

JAPANESE ANIME AND MANGA COPYRIGHT REFORM

In the mid-1990s, Japanese video game company Nintendo took the American toy and game market by storm when it introduced the hand-held video game Pokémon to the United States market.¹ Although some Japanese media had trickled into mainstream United States pop culture before Pokémon,² this was part of the beginning of markedly Japanese mass-consumer pop culture in the United States.³ Previously, Japanese

1. *Game Boy's Pokémon Unleashed on September 28!*, NINTENDO.COM, <http://web.archive.org/web/19990501171038/http://www.nintendo.com/corp/press/100298.html>; see also *IGN Presents the History of the Game Boy*, IGN (July 27, 2009), <http://www.ign.com/articles/2009/07/27/ign-presents-the-history-of-game-boy>. Successful handheld games had been released previously, including Super Mario and the Legend of Zelda. However, unlike these games, Pokémon was meant to be “a truly social game, where players would have their own personal collection to share, trade, and compete with friends.” *Id.* In fact, the first two Pokémon games released into the United States, Pokémon Red and Pokémon Blue, could not be fully completed without cooperating with a friend who owned the other game. *Pokémon Red Version and Pokémon Blue Version*, available at <http://www.pokemon.com/us/pokemon-video-games/pokemon-red-version-and-pokemon-blue-version/>. This interaction helped spawn the huge fan culture that still exists today and will be covered later in this Note.

2. For example, the popular children’s television show “Mighty Morphin’ Power Rangers” was the Japanese television show “Kyoryuu Sentai Zyuranger” that was spliced with new content to appeal to American audiences. Teresa Watanabe, *Just Say It’s the ‘Power’ Source: Pop culture: For two decades, Toei Studios of Japan has churned out versions of those ubiquitous Power Rangers—and as long there are kids, they’ll keep right on going*, L.A. TIMES, Mar. 9, 1995, available at http://articles.latimes.com/1995-03-09/news/ls-40804_1_power-ranger. However, most viewers assumed that the show was produced in the United States and did not connect it to Japan. Michael Meyer, *Ninja Turtles, Eat Our Dust*, NEWSWEEK (Aug. 7, 1994, 8:00 PM), available at <http://www.newsweek.com/ninja-turtles-eat-our-dust-187858> (describing the worldwide success of Power Rangers as the product of its Hollywood creator with no reference to the Japanese roots). Similarly, video games, including the popular Super Mario Brothers series, were not thought of as belonging to a particular culture until this same period in the 1990s. In fact, Nintendo deliberately attempted to “Americanize” its North American games before release. Robert Verbruggen, *Mario’s World: How a Japanese Company shaped American culture*, NATIONAL REV. (Aug. 19, 2011, 4:00 AM), <http://www.nationalreview.com/article/274916/marios-world-robert-verbruggen>; see also Martin Gaston, *Why is Kirby Always Angry in the US? Nintendo explains*, GAMESPOT (Apr. 28, 2014), <http://www.gamespot.com/articles/why-is-kirby-always-angry-in-the-us-nintendo-explains/1100-6419263> (box art for the Japanese releases of the “Kirby” game franchise is designed to show the character as cute, while American releases of the same titles show the character as angry/an action hero). By westernizing Japanese media, the titles become culture-neutral and do not invoke a sense of “Japanese-ness.” Thus, consumers can interact with these products without knowing that the product is coming from a foreign market. See KOICHI IWABUCHI, RECENTERING GLOBALIZATION: POPULAR CULTURE AND JAPANESE TRANSNATIONALISM 43 (2002) (“The global success of Pokémon also has much to do with America’s intervening partnership. . . . No less significant is how Pokémon has been localized, or Americanized, to hide its ‘Japaneseness’ as part of a global promotion strategy. Significantly, it is the remade-in-the-U.S. version of Pokémon that has been exported to other parts of the world (except Asia).”) (internal quotation omitted).

3. Pokémon was one of the first “anime style” cartoons to play on television in the United States. The art style was distinguishable from other cartoons at the time as something foreign; attempts to westernize Japanese references were laughably obvious, even to young children. See *Pokemon Case Study*, available at <http://w3.salemstate.edu/~poehlkers/Emerson/Pokemon.html> (“When the food the

media was usually “westernized” to appeal to American audiences; this westernization caused consumers to be wholly unaware of the cultural source of the media.⁴ After Pokémon’s introduction, an influx of definably Japanese media entered the United States. Saturday morning was filled with translated versions of Japanese animated shows (“anime”),⁵ media mogul Disney entered an agreement with popular anime production company Studio Ghibli to distribute its animated movies,⁶ and comic book sections of bookstores were packed with translated Japanese comics (“manga”).⁷ This flood of new media became especially popular among elementary and high school students in the mid-1990s.⁸ The wide-spread reach of Japanese media has continued to grow and evolve with the passage of time, and the global market is now a significant percentage of Japanese profits on this type of media.⁹

Because of the growing global market, Japan’s Ministry of Economy, Trade, and Industry (“METI”) has recently enacted a plan to prevent

characters eat is considered too Japanese specific (sushi, e.g.), more generic American food may be literally painted in, frame by frame. More commonly, reference is made to an American food, while the appearance of the food is not changed. For example, when the characters eat rice balls (onigiri) they remark about the delicious taste of their donuts.”); *see also Saturday Morning TV Schedules of the 90s*, available at: <http://www.inthe90s.com/saturdays.shtml> (spring of 1999 Saturday morning TV Schedule lists Pokémon, Godzilla, Power Rangers as the only Japanese titles, fall of 1999 includes Monster Rancher and Digimon along with Power Rangers, and more blocks devoted to Pokémon as the success of Pokémon invites more anime programming to the United States).

4. *See supra* notes 2–3.

5. *See Saturday Morning TV*, *supra* note 3; *Toonami*, BEHIND THE VOICE ACTORS, <http://www.behindthevoiceactors.com/commercials/Toonami/>.

6. *August Issue News Section: Disney Will Distribute Japanese Animation*, ANIMATION WORLD MAGAZINE (Aug. 1996), <http://www.awn.com/mag/issue1.5/articles/newsmag1.5.html>.

7. *See BARNES AND NOBLE*, http://www.barnesandnoble.com/s/?category_id=1133350; Brigid Alverson, *Manga 2013: A Smaller, More Sustainable Market*, PUBLISHER’S WKLY. (Apr. 5, 2013), <http://www.publishersweekly.com/pw/by-topic/booknews/comics/article/56693-manga-2013-a-smaller-more-sustainable-market.html>.

