protégé) akin to the form of fan fiction known as “slash” – a term used to describe fan fiction that depict same-sex romances between two popular characters in a media text (Tosenberger, 2008, p.185). Despite sometimes “fanish” inclinations in its storytelling, the production of Phase II is on par with the original *Star Trek* series, with special effects that rival those found in the more recent *Star Trek* series' and movies. A testament to its production value, a number of *Star Trek* actors and alumni, such as George Takei and Walter Koenig (the actors who played Sulu and Chekov, respectively, in the original series), have either guest starred in the series or given it their endorsement. The popularity of the series has also grown to the point where various experts in the field of cinematography and science fiction (such as writers, directors, and film editors) have joined

the production team, including some who worked on the original and sequel *Star Trek* series’.

Although *Star Trek* New Voyages: Phase II is entirely produced, without profit, by fans, there is a sense on the series’ webpage (www.startreknewvoyages.com) that the show is entirely at the whim of Paramount Studios. Prior to the beginning of each episode, a notice indicating that *Star Trek* and related marks or images are the exclusive property of Paramount Studios, and that no profit is being made from the production of Phase II. Similarly, disclaimers to the same effect are posted on the website, accompanied with the explanation that any infringement of copyright is unintended. While the producers of Phase II might not necessarily profit directly from the series, they have certainly developed a degree of fame and respect from their production. Many of the sets and props used in the show were borrowed for episodes of *Star Trek: Enterprise* prior to its cancellation (Everett, 2008, p.195). Cawley was also able to turn his exposure as both producer and star of Phase II into a role (albeit small) in the 2009 *Star Trek* film (Pascale, 2008, ¶1). The overall success of Phase II speaks volumes to both the quality of fan productions but also to the sense of proprietorship fans feel towards the media text in question. Everett (2008) describes a “schism” that emerged between the producers’ vision of *Star Trek* and the fans’ vision of the series (p.193). These visions have “fed off of one another” for years, with fans creating their own explanations and histories when discontinuities and unanswered questions emerged in the official version of *Star Trek*. However, when the official media text began to clash with fan interpretations of the mythology (as particularly was the case with *Star Trek: Enterprise*, a prequel to the original series which sought, among other things, to explain discontinuities that exist in the other series), fans opted to take matters into their own hands: hence the productions of fan vehicles such as Phase II (pp.192-194). What such productions indicate is

that new technologies have given rise to fan productions that not only tell the stories that fans want to see, but in an aesthetic and quality that is authentic to the original *Star Trek*. In essence, these productions are the fans' way of taking charge of the media text and implicitly sending a message to the producers of the official media that they are not necessarily needed, as Green (1992) noted, for the production of new material.

Chapter 10: Cultural Policy and Agency in the Digital Age

The research conducted illustrated a form of agency in relation to cultural policy as rendered salient by the digital age. The research, which explored the nuances of fan and fandoms as they emerged – in large part, through the internet – as, arguably, legitimate political actors/actresses, led to a greater understanding of cultural theories and how they can and do apply to public administration and cultural policy. Through their engagement with cultural commodities and media texts, fans have been and remain in a position where they are being subjugated by what is sometimes a repressive policy. That is to say, by virtue of the consumer/producer dualism that is enforced by cultural policy and, more specifically, copyright law, fans are being pushed into the role of consumer despite also being producers. Following this purview, the research of this thesis uncovered a number of interesting developments regarding fans and their productions vis-à-vis cultural policy, the findings of which may be summarized as follows:

- Certain fan activities and productions constitute a contestation of the cultural industry and its rise;
- These activities and productions also act as a critique of cultural policy and its effects on elite culture and repertoire building;
- Fans build – through their productions and mobilizations – what can, perhaps, best be described as creative and playful forms of resistance to producer power enforced by governmental policy;
- Fan communities are built around shared interests and commonalities – no different than most any other form of cultural community – but provide a degree of solidarity and legitimacy to fandoms in relation to cultural policy;

- Fans, through their use of copyright material to produce cultural commodities, challenge the dualism of consumers and producers because fans are, at once, consumers and producers;
- While fans challenge cultural policy, cultural policy challenges fans in way of limiting the ability and scope of fans to produce derivative works.