8. Brad Fear, *It’s a Critical Hit! A History of the POKEMON Phenomenon*, WHATCULTURE, <http://whatculture.com/gaming/its-a-critical-hit-a-history-of-the-pokemon-phenomenom.php>. More extreme fans became branded as Japanophiles, Wapanese (“Wannabe Japanese”), or Weeaboos (slang for Wapanese) in the same derogatory fashion as fans of Star Trek had been branded “Trekkies.” Both fan groups have now claimed these derogatory terms as their own positive names for themselves. *See, e.g.*, LOOKHUMAN, <http://LookHuman.com> (selling shirts with “Weeaboo Trash” on them).

9. *See METI to Start the First Cross-Industry Anti-Piracy Measures for Manga and Anime*, METI, http://www.meti.go.jp/english/press/2014/0730_01.html; *see also Where your Crunchyroll dollars really go: An interview with the CEO*, OTAKUJOURNALIST (Oct. 22, 2013), <http://otakujournalist.com/where-your-crunchyroll-dollars-really-go-an-interview-with-the-ceo/> (discussing how money from legal anime streaming online is going back to the industry).

global copyright infringement of anime and manga.¹⁰ METI dubbed this plan the “Manga Anime Guardians Project” (“MAGP”).¹¹

In this Note, I will discuss the current copyright law in Japan, how this law relates to other copyright laws internationally, international fan culture, and the effect that METI’s project may have on this influential, global part of the market. Finally, I will suggest copyright law reforms to accomplish METI’s goal of preventing infringement without sacrificing fan culture.

I. COPYRIGHT LAW IN JAPAN

Japanese copyright law defines a copyrightable work as a “production in which thoughts or sentiments are expressed in a creative way and which falls within the literary, scientific, artistic or musical domain.”¹² For example, novels, music, architecture, choreography, and computer programs are all creative endeavors that are covered by the Japanese Copyright Act.¹³ Unlike other intellectual property rights, copyright protection vests the moment that the work is created.¹⁴ Because this can be difficult to claim in a legal setting, creators wishing to license their work can register their copyright through the Japanese Government’s Agency

10. *METI to Start the First Cross-Industry Anti-Piracy Measures for Manga and Anime*, *supra* note 9.

11. *Id.* (announcing the project); see also *Japanese Government Launches Manga-Anime Guardians Anti-Piracy Project*, ARAMA JAPAN, <http://aramajapan.com/news/otaku/anime/japanese-government-launches-manga-anime-guardians-anti-piracy-project/4736/> (describing the steps METI intends to take in its project); *Manga-Anime Here*, M.A.G., <http://manga-anime-here.com/> (official website of MAGP).

12. 著作権法 [Copyright Law of Japan], Law No. 48 of 1970 (Japan), Art. 2.1(i), available at <http://www.cric.or.jp/english/clj/ocl.html> [hereinafter “Copyright Law of Japan”].

13. *Id.* Art. 10.1; Japan recently amended its Copyright laws to cover e-books that are published only in digital formats. *New copyright protections, risks*, THE JAPAN TIMES (Jan. 3, 2015), <http://www.japantimes.co.jp/opinion/2015/01/03/editorials/new-copyright-protections-risks>

14. Copyright Law of Japan, *supra* note 12, Art. 51(1) (“The duration of copyright shall begin with the creation of the work”). Like the United States, Japan is a member of the Berne Convention. The Berne Convention is an international agreement that provides certain minimum copyright protections to copyright holders in all of the participating countries. *Summary of the Berne Convention for the Protection of Literary and Artistic Works (1886)*, WIPO, http://www.wipo.int/treaties/en/ip/berne/summary_berne.html.12, Art. 51(1).

for Cultural Affairs.¹⁵ Registration is also the only legal way to transfer a copyright from one party to another.¹⁶

Unlike the United States which requires fixation in some tangible medium before copyright rights vest,¹⁷ copyright rights in Japan exist immediately after the work's creation, even if that creation is not fixed or tangible in nature.¹⁸ In addition, Japanese Copyright Law has a more robust creativity requirement than U.S. Copyright Law—similar to the concept of “novelty” in U.S. Patent Law.¹⁹ In Japan, copyright rights usually last for fifty years following the death of the author (with some exceptions).²⁰

Once an author has a valid Japanese copyright, he or she can exclude others from using the copyrighted work in most cases.²¹ Japan splits the copyright owner's rights into two categories—moral and economic.²² Moral rights include the right to make the work public, the right to determine the indication of the author's name, and the right to preserve the integrity of the work.²³ According to Article 59 of the Japanese Copyright Act, “[m]oral rights of the author shall be exclusively personal to him and

15. 著作権登録制度 [*Copyright Registration System*], 文化庁, http://www.bunka.go.jp/seisaku/chosakuken/seidokaisetsu/toroku_seido/. Registration is not free, so most copyright owners do not register unless they have a reason to. 著作権に関する登録制度についてよくある質問 [*Common Questions about the Copyright Registration System*], 文化庁, http://www.bunka.go.jp/seisaku/chosakuken/seidokaisetsu/toroku_seido/faq.html. It is only necessary if the copyright owner means to transfer the copyright rights to a third party. Copyright Law of Japan, *supra* note 12, Art. 77.

16. *Id.* Copyright registration, however, is not as common in Japan as it is in the United States because (1) registration is not required to file an infringement suit and (2) registration is not considered *prima facie* evidence of copyright validity. *Copyright Registration No “Prima Facie” Evidence of Copyright Validity in Japan*, IT LAW ISSUES IN JAPAN (Feb. 25, 2013), <http://japanitlaw.blogspot.com/2013/02/copyright-registration-no-prima-facie.html>.

17. 17 U.S.C. § 102(a) provides “[c]opyright protection subsists, in accordance with this title, in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.” See also UNITED STATES COPYRIGHT OFFICE, CIRCULAR 92, COPYRIGHT LAW OF THE UNITED STATES, (2011), available at <http://copyright.gov/title17/circ92.pdf>.

18. Copyright Law of Japan, *supra* note 12, Art. 51. This creates protection over some artistic works that would not be covered under U.S. copyright laws because of the fixation requirement. See CIRCULAR 92, *supra* note 17, at US Copyright Act 102(a).

19. “The Japanese courts have expanded the explicit creativity requirement in the JCL to signify ‘novelty,’ while in the U.S. originality (that the work was produced independently, whether or not it is novel) is the operative requirement, and a mere scintilla of creativity need be shown” Pantea Garroussi, *Technology Transfers to Japan: Legal And Cultural Frameworks*, 26 COLO. LAW. 77, 78 (1997); see also 17 U.S.C. §101 *et seq.*; Copyright Law of Japan, *supra* note 12, Art. 2.

20. See Copyright Law of Japan, *supra* note 12, Art. 51-58.

21. *Id.* Art 17.

22. *Id.*

23. *Id.* Art. 18-20.

inalienable.”²⁴ They are non-transferrable and will always belong to the author of the work; the author can never be “erased” even if the copyrighted material was created as a work-for-hire.²⁵ In contrast, Japanese economic rights from copyright include, among others, the right of reproduction, distribution, translation, public transmission, exhibition, and exploitation of a derivative work.²⁶ Unlike moral rights, economic rights are transferrable to a new owner after registering the copyright and paying a fee.²⁷ This system of rights helps to give potential future creators an incentive to put their time, money, and effort into pursuing creative and artistic endeavors whether or not they are creating the work for profit.²⁸

II. INTERNATIONAL COPYRIGHT LAW

Just as technology changes and improves, copyright law must change and improve to be able to provide incentives to copyright owners. The internet has introduced new and unpredictable methods of infringement that are difficult to prevent or combat under current copyright law.²⁹ Much

24. *Id.* Art. 59; “The broad acceptance of moral rights is in striking contrast to the limited allocation of moral rights provided in the United States. Therefore, American contractors should be cognizant of the potential limits to what kind of use they may put the copyrighted work. They especially should note that moral rights are inalienable, and if exercise of any of these moral rights is contemplated, the affirmative consent of the author should be secured by contract.” Garroussi, *supra* note 19, at 78.

25. Copyright Law of Japan, *supra* note 12; Watanabe Harumi, *Outline of Copyright System in Japan and Issues Copyright Law Faces*, National Training Seminar on Copyright Awareness, 2008 http://www.accu.or.jp/appreb/10copyr/pdf_ws0810/c2_06.pdf (Moral rights “automatically belong[] to the author alone while [economic rights are] able to be transferred to others through buying and selling or inheritance, etc., after once it automatically belonged to the author when the work was created.”).

26. Copyright Law of Japan, *supra* note 12, Art. 21-28.

27. *FAQ*, BUNKA, http://www.bunka.go.jp/seisaku/chosakuken/seidokaisetsu/toroku_seido/faq.html (listing prices for various copyright registration processes, including transferral). “Moral rights” are rights that only the author is granted (they are personal in nature). *Moral Rights*, JASRAC, <http://www.jasrac.or.jp/ejhp/copyright/person.html> (stating that a copyright collective which exists to protect artists’ music copyrights cannot bring suit or do anything about infringement of moral rights because these rights will always belong solely to the author and cannot be transferred). The non-transferrable nature of moral rights is similar to the U.S. Patent registration requirement of including the actual inventor’s name. While the patented technology may be created in the course of employment, a company cannot register for a patent—the inventor alone is eligible (although often under contractual requirements to license). *Patent FAQs*, USPTO, <http://www.uspto.gov/inventors/patents.jsp>.

28. There has been some pushback against the idea that the copyright regime is the right way to give these incentives. *See, e.g.*, Glynn S. Lunney, Jr., *Reexamining Copyright’s Incentives-Access Paradigm*, 49 *VAND. L. REV.* 483 (1996).

29. *See, e.g.*, Janko Roettgers, *RapidShare Wins in Court*, GIGAOM (May 3, 2010), <https://gigaom.com/2010/05/03/rapidshare-wins-in-court/>; Christopher Zoia, *This Guy Makes Millions Playing Video Games on Youtube*, THE ATLANTIC, <http://www.theatlantic.com/business/archive/2014/03/this-guy-makes-millions-playing-video-games-on-youtube/284402/>; *Cartoon Network, LP v.*

of the difficulty stems from the fact that the internet is an international forum.³⁰

Japan is a member of the Berne Convention, an agreement between 168 countries worldwide to comply with certain copyright registration and minimum protection requirements.³¹ Members of the convention are required to accept copyrights that vest the moment a covered work is created and cannot require registration to establish a copyright.³² In addition, the Berne Convention requires the participating countries to offer at least fifty years of copyright protection after the death of the creator.³³ Many countries, including the United States, have protection that lasts

CSC Holdings, Inc., 536 F.3d 121 (2d Cir. 2008) (holding that a DVR company making copies a few seconds long that were immediately over written by everything on TV in order to efficiently record shows for their DVR service was not infringing).

30. This is a global issue because of the transnational nature of the internet. *See, e.g.*, Nick Perry, *Popular File-Sharing Website Megaupload Shut Down*, USA TODAY, <http://usatoday30.usatoday.com/tech/news/story/2012-01-19/megaupload-feds-shutdown/52678528/1> (describing the shutdown of popular file sharing website MegaUpload). MegaUpload—based in Hong Kong, with its creators living in New Zealand—was utilized by users worldwide to distribute copyrighted materials from hundreds of countries. Although suit was brought in the United States, most of the litigation took place in the New Zealand court system because of the location of the website owners and the United States could do little against them because of a lack of jurisdiction. The vast, worldwide, multilingual internet makes it difficult to track down infringers and make them stand for their actions in court because of jurisdictional rules. *Id.*; *see also* Kono, *Jurisdiction over Ubiquitous Copyright Infringements: Should Right-Holders be allowed to Sue at Home?*, available at <http://ssrn.com/abstract=2181671> (discussing the difficulty of determining jurisdiction and choice of law with Cloud technology). For example, in regards to file sharing website Pirate Bay: “The Pirate Bay controversy raised questions about the technical feasibility of closing its websites, desirability to balance the interests of proprietors of IP rights with such values as freedom of speech and dissemination of information. Pirate Bay considered such legal actions as ‘free advertising.’ In a statement about its migration to the cloud, the Pirate Bay proclaimed that: ‘If the police decide to raid us again there are no servers to take, just a transit router. If they follow the trail to the next country and find the load balancer, there is just a disk-less server there. In case they find out where the cloud provider is, all they can get are encrypted disk-images.’” *Id.* When the infringing copies are encrypted code rather than physical embodiments (for example, a forged painting), determining who is liable for the infringement can become a figurative wild goose chase. *See, e.g.*, Saikō Saibansho [Sup. Ct.] Dec. 19, 2011, 2009 (A) No. 1900, 65 SAIKŌ SAIBANSHO KEIJI HANREISHŪ [KEISHŪ] 1, <http://www.courts.go.jp/hanrei/pdf/20111221102925.pdf>. The Court’s English translation can be accessed at http://www.courts.go.jp/app/hanrei_en/detail?id=1131. In *Winnie*, Japanese courts found the creator of the file-sharing program not guilty because he was not aware of the high probability that users would use his program to infringe. However, they also found two users of the program guilty for their direct infringement of copyrights while using the program. *Winnie Developer Acquitted*, THE JAPAN TIMES (Oct. 9, 2009), <http://www.japantimes.co.jp/news/2009/10/09/news/winnie-developer-acquitted/>.

31. *See* Berne Convention for the Protection of Literary and Artistic Works, Sept. 9, 1886, *revised at Paris* July 24, 1971 (amended 1979) 25 U.S.T. 1341, 828 U.N.T.S. 221. The Berne Convention was established in 1896 and amended in 1979. The members are required to recognize the copyright of works of authors from other Berne Convention member countries just as it recognizes the copyright of citizens of its own country. Accordingly, Japanese copyright law will apply to any work published/performed/shown in Japan, even if the creator is not a Japanese citizen.