First, in relation with copyright law, fan collective actions seem to challenge the rise and dominant conception of cultural policy from the cultural industries point of view. As the logics of cultural industries seem to establish themselves through the mass production of culture – to the extent that an artist is measured not by the quality or artistic integrity of his or her work but by the volume of units his or her work sold – fans bring a craft dimension to cultural production and challenge the established positions of consumer and producer by producing with the inherent knowledge that their work cannot be marketed and sold by them without legal consequence. Their action is, at times, specifically oriented towards contesting the rise of cultural industries and the notion that culture is a commodity. Second, fan agency has challenged the influence of cultural policy and its elitism over established tastes in a way that, interestingly, does not put in equivalence tastes and markets. Fandoms, more often than not, emerge around media texts and cultural commodities that can best be described as marginal or niche. That is to say, that these media texts were deemed by producers to lack a sizeable enough audience to be financially profitable – to the point where production has been ceased. Fans will often congregate around these properties, developing a cult following and ensuring that the media text is not completely forgotten. Perhaps ironically, in certain instances, fan intervention and action has enabled a cult media text to become profitable, in

the process defying established cultural norms. Third, much of the relative success fans have had can be attributed to the communities that have formed around particular commodities or media texts. This unity has facilitated fan activism and mobilization, and has given fans a legitimate voice in cultural and cognitive discourses, allowing fans in the process a greater degree of influence or weight in their resistance to dominant discourses. While fan communities have always existed, the internet has allowed for an exponential growth in the size and scope of fan communities – to the point where producers now court fan opinion when developing new media texts (which, in effect, serves as a means for producers to commodify cultural practices). To this extent, the internet has given a newfound strength to fan communities, but it has also increased their exposure to media producers – for both good and ill. Finally, fans represent a unique voice in the cultural zeitgeist as they are, at once, producers, users, and owners of cultural commodities and media texts. While fans' place as users/consumers goes uncontested, their place as producers and owners is of a social and cultural nature which cannot be easily (if at all) defined in legal terms. Because of this, fans are left between the proverbial rock and a hard place: their rights as producers are limited and subject to cultural policy – a policy that does not recognize fans as producers.

The fieldwork approached in this thesis revealed the distinctive features of contemporary cultural practices and dimensions that serve to distinguish fans, from both a cultural point of view and as a political force in relation to cultural policy making. First, as noted, one of the primary components of culture is the notion that groups embody their ideas, values, and beliefs in symbols and artefacts (Inglis & Hughson, 2003, p.5). To this extent, fan cultures are no different than any other culture, except perhaps in the fact that they embody their beliefs and symbols in artefacts that just so happen to be derived from media productions. In other words, fan symbols and artefacts rely on concepts and ideas that are the

intellectual property of someone else. Even this, arguably, is not much different from modern cultural conventions. Adorno (1991) suggests that many “facets traditionally allocated to culture come to resemble material production” dependent upon material life or economics (p.109). In other words, culture is essentially being mass produced for consumption. Consider, then, fan productions: the aesthetic of fan productions is said to be a celebration of the “creative use of already circulating discourses and images, an art of evoking and regulating the heteroglossia of television culture” (Jenkins, 1992b, p.279). Taking the aesthetics of fan production into consideration in conjunction with Adorno’s conception of culture as essentially being mass produced for consumption, one can easily make the argument that fans embody the esprit of commercial culture – they readily adopt and consume the cultures created around media texts. However, this is only part of the picture – and a relatively small one at that.

As Jenkins (1992b) describes, the nature of fan creation “challenges the media industry’s claims to hold copyrights on popular narratives [...] once television characters enter into a broader circulation, intrude into our living rooms, pervade the fabric of our society, they belong to their audience and not simply to the artists who originated them” (p.279). In a similar vein, Benjamin (2008a) notes that the relationship “of the mass to art” has been altered by the fact that technology has enabled the reproduction of art (p.26). In the past, a work of art was not something that could easily be conveyed to the masses – it was something whose consumption was largely individualistic in nature. Even when works were brought to galleries and museums, it was difficult if not impossible for the “masses to organize and check on themselves in the context of that kind of reception” (p.27). However, the ability to reproduce art has facilitated the consumption of works by a larger and broader audience than would have once been imagined. For some artists/producers, this has led to

greater exposure, fame, monetary wealth, and socio-political influence. For those artists, reproductive technologies have shifted the relations of power between them, their audience, the industry, and their peers relative to their success. Through the reproduction of art, masses are better able to receive, appreciate, critique, or mobilize around a work of art. In some instances, however, reproduction has enabled the masses to use works of art in ways that the original artist did not anticipate or desire. It is invariably in these instances that producers and fans clash. Simply put, the technology to reproduce and propagate works of art has created a quagmire of sorts for both producers and fans. Confounding the issue is the fact that many fans appropriate copyrighted material into their cultural practices. Cultural policy and, more specifically, copyright law do not account for such possibilities. Instead, a precedent has been set by the Québec Court of Appeal (2002) to give copyright holders the rights to derivative works – of which fan cultural productions are considered. To this extent, the courts are essentially codifying culture as a commodity that can be owned. Copyright law reinforces this notion by protecting the productive rights of producers. Furthermore, copyright law, in a way, is repressing elements of the relationship that has evolved between mass and art through advents in reproductive technologies.

The advent of the internet has radically reshaped the media industry and shifted the relations of power between consumers and producers to better favour consumers. Cultural activities, such as file sharing, which were once the forte of fans and love-struck teenagers – in the forms of bootlegged cassettes and mixed tapes respectively – have become staples in Western culture. In the wake of this loss of control over their cultural productions and the shift in their relations of power, artists/producers have fallen back on cultural policy and copyright law to restore order and balance to their relationship with consumers. However, like Pandora's Box, it is difficult to image the consumer/producer dichotomy returning to the

state in which it resided prior to the expanse of the internet. Even with proposed amendments to copyright law that would better address issues that have arisen because of the internet and file sharing, new programs and technologies are emerging that will make such amendments obsolete. For many producers, the answer to this problem seems to come in the form of stricter laws that would negate advents in technology. However, in introducing stricter copyright laws, producers (and by extension, policy makers) are arguably betraying the spirit of copyright law: the production and proliferation of new knowledge. If new minds, with different and unique perspectives, are limited or prohibited in their use of existing knowledge, does that not stunt the growth of new knowledge? While an element of the spirit of copyright law is to ensure that its holders can benefit – financially or otherwise – from their productions without the fear of being exploited, that benefit should not preclude the possibility of others borrowing and expanding on that intellectual property – particularly if it is to the benefit of society.

Part of the problem with the proposed amendments to copyright law is that they seem to be focused on the financial aspects of copyright – the remuneration of artists/producers – at the expense of its cultural and expansive aspects. In this respect, the proposed amendments pose a particular challenge to fans and fan culture. For most fans, the use of copyrighted material in their productions is not meant as a method of circumventing the legal and fiscal channels of cultural commodities, but as a means of celebrating the intellectual property that they adore. Ironically, in many cases – perhaps best exemplified by the *Star Trek* and *Firefly* fandoms – fans’ use of copyrighted material in their productions has served to promote particular media texts and, in the long run, generate greater revenue for producers than what they lost due to copyright infringement by fans. If not for fan productions and mobilizations, the *Star Trek* and *Firefly* fandoms might have ceased to exist in any sort of significant

capacity. More than that, however, fans have, in particular cases, canonized certain fandoms into the cultural fabric of society. Even the most ardent non- and/or anti-fans of *Star Trek* are familiar with its symbols and sayings. When producers seek to mitigate or extinguish certain fan activities, they run the risk of curtailing cultural activities. The question thus becomes one of public administration: by giving producers greater control over their intellectual property, through copyright amendments, is the government also giving them greater control over culture? The answer to this question is, arguably, a qualified yes. In general terms, the proposed amendments to copyright law would be unlikely to affect the average Canadian citizen beyond making file sharing and media lock circumvention illegal. But for fans that use copyrighted materials in their productions, these laws could act as barriers to cultural practices. To this extent, fan culture appears to be an unanticipated victim of cultural policy.