32. *Id.* Art. 5(1), (2).

33. *Id.* Art. 7 (1).

longer than this minimum.³⁴ Japan has thus far neglected to lengthen the term of protection in its copyright laws but has contractually agreed to extend its protection to the same seventy-year period that the United States and several other countries have adopted in some specific cases.³⁵

The Berne Convention, and similar agreements, are an attempt to deal with some of the copyright issues that have arisen due to the increase in international sales and internet sharing of copyrighted works.³⁶ In particular, the internet presents a unique challenge for copyright protection because of the sometimes lengthy chain of participants in an infringement. For example, a copied image may be posted on an external website by a user and subsequently viewed or downloaded by countless others. In these cases, it is often difficult to define who the infringing parties are and what steps are appropriate to take against them, especially when these infringers may come from hundreds of different countries.³⁷

The United States and Japan have taken different stances on dealing with these difficult “file sharing” copyright cases. While U.S. copyright holders have started mass “John Doe” lawsuits against file sharing users, Japan has targeted individual infringers.³⁸ For example, in a 2009 Supreme Court of Japan case, the creator of a file sharing program called “Winny” was found to not be an infringer for providing file-sharing software and found that because he created the program for legitimate legal uses, he did not intend to become an accessory to the crime of copyright infringement.³⁹ In contrast, in *A&M Records, Inc. v. Napster, Inc.*, the

34. See, e.g., 17 U.S.C. § 302 (2014).

35. See TPP “chizai” gōi e zenshin chosakukenhogo kikan, 70-nen ni tōitsu de chōsei, SANKEIBIZ, <http://www.sankeibiz.jp/macro/news/140514/mca1405140500002-n1.htm> (last visited Apr. 6, 2016). This agreement is part of the Trans-Pacific Partnership, a trade agreement between the United States and several Asian-Pacific countries. See *Overview of the Trans-Pacific Partnership*, OFF.U.S. TRADE REP., <http://www.ustr.gov/tpp> (last visited Apr. 6, 2016).

36. See generally William Patry, *Choice of Law and International Copyright*, 48 AM. J. COMP. L. 383 (2000).

37. *Id.* at 448–51. Courts have dealt with these issues on a case by case basis. For example, in the case of *NFL v. Primetime 24*, 211 F.3d 10 (2d Cir. 2000), a Canadian station (Primetime) rebroadcast an NFL game without permission in Canada which was picked up and rebroadcast to U.S. Citizens. The Second Circuit held that this was a direct infringement despite the fact that PrimeTime only provided a weblink on its website and did not transmit the broadcast directly to the United States. *Id.* This case elicited much backlash as this holding effectively imposes liability on any international site owner who links to copyrighted content that may be viewed by a United States citizen, even if there is no evidence of actual viewing. See Jason L. Lunardi, *Guerrilla Video: Potential Copyright Liability for Websites That Index Links to Unauthorized Streaming Content*, 19 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 1077 (2009).

38. See Christopher Sibens, *Divergent Approaches to File-Sharing Enforcement in the United States and Japan*, 52 VA. J. INT’L L. 155, 165–67, 174–75 (2011).

39. Saikō Saibansho [Sup. Ct.] Dec. 19, 2011, 2009 (A) No. 1900, 65 SAIKŌ SAIBANSHO KEIJI HANREISHŪ [KEISHŪ] 1(Japan).

Ninth Circuit in the United States found that Napster, a file-sharing platform, was an infringer who was not using the copyrighted materials under fair use as it facilitated the infringement by allowing the materials to be shared between members of its network.⁴⁰ “Winnie” and *Napster* are cases with very similar facts, and yet they came out opposite ways. Though the world is attempting to come together to protect copyright rights through alliances like the Berne Convention, there are still critical differences in countries’ views on how to deal with the underlying issues. These differences can give internet infringers the necessary loophole to avoid legal ramifications for their infringement.⁴¹

III. JAPANESE POP CULTURE, FANDOM, AND THE INTERNET

“Fandom” subculture is a unique phenomenon that began in the United States and United Kingdom after the release of sci-fi cult classics *Star Wars* and *Star Trek* (among other television and movie series) in the 1970s.⁴² When introduced to pop culture media such as TV shows, movies, or novels, a general consumer will only passively interact with it through reading or watching.⁴³ Members of the fandom subculture go beyond this passive consumption to make active additions to the media.⁴⁴

40. *A&M Records, Inc. v. Napster, Inc.*, 239 F.3d 1004, 1021, 1022 (2001); *see also* Raymond Shih Ray Ku, *The Creative Destruction of Copyright: Napster and the New Economics of Digital Technology*, 69 U. CHI. L. REV. 263, 287–89 (2002).

41. For example, in the *Pirate Bay* case *supra* note 34, after being found liable in Sweden, the website owners changed their domain from *thepiratebay.org* to *thepiratebay.se*, effectively putting themselves out of the reach of United States copyright jurisdiction. Pat Pilcher, *Pirate Bay Shifts Domains after Appeal Fails*, THE NEW ZEALAND HERALD (Feb. 2, 2012), http://www.nzherald.co.nz/technology/news/article.cfm?c_id=5&objectid=10782968. Although many of the files hosted on the website have United States citizens as their copyright holders, the *Pirate Bay* has taken advantage of this loophole to avoid infringement suits.

42. Sharon Kinsella, *Japanese Subculture in the 1990s: Otaku and the Amateur Manga Movement*, 24.2 J. JAPANESE STUD. 289, 307 (1998); Daryl G. Frazetti, *Star Trek and the Culture of Fandom*, STAR TREK (Apr. 26, 2011), <http://www.startrek.com/article/star-trek-and-the-culture-of-fandom>; Daryl G. Frazetti, *Star Wars Fandom*, ACADEMIA.EDU, http://www.academia.edu/1699217/Star_Wars_Fandom.

43. *See* Jane E. Brody, *Personal Health; TV’s Toll on Young Minds and Bodies*, N.Y. TIMES (Aug. 3, 2004), <http://www.nytimes.com/2004/08/03/health/personal-health-tv-s-toll-on-young-minds-and-bodies.html>.