However, as stated, fans and producers find themselves in a quagmire vis-à-vis copyright law. On the one hand, producers should and do have the right to control and profit from their intellectual property. On the other hand, fans should have the right to express themselves culturally – which in most cases entails the use of intellectual property and copyrighted material not their own. How should the government remedy these issues? Or should the government even remedy these issues? Legally, the courts have historically sided with the side of producers when issues of copyright arise. Politically, policy is moving in a direction that would also favour producers to a greater extent. In effect, the government has already chosen a side in these issues. What is more, the argument can be made that the government's decisions with regards to copyright law have been influenced by parties with deep pockets. It is perhaps for this reason that fans have sought refuge from within the fan community. Organizations, from the ill-fated Fandom.com to the Organization for Transformative Works (OTW), have emerged to give voice to fans in a socio-political arena

where they have hitherto been silenced and to compete with political and corporate institutions that have the financial backing to influence the government. These organizations that advocate for the rights of fans mark yet another shift in the relations of power between producers and fans. As these organizations have gained traction and legitimacy, they have begun to influence policy decisions. Most recently, for instance, the OTW (2010) successfully lobbied to have an exemption included in the United States' Digital Millennium Copyright Act to allow fans the use of non-commercial video mixers to copy segments from DVDs for the use in certain forms of fan-made videos. While this is a small victory for fans, it is certainly an encouraging one.

While fans and fan advocates have seen success in their endeavours to broaden the scope of what fans are allowed to do with copyrighted material, questions still remain regarding the rights of fans as knowledge workers. The case of Vander Ark and his *Harry Potter* lexicon might be an exception in terms of fans trying to profit from their work, but the fact remains that many a fan have created works of knowledge – not unlike Vander Ark's – that have been used by producers in some capacity. Though fans often function as knowledge workers with little to no intent of profiting from said work, one must nevertheless question whether or not a producer's use of such work could be construed as exploitation – particularly if the work the fan has performed is something the producer would have paid someone to do otherwise.

Conclusion:

As discussed, cultural policy theory operates on a division between producers and the public. Dualisms, such as producer/consumer, have had a structuring effect on the way in which we envision cultural policy theories. At its core, the producer/consumer dualism implies subjectivities – that is to say that it defines positions in relationships between socio-political actors/actresses. At the governmental level, such clear-cut subject positions are perceptible beyond theories, entering into the actual practice of policy-making to the point where certain policies structure the notion of the public (or consumers), and the producers and/or owners. Copyright law, for instance, represents a good example of such an ideational construct. As a form of cultural policy, copyright law seeks to define the rights of producers with regards to their productions. In this research, the focus has been on the notion that cultural policy is repressive as it relates to fans. Cultural policy has a tendency to reinforce the consumer/producer dichotomy – a dichotomy, as espoused by both copyright law and cultural industries, which is often pushed upon fans despite the fact that they are both producers and consumers. As cultural entities, fans have found refuge through the internet to resist the producer/consumer dualism and emerge as political entities in cultural policy discourse. The internet has provided a means for fans to produce and proliferate their cultural productions and, in the process, challenge the tenants of cultural policy.

The emergence of the internet has brought with it a number of changes that challenge cultural policy and the rights of producers. At the centre of these challenges are users who have found a means, through the internet, to appropriate copyrighted materials for their own personal use – a practice which violates the copyrights of the producer. Consequently, producers have sought, through cultural policy and copyright law, to curtail such uses of their copyrighted material. However, in doing so, producers (and policy makers) have put

into the question the cultural rights of fans – who often use copyrighted or derivative materials to produce cultural commodities of their own. Because of these productions, fan can said to be producers and consumers – a concept which challenges conventional cultural studies theories that tend to discuss producers and consumers as dichotomous entitites. This thesis has explored the discourses that have emerged surrounding copyright law and cultural policy in the digital age, and have examined the place of fans – a cultural entity that is, at once, a consumer and producer – in cultural policy.

Focusing on three fandoms in particular – the *Star Trek*, *Firefly*, and *Harry Potter* fandoms – this thesis has found that, through their productions, activism, and mobilizations, fans have sought legitimization in the socio-political arena. For years, fans have been treated as social misfits and pathologically obsessed. Fan activism, amongst other things, has sought to rehabilitate this perception of fans and bring a degree of legitimacy and respect to the notion of fans as both cultural consumers and producers. Organizations such as the Organization for Transformative Works advocates for the rights of fans and has sought to validate fanart as a legitimate art form through academic circles. While fans' use of copyrighted material in their productions has, at times, infringed on the rights of producers, their use of copyrighted material is often of a cultural nature and speaks to notions of semiotics. Some fan communities have even gone so far as to adopt elements of a media text into their community culture, using images, symbols, languages, and texts from the media as cultural elements of their day-to-day lives. Moreover, fan productions have often served to promote the media text or cultural commodity of a particular producer and fandom. In some cases, such as when a media text has been cancelled, fan productions serve as the only form of new material for a fandom. In such instances, the survival and growth of a fandom is sometimes linked to the continued production of fan works.

Fans, in some respects, represent a form of knowledge worker – workers whose knowledge related to a particular media text or fandom is specialized and authoritative, and whose works epitomize said authority. While such work can benefit fans and producers alike, there is a very real possibility that such work can be exploited. Fans are at a relative loss when it comes to benefiting from their knowledge work because attempts to do so can and have been construed as copyright infringement. In fact, fear of copyright infringement has been ingrained in most fan communities – particularly those that host fan productions and works. Fansites post disclaimers to the effect that any infringing copyrighted content used on the site is done so accidentally and will be removed upon request of the content’s producer. Even in cases where fans use copyrighted material without infringing on copyright law, the fear of being sued by producers is so powerful that fans will often comply with “cease and desist” orders rather than be taken to court where legal costs alone would, in most cases, bankrupt the fan.

While producers have been quick to draw upon the law to mitigate fans’ use of copyrighted material in their productions, fans too have taken up the cause of stopping copyright infringement and plagiarism from occurring in fan communities. Perhaps in a similar vein to rehabilitating the social perception of fans, communities of fans have emerged to police fan productions and ensure that the work in question was not stolen from a producer or another fan. The implication here is that fans are aware of copyright and cultural policy, to a degree, and are willing to abide by it and ensure its compliance within fan communities – perhaps as a gesture of good faith to producers. Moreover, a number of fans have set up websites exclusively devoted to the education of other fans with regards to copyright and cultural policy. In this respect, fans are reacting to policy and mobilizing to address its consequences. This has served to shape fan culture and create, in some fan circles, a sense of

apprehension vis-à-vis their use of copyrighted material. Further adding to this apprehension is the exposure fans now experience as a result of the relative transparency and openness of the internet. Many fan practices that once went unnoticed are now visible and at the forefront of the issues producers have with fans and copyright law. Practices, such as bootlegging and file sharing, which were once practiced by fans below the proverbial radar, have now become common practice in society at large. Fans, themselves, are divided on the issues, unsure of what is morally right or wrong when it comes to using and sharing copyrighted materials. This uncertainty is confounded when one considers that such practices are enmeshed with fan culture.