44. LISA A. LEWIS, THE ADORING AUDIENCE: FAN CULTURE AND POPULAR MEDIA 53 (1992) (“A text can only mean something in the context of the experience and situation of its particular audience. Equally important, texts do not define ahead of time how they are to be used or what functions they can serve. They can have different uses for different people in different contexts. . . . a text can be remade and even remixed to conform to the audience’s expectations and desires.”); *see also* Henry Jenkins, *Star Trek Rerun, Reread, Rewritten: Fan Writing as Textual Poaching* in TELEVISION: THE CRITICAL VIEW 470, 473 (Horace Newcomb ed., 2000), *available at* <http://web.mit.edu/211.432/www/readings/star%20trek%20rerun.pdf> (“One becomes a fan not by being a regular viewer of a

Works like fan-written stories, fan-drawn pictures, and bulletin board chats are all commonplace.⁴⁵

This subculture traveled to Japan in the form of amateur manga (“doujinshi”) and other fan works.⁴⁶ Japanese doujin fan culture became so widespread that huge Doujinshi Festivals started (for example, “Comiket,” short for “Comic Market”), and stores opened with the purpose of selling manga and doujinshi side by side.⁴⁷ These fan-created works, both in the United States and Japan, helped traditionally sidelined members of society—primarily young girls—take media that was not created for them and subvert it to create their own type of culture by molding the work into something that they can relate to.⁴⁸ Japanese artists have noticeably turned a “blind eye” to fan “infringements” and in general are supportive of their fans’ creativity and enthusiastic response to their works.⁴⁹

particular program but by translating that viewing into some type 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 sparks production, reading generates writing, until the terms seem logically inseparable.”)

45. See, e.g., ARCHIVE OF OUR OWN, <http://archiveofourown.org> (last visited Aug. 9, 2016); THE OTAKU, <http://www.theotaku.com> (last visited Aug. 9, 2016); FANFICTION, <https://www.fanfiction.net> (last visited Aug. 9, 2016).

46. Kinsella, *supra* note 42, at 294–95.

47. *Id.*; COMIC MARKET, <http://www.comiket.co.jp/> (last visited Aug. 9, 2016). In 2013, Comiket had almost 600,000 attendees. *Comic Market 84 Sets Record with 590,000 Across 3 Days*, ANIME NEWS NETWORK (Aug. 13, 2013), <http://www.animenewsnetwork.com/news/2013-08-13/comic-market-84-sets-record-with-590000-across-3-days>; see also MANDARAKE: RULERS OF TIME, <http://www.mandarake.co.jp/> (last visited Aug. 9, 2016) (used anime/manga/doujinshi store that sells overseas—some branches have basements filled with millions of doujinshi for sale). Some doujin authors have become so well-known that they have fan-bases of their own. For example, Ryukishi07, founder of popular Japanese gaming company, 07th Expansion, is a proponent of non-professional doujin, and fan works. Accordingly, he made the following statement about fan works on his website: “The law divides infringement and non-infringement into black and white categories. But if you create from the bottom of your heart, with love for the material, as long as you do so with respect, even the law cannot help but notice and appreciate your work and put it into a grey area.” (Translation by author) 07TH EXPANSION OFFICIAL WEBSITE, <http://07th-expansion.net/faq.htm> (last visited Aug. 9, 2016). Ryukishi07 has been very supportive of doujinshi and fan games featuring his copyrighted characters. *Say it in Red! An Interview with Ryukishi07*, APGNATION (JAN. 29, 2015), <http://apgnation.com/articles/2015/01/29/13689/say-red-interview-ryukishi07/>.

48. Kinsella, *supra* note 42, at 299–302; Jenkins, *supra* note 44, at 476–81. In both cases, fandom culture created homoerotic fan works that appealed to the female sensibility rather than to a male power fantasy. *Star Trek* was directed towards a male audience but the fans reclaimed it for a female audience through homoerotic fan works of the male leads. Jenkins, *supra* note 44, at 476–78. Manga artists were primarily male and while some wrote with a female audience in mind, there were very few manga written by women for women. Kinsella, *supra* note 42, at 299–300. Japanese doujinshi writers were largely women and they wrote with a female audience in mind, including creating new genres, such as shounen-ai (boy’s love), shoujo-ai (girl’s love), and jousei (manga for adult women). Kinsella, *supra* note 42 at 301–02.

49. Salil K. Mehra, *Copyright and Comics in Japan: Does Law Explain Why All the Cartoons my Kid Watches Are Japanese Imports?*, 55 RUTGERS U. L. REV. 155 (2002) (although doujinshi often infringes copyright, the manga industry ignores and encourages this infringement by putting on

Although some Japanese media began to come into the United States in the 1970s and 1980s, it really started to take off in the 1990s following the release of Pokémon.⁵⁰ After this fad began, and as the young fans began to grow up, use of the internet became more widespread, and the Japanese and United States fan cultures began to merge.⁵¹ Fan culture is, at its roots, a group mentality where single fans can share their contributions with other fans.⁵² With the internet, fans scattered across the globe are able to participate in fan culture without geographic restriction.⁵³ This has led to multi-national fan activities, including conventions and competitions, and global fan work collectives.⁵⁴

The merger between Japanese and American culture has become known as “American Otaku.”⁵⁵ The United States fans reclaimed the derogatory Japanese slur “Otaku” (usually used for intense fans that do not leave their home) as a name for their own creative fan culture.⁵⁶ In

Comiket. Studies have shown that many doujinshi authors eventually become manga authors and feed the industry. In addition, many of the same consumers are willing to buy both manga and doujinshi because they often fill different niches. While manga usually has a multi-book story line, most doujinshi are “one-shots” featuring the same characters).

50. See *supra* note 1.

51. J.D. Considine, *Anime’s Growing Market Otaku: They Are The Serious Fans of Japanese Animation, And They Are a Growing Group*, THE BALTIMORE SUN (Apr. 16, 1996), available at http://articles.baltimoresun.com/1996-04-16/features/1996107115_1_american-otaku-japanese-animation-favorite-anime; see also WORLD COSPLAY SUMMIT, <http://www.worldcosplaysummit.jp/en/> (a costume competition with participants in multiple countries that travel to Japan); PIXIV, <http://Pixiv.net> (a Japanese fan art site that recently opened its English language site); NICONICO, <http://www.nicovideo.jp/> (a Japanese site similar to YouTube that recently opened a US branch); 2CHAN, <http://www.2chan.net/>, 4CHAN, <http://www.4chan.org> (2chan is a Japanese message board system, 4chan is the English “copy” with very similar content).

52. LEWIS, *supra* note 44, at 213 (“What fandom offers is a community not defined in traditional terms of race, religion, gender, region, politics or profession, but rather a community of consumers defined through their common relationship with shared texts. Fans view this community in conscious opposition to the ‘mundane’ world inhabited by non-fans, attempting to construct social structures more accepting of individual difference, more accommodating of particular interests, and more democratic and communal in their operation.”).

53. For example, social media site Tumblr is a popular location for posting fan works and interacting with other fans. See Tumblr.com. According to statistics, Tumblr traffic comes from millions of users in hundreds of countries and is available in multiple languages to reach global users. *Regional Distribution of Tumblr Traffic in The Last Three Months as of April 2016, by Country*, STATISTA (2016), available at <http://www.statista.com/statistics/261413/distribution-of-tumblr-traffic-by-country/>.