Fan culture, itself, is a particularly complicated issue vis-à-vis cultural policy. Fan culture, in large part, develops around cultural commodities. Merchandise that producers create and sell become cultural artefacts for some fans. This raises the question of whether producers, through their manufacturing of merchandise, are commodifying fan culture. Some fans have argued that producers release certain merchandise with the implicit expectation that a core segment of the fan community will purchase it to complete their collections. The comic industry, for instance, is notorious for releasing comic books with variant covers – released only at specialty stores – expecting that fans will purchase a copy of each version. At the centre of this commodification of culture is essentially the notion that producers, through cultural policy, legally control fan culture. However, as many fans have pointed out, while a producer might own the copyrights to a media text, they do not own the social rights. The argument follows that once a media text enters the cultural mythos, it becomes the social property of fans. Social proprietorship does not entail or infer any legal rights, but it does, from a moral standpoint, call into question cultural commodification.

Overall, the research in question went according to plan. The case study approach of research proved fruitful and allowed for a greater degree of ethnographic observation. As there is literally an endless wealth of information on fans and cultural policy on the internet, the case study approach allowed for a more direct and pronounced research. Suffice it to say, the research, conducted exclusively on the internet, yielded favourable results in this case. That being said, a number of limitations in the research have allowed the potential for further inquiry into the issues surround the ambiguity of fans as producers and consumers in the context of cultural policy. For instance, it would have been preferable to have complimented this research with traditional observation at fan events. However, limited resources – coupled with a relatively short timeframe – made excursions to such events unfeasible for this research. Furthermore, given the ongoing nature of the issues addressed in this thesis, new developments pertaining to copyright and cultural policy emerge on an almost daily basis. This inevitably meant, in the later stages of the research, discontinuation of research into current events pertaining to copyright law – events which would undoubtedly proffer intriguing insights into fan culture and cultural policy.

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Appendix

Table 4.2: List of Fan Communities Observed in Research

Fandom of Origin/Producer	Community/Website Name	Description
Firfly/ <i>Serenity</i>	Browncoats.com	Fansite devoted to providing fans of <i>Firefly</i> with a complete resource to the fandom. Among its features are a chronology of the fandom and its mobilizations, and a network to other <i>Firefly</i> fan sites. Various fan productions are also hosted on Browncoats.com.
<i>Firefly</i> / <i>Serenity</i>	<i>Firefly</i> fans.net	<i>Firefly</i> fan.net plays host to a message board community and fan blogs. The site also hosts (or provides links to) various fan productions such as videos, fanzines, podcasts, and fanart.
<i>Firefly</i> / <i>Serenity</i>	<i>Serenity</i> Movie.net/ <i>Firefly</i> dvd.com	<i>Serenity</i> Movie.net is a fan community/message board that caters to fans of the <i>Firefly</i> and <i>Serenity</i> series. It offers a wide variety of fan discussion on the <i>Firefly</i> series as well as issues surrounding fan mobilization and production.
<i>Firefly</i> / <i>Serenity</i>	Virtual <i>Firefly</i> (stillflying.net)	Virtual <i>Firefly</i> is a fan community that writes fan fiction in the form of scripts. These scripts continue the <i>Firefly</i> story, expanding on ideas and themes fans believe would have been explored by the producers and writers of the series had it not been cancelled.
<i>Star Trek</i>	The Klingon Assault Group (KAG.org)	The Klingon Assault Group (KAG) is a fan community devoted to the fictional <i>Star Trek</i> alien race, the Klingons. The website features rules and guidelines for members, a bi-annual fanzine/communiqué, and photos, videos, and updates of the group and its activities.
<i>Star Trek</i>	Starfleet (sfi.org)	Similar to the KAG, Starfleet is a <i>Star Trek</i> fan group. Its website features similar content to the KAG, albeit from the perspective of the human race.
<i>Star Trek</i>	Trek Today (TrekToday.com)	Trek Today is a <i>Star Trek</i> fan community that provides fans with almost up-to-the-moment news and information on <i>Star</i>