54. See, e.g., WORLD COSPLAY SUMMIT, *supra* note 51. Japanese cosplayers are invited as guests to conventions worldwide. *Cosplayer Reika Set to Make Her U.S. Debut at Anime Matsuri*, ANIME NEWS NETWORK (Nov. 4, 2013), <http://www.animenewsnetwork.com/press-release/2013-11-04/cosplayer-reika-set-to-make-her-u.s-debut-at-anime-matsuri>.

55. See MIZUKO ITO ET AL., FANDOM UNBOUND: OTAKU CULTURE IN A CONNECTED WORLD 85–104 (2012).

56. *Id.*; Colette Bennett, *Otaku: Is it a dirty word?* GEEK OUT!, CNN (Sept. 12, 2011), <http://geekout.blogs.cnn.com/2011/09/12/otaku-is-it-a-dirty-word/>.

response to this growing group, Japan has started to cater to these American Otaku and other foreign fans: the Japanese Doujinshi stores now sell worldwide, most Japanese fansites have English language websites, and global fans of Japanese media create fan art and fan fiction in every language.⁵⁷ American fans of Japanese anime and manga have created their own Doujinshi, create costumes based on the characters, and contribute actively to websites that were previously “Japan only.”⁵⁸ This cultural merger, however, has also led to some unique copyright issues.

IV. NON-INFRINGEMENT ACCESS TO GLOBAL MEDIA

As Japanese media gains more overseas fans, the market for anime and manga in non-Japanese languages grows.⁵⁹ To try to feed this emerging market in the United States, a few companies have licensed Japanese copyrighted materials to provide them to English speaking fans.⁶⁰ Although many fans prefer to go through these legal routes, many are forced engage in activities that infringe on copyrights in order to access Japanese media.

Legal streaming sites such as Crunchyroll.com, Funimation.com, and NicoNico have begun to “simulcast” (broadcast simultaneously worldwide online) popular shows and post subtitled and voiced over copies of other popular anime.⁶¹ However, this technology is very new. Translated anime that did not air in the last few years, often exists only in VHS or DVD format.⁶² Even if an anime is licensed by one of the streaming or DVD-

57. See MANDRAKE, *supra* note 47 (website selling Doujinshi); ARCHIVE OF OUR OWN, *supra* note 45 (popular fan fiction archive).

58. See, e.g., *DarkN2Ght*, DEVIANTART, <http://darkn2ght.deviantart.com/> (Malaysian artist who does original English language doujinshi); ACPARADISE <http://americancosplayparadise.com> (social networking site to post cosplay for Americans); PIXIV, <http://pixiv.net> (Japanese fanart site that is now open to users from any country and has an English language site).

59. E.g., TOKYOPOP, www.Tokyopop.com (publishes manga in both English and German for different international markets).

60. Some of the big names in this market include crunchyroll.com, a subscription service similar to Netflix or HuluPlus that provides subtitled anime shortly after release in Japan for popular titles, and Funimation, a company that both subtitles and dubs (or voices over) anime with English voice actors. The largest translated manga producer, Tokyopop, went bankrupt a few years ago and a replacement has not surfaced. While other manga translators are still licensing and releasing manga, because physical books are not selling well, physical manga copies are also not selling well. These charts show just how bad things are for bookstores. Max Nisen, *Why Bookstores are Doomed*, BUSINESS INSIDER (Oct. 15, 2013), <http://www.businessinsider.com/why-bookstores-are-doomed-2013-10>.

61. *Supra* note 60.

62. Only a small percentage of anime and manga get English translations, and an even smaller percentage get video releases. See Justin Sevakis, *The Anime Economy—Part 2: Shiny Discs*, ANIMENEWSNETWORK (Mar. 7, 2012), <http://www.animenewsnetwork.com/feature/2012-03-07>

releasing companies, it can take several years for the company to release a translated legal copy to view or purchase.⁶³ The only other non-infringing option is to import legal DVD or Blu-ray copies from Japan.⁶⁴ However, unlike the United States where single Blu-Ray discs retail for 10–30 USD, Japanese Blu-Ray discs often retail for at least 50–80 USD (5000–8000 JPY).⁶⁵ The price, plus the cost of international shipping, is often more than the fans can afford for only a few episodes or one movie.⁶⁶

Manga faces the same issue. After United States manga translating giant TokyoPop closed down in 2011, a replacement has not surfaced.⁶⁷ Several smaller companies continue to publish translated manga, but are struggling to sell physical books in stores and are not currently offering translated manga online.⁶⁸ Overall, legal access to these media has not been able to keep up with the demands of non-Japanese fans which has led to the current issues with illegal streaming and translations.

V. FANSUBS AND COPYRIGHT INFRINGEMENT

Because this content can be difficult to access due to the rapidly expanding fan base and expensive licensing costs, fans are taking the source material and creating fan translations (“fansubs”).⁶⁹ Because fandom is a community, Japanese-speaking members, wanting to share the new material with other fans, translate and subtitle anime and manga and

(discussing the pricing model for DVDs in Japan and the U.S. and why licensing fees make it difficult to release DVDs).

63. DVD licensing and dubbing company “Funimation” takes approximately 2 years from announcement that a certain title is licensed to release that title onto DVD.

64. Some Japanese titles include English subtitles for English speaking Japanese residents.

65. See Sevakis, *supra* note 62.

66. The average anime fan is between 13 and 35. See, e.g., Claire Davidson, *Why Budgeting is Hard for Young 20-somethings*, USA TODAY (Sept. 28, 2014, 6:15 AM), <http://www.usatoday.com/story/money/personalfinance/2014/09/28/budgeting-millennials/16272309/>. Because of the current economy, most of this age group does not have a large disposable income. *Id.*

67. *TokyoPop Closing*, ICv2 (Apr. 15, 2011, 10:40 AM), <http://www.icv2.com/articles/news/19869.html>.

68. E.g., Brigid Alverson, *Strong French Manga Market Begins to Dip*, PUBLISHER’S WEEKLY (Feb. 12, 2014), <http://www.publishersweekly.com/pw/by-topic/booknews/comics/article/61030-strong-french-manga-market-begins-to-dip.html>; Jeffrey Trachtenberg, *What’s Barnes & Noble’s Survival Plan?*, WSJ (Apr. 17, 2014, 8:31 PM), <http://online.wsj.com/articles/SB10001424052702303626804579507321532982730> (discussing Barnes & Noble bookseller’s struggle to stay open and closing stores).

69. See Doki Fansubs, *The Fansubbing Process*, <http://doki.co/support/the-fansubbing-process>; Jorge D. Cintas & Pablo M. Sanchez, *Fansubs: Audiovisual Translation in an Amateur Environment*, 6 J. of Specialized Translation 37, 37–51 (2006), available at http://www.jostrans.org/issue06/art_diaz_munoz.pdf; Zac Bertschy, *Interview With The Fansubber*, ANIMENEWSNETWORK (Mar. 11, 2008), <http://www.animenewsnetwork.com/feature/2008-03-11>.

release the translations to the public over the internet.⁷⁰ Since the intent of these translations is not to profit from the material, fansubbers use their own code and do not charge for translations.⁷¹ Using fansubs, international fans have access to content that might take years to be translated through legal channels (or would never be translated at all). These fan translations, however, constitute copyright infringement under Japanese copyright law.⁷²

Article 27 of Japanese Copyright Law gives copyright holders the economic “Right to Translate.”⁷³ This is a right that can be transferred or licensed to other entities, but the creator retains authorship.⁷⁴ In the United States, translation is considered a “derivative work.”⁷⁵ Derivative works are original works that use some previous copyrighted work.⁷⁶ This means that in the United States, fan translations may be copyrightable on their own but when the translator distributes the translation without permission, it becomes an unauthorized derivative work and an infringement of the copyright.⁷⁷ It seems clear that under either law, fan translations would be considered copyright infringement, even if they were distributed without expectation of payment.

These translations may also fall under the Japanese Copyright Law’s economic “Right of Public Transmission.”⁷⁸ This law has been hotly debated by current copyright reformers in Japan. This right was originally added in the 1997 amendment to Japanese Copyright Law in response to

70. Ian Condry, *Dark Energy: What Fansubs Reveal about the Copyright Wars*, 5 MECHADEMIA, 193, 194 (2010); <http://www.insidescanlation.com/history/> (unlicensed translations of manga are commonly called “Scanlations” because of the act of scanning the comic into the computer and then adding the translation to the image in an image editing software).

71. See, e.g., Dang Li, *China’s Fansubbing Community: a Jianghu of Underground Heroes—Ten Years’s Ups and Downs*, CITIZEN MEDIA AT MANCHESTER (DEC. 6, 2013), <https://citizenmedia.manchester.wordpress.com/2013/12/06/chinas-fansubbing-community-a-jianghu-of-underground-heroes-1-ten-years-ups-and-downs/>.

72. Chosaku ken hō [Copyright Act], Law No. 48 of 1970, art. 27 (Japan), available at http://www.cric.or.jp/english/clj/doc/20151001_October,2015_Copyright_Law_of_Japan.pdf.

73. “The author shall have the exclusive rights to translate, arrange musically or transform, or dramatize, cinematize, or otherwise adapt his work.” *Id.*

74. Authorship is a moral right. The right to translate is an economic right. See *supra* Part II.

75. UNITED STATES COPYRIGHT OFFICE, CIRCULAR 14: COPYRIGHT IN DERIVATIVE WORKS AND COMPILATIONS I (2003), available at <http://copyright.gov/circs/circ14.pdf>.

76. *Id.*

77. See 17 U.S. Code § 101, 103 (defining translation as a derivative work and protecting the author’s right to control derivative works outside of fair use.)

78. “The author shall have the exclusive right to make the public transmission of his work (including the making transmittable of his work in the case of the interactive transmission).” COPYRIGHT ACT art. 23, para. 1.

the popularity of file-sharing technologies and the internet.⁷⁹ As mentioned previously, although economic rights under the Japanese Copyright law can be transferred or licensed, the authorship can never be transferred from the original creator.⁸⁰ Because of this, and the right to make transmittable, any and all legal postings on the internet of copyrighted material must get permission both from the licensee and the authors themselves.⁸¹ This has proven to be an issue for internet businesses, particularly those that post videos and music, because they are required to get permission from the actors and musicians in the copyrighted materials.⁸² This rule makes independent fansubbers' ability to license the content they wish to distribute much more difficult as well.

There is also the possibility that inaccurate translation may violate the Japanese moral "Right of Preserving the Integrity."⁸³ Violations to a moral right are considered more severe than violations to economic rights because they are inalienable.⁸⁴ It seems unlikely that translation will be a "mutilation," but if the fan translation is sufficiently inaccurate, there is a possibility that the message or purpose of the work could be skewed and constitute an infringement under this Act.⁸⁵

79. Copyright System in Japan, Copyright Research and Information Center, <http://www.cric.or.jp/english/csj/csj2.html>. See also Saikō Saibansho [Sup. Ct.] Dec. 19, 2011, 2009 (A) No. 1900, 65 SAIKO SAIBANSHO KEIJI HANREISHŪ [KESHŪ] 1, available at http://www.courts.go.jp/app/files/hanrei_jp/846/081846_hanrei.pdf, English translation available at http://www.wipo.int/edocs/pubdocs/en/copyright/1025/wipo_pub_1025.pdf.

80. *Supra* note 75.

81. *Copyright and Another of 'Net Rights' Founding*, INTERNET WATCH (Mar. 17, 2008), available at <http://internet.watch.impress.co.jp/cda/news/2008/03/17/18834.html>.

82. *Id.*

83. Article 20 of the Japanese Copyright Act reads: "The author shall have the right to preserve the integrity of his work and its title against any distortion, mutilation or other modification against his will." Copyright Law of Japan, *supra* note 12, at Ch. 2 Art. 20.

84. Christopher Heath et al., *Japanese Copyright Law: Writings in Honour of Gerhard Schricker* 41–49 (2005).

The broad acceptance of moral rights is in striking contrast to the limited allocation of moral rights provided in the United States. Therefore, American contractors should be cognizant of the potential limits to what kind of use they may put the copyrighted work. They especially should note that moral rights are inalienable, and if exercise of any of these moral rights is contemplated, the affirmative consent of the author should be secured by contract.

Garroussi, *supra* note 19, at 78.

85. Translations rarely fall into this category but there is a possibility that they could. See, e.g., the dubbed version of the anime "Ghost Stories." Although this was a licensed translation, the company released legitimate subtitles alongside a spoof dub track that did not follow the original script. Msarko, *Ghost Stories: An Anime with an Unusual Dub*, FOREIGN ENTERTAINMENT (May 13, 2010, 3:31 AM), <http://foreignentertainment.com/article/ghost-stories-anime-with-unusual-dub>; However, American Otaku are often very particular about their translations:

Although fan translations are currently considered infringements, Japanese copyright law is a quickly changing area of law and those who are pushing for reform are very vocal.⁸⁶ One such reform would take fan works and create an exception, much like the unwritten exception for Doujin works, and would excuse nonprofit fan works from infringement.⁸⁷

VI. JAPAN'S CURRENT MANGA ANIME GUARDIANS HERE PROJECT

In July 2014, METI announced new plans to combat overseas copyright infringement of anime and manga.⁸⁸ Dubbed the “Manga Anime Guardians Project” (“MAGP”), METI gathered prominent anime and manga industry professionals together to work together to combat copyright infringement.⁸⁹ MAGP has created its own website with links to legal websites to buy or access translated anime and manga.⁹⁰ METI’s plan is to have the members of MAGP contact websites that are known to have

“I was just as obnoxious as any fan walking the street today. Probably worse,” laughs Trish Ledoux, editor of the anime-oriented monthly *Animerica* and a translator who has worked on both video and comic book adaptations of “*Ranma ½*” and “*Maison Ikkoku*.”