		<i>Trek</i> and related topics. It also provides fans with resources on episodes, movies, and other <i>Star Trek</i> media.
<i>Star Trek</i>	<i>Star Trek</i> New Voyages: Phase II	Phase II is a fan project that produces new episodes of the original <i>Star Trek</i> series. Using sets that are virtually identical to those used in the original series and featuring actors, writers, and production crew from the original and proceeding <i>Star Trek</i> series, Phase II is among the most acclaimed fan productions on the internet.
<i>Harry Potter</i>	The-Leaky-Cauldron.org	The Leaky Cauldron provides fans with a venue to post and access various fan productions, news and updates on <i>Harry Potter</i> movies and novels, and features one of the largest <i>Harry Potter</i> related message board communities on the internet.
<i>Harry Potter</i>	Mugglenet.com	Like the Leaky Cauldron, Mugglenet provides <i>Harry Potter</i> fans with a venue for fan productions, news, and message board communications. Among its additional features, Mugglenet also provides its community with a social network similar to Facebook.
Misc.	The Organization for Transformative Works (transformativeworks.org)	The Organization for Transformative works is a fan advocacy group that lobbies for the rights of fans. Its website often provides news on issues pertaining to fans' use of copyrighted materials in their productions. Complementing its main site, the organization also publishes an online-only peer reviewed journal dedicated to forwarding discourse on fan productions and transformative works.
Misc.	Stop Plagiarism (community.livejournal.com/stop_plagiarism/)	Stop Plagiarism is a fan community devoted to policing fan productions. When a fan production is suspected of having plagiarised either an official work or the work of another fan, members of the community will investigate the work to determine if it is, indeed, a work of plagiarism.
Webcomic	Applegeeks (applegeeks.com)	Applegeeks is an online comic strip – webcomic – which has developed a

		following of more than 8,000 members since its beginnings in 2003. The Applegeek fan community has been vocal on issues of copyright infringement – particularly in an instance when, in 2005, a fan printed and bound the webcomic into a booklet for his own use.
Comic Book	Barbelith Underground	Barbelith Underground is a web community/message board forum originally conceived as a venue for fans of the comic book writer Grant Morrison to discuss his works. While it has since evolved into a multipurpose forum, much of its focus remains on comic books and popular culture.
<i>Star Trek</i> , misc.	Geekvolution (We Are Geeks Not Nerds) (wearegeeksnotnerds.com)	We Are Geeks Not Nerds is a relatively new fan community that features videos, blogs, and podcasts primarily related to and interested in comic book and television fandoms such as <i>Star Trek</i> and the X-men. The community also hosts a message board forum where fans can, among other things, discuss their favourite fandoms and make recommendations to other fans.
Misc.	eFanzines.com	EFanzines is a community that hosts various fanzines of the science fiction and fantasy genres from all over the world. Its community also provides a directory to resources for fanzine producers.
Misc.	Fanart Central (Fanart-central.net)	Fanart Central, as its name implies, is a web community that hosts fanart. While the fanart hosted on the site spans countless genres and media texts, the majority of the work is centred on Japanese anime and manga fandoms. The community also hosts a message board forum where fans can and do often discuss issues of copyright and plagiarism.
Misc.	DeviantART (DeviantArt.com)	DeviantART is the world's largest web community of artists and art lovers. The site plays host to countless works of art, including a large selection of fanart.
Misc.	Saturday Morning Breakfast	SMBC is a webcomic and online video

	Cereal (SMBC) (smbc-comics.com)	website that, among other things, makes light of comic book tropes and nerd/geek culture.
Misc.	How it Should Have Ended (howitshouldhaveended.com)	How It Should Have Ended is a website that creates animations depicting how movies should have ended.
Misc.	The Citizen Purple Message Boards (users.boardnation.com/~phantom/index.php)	A small community of fans primarily interested in online and table-top Role Playing Games (RPGs) similar to Dungeons and Dragons. The community also follows an online comic strip, Citizen Purple. This community was interesting in its embrace of various forms of fan culture.