...

So now that she’s translating it for others, she has to deal with phone calls from irate American otaku who can’t believe she has the English-language *Ukyou Kounji* saying “*Ranma honey*” where the Japanese character uses the near-untranslatable “*Ran-chan*.”

“People complain about ‘*Ranma*’—‘No, no, they’re saying it wrong!’” she says. “I understand. I was one of the worst ones of all. I used to go around saying, ‘That’s not what it says!’”

J.D. Considine, *supra* note 51.

86. Recent Japanese cases have reflected a lean towards protection of copyright owner’s rights over public use. *See, e.g.*, Tōkyō Chihō Saibansho [Tōkyō Dist. Ct.] Sept. 30, 2013, 2012 (wa) no. 33525 (holding that a company that receives hard copies of books via the mail and scans the books for their customers into PDF form is likely to infringe on the copyright of the holder by distributing their work.) An injunction was granted. *Id.*

87. *Id.*; In response to the trend in *infra* note 90, reformers have pushed for less serious punishment, or more strict requirements for an act to constitute infringement.; *See* Stacey Leasca, *Japan Introduces Strict Anti-Piracy Laws* (Oct. 1, 2012, 10:18 AM), <http://www.globalpost.com/dispatch/news/regions/asia-pacific/japan/121001/japan-introduces-strict-anti-piracy-laws>.

88. *METI to Start the First Cross-Industry Anti-Piracy Measures for Manga and Anime*, *supra* note 9.

89. *See* METI, *STOP! Piracy “MAG Project” Launched!* (July 7, 2014), available at http://www.meti.go.jp/english/press/2014/pdf/0730_01a.pdf. Some of the backers include Studio Ghibli (Disney’s partner and the studio behind popular films *Spirited Away*, *Howl’s Moving Castle*, and *Ponyo on the Cliff by the Sea*), Tezuka Productions Co., Ltd. (producers of classic anime such as *Astro Boy* and *Kimba the White Lion*), and Good Smile Company, Inc. (the top anime figure producer in Japan, producing hundreds of varieties of anime figures each year). Besides the members of the committee, several other companies have endorsed the project and are going to promote copyright protection, but not participate actively in the MAGP plan.

90. *See Manga-Anime Here*, *supra* note 11.

infringing content, including YouTube, Vimeo, and MegaUpload, to request removal of the infringing copies.⁹¹

This project was spurred by the manga and anime industry's realization that the monetary loss by unauthorized internet copies of content was significant.⁹² According to METI, Japan has lost over \$5.6 billion dollars per year to major cities in China alone due to copyright infringement of manga and anime.⁹³ Japan's copyright laws have been slowly becoming stricter, favoring the copyright owner over the user because of the widespread copyright infringement on the internet.⁹⁴

Although MAGP includes several noted industry professionals, other prominent professionals have expressed distaste for the project and the stricter copyright law movements.⁹⁵ For example, Ken Akamatsu, a

91. See *METI to Start the First Cross-Industry Anti-Piracy Measures for Manga and Anime*, *supra* note 9; *Japanese Government Launches Manga-Anime Guardians Anti-Piracy Project*, *supra* note 11.

92. *METI to Start the First Cross-Industry Anti-Piracy Measure for Manga and Anime*, *supra* note 9.

93. *Id.*

94. See Maira Sutton, *Japan's Copyright Problems: National Policies, ACTA, and TPP in the Horizon*, ELECTRONIC FRONTIER FOUNDATION (Aug. 21, 2012), <https://www.eff.org/deeplinks/2012/08/copyright-japan> ("In 2010, due to heavy lobbying from the Japanese Society for Rights of Authors, Composers and Publishers (JASRAC), the Ministry of Education, Culture, Sports, Science and Technology passed an amendment—despite huge opposition from the public—making unauthorized downloads illegal as well."); see also Mike Masnick, *Japanese Anime And Manga Fans Worried About How TPP Will Kill Important Fan Fiction*, TECH DIRT, <https://www.techdirt.com/articles/20140330/23484726740/japanese-anime-manga-fans-worried-about-how-tpp-will-kill-important-fan-fiction.shtml>. While traditionally, doujinshi has not been targeted as infringement, fans are worried that these stricter rules are a step into that direction that might not stop until even much more indirect infringements (such as costuming) are at risk of infringement suits:

"The creation of derivative works has helped the expansion of the market (for anime and manga), a rich gray zone built based on a gentleman's agreement between original artists and amateur creators," [lawyer Kansaku Fukui] said. If the copyright law was enforced without a formal complaint, not only doujinshi, but also parodied creations of movies and literature, could be subject to a crackdown, Fukui said. He added that even cosplayers could be a target, especially if their costumes were elaborately made and if a video of the costume play was uploaded on the Internet. "If people think about the possibility of coming under questioning, they might cower," he said.

Id. In other words, Fukui and many others are concerned that creating extremely strict copyright rules will actually discourage creation of new artistic works. Although creators in industry will have an incentive to create, all amateurs will be afraid to expose themselves to the possibility of a lawsuit and will be less likely to create artistic expressions because of these strict restrictions. *Id.*

95. See アニメの製作委員会に見る「お金×リスク×作り手」の微妙な関係 [Anime Production Committees Examine the Delicate Balance Between Money, Risk, and Creators], HARBOR BUSINESS ONLINE, <http://hbol.jp/7978>; Ken Akamatsu (@kenakamatsu), TWITTER (Oct. 31, 2011), <https://twitter.com/KenAkamatsu/statuses/130968757467230208>; *infra* note 99. Some production companies, seeing the rise of crowdfunding sources such as Kickstarter, are afraid that without some share in the copyright of the work, they will quickly become obsolete as manga and anime authors and artists use these crowd funding sources to produce content directly or on their own. This seems like a stretch, as only a small percentage of crowdfunded projects succeed. Robert Strohmeier, *The*

prolific and popular manga author, said on his Twitter, “[i]f we change to these [stricter] standards, even non-infringing conduct will be actionable, and it will kill the Doujinshi industry.”⁹⁶ MAGP claims that their purpose is to limit online viewing to legal sites and remove infringers.⁹⁷ However, as in any copyright case, by creating stricter permissions, the cost of the product will almost certainly rise. In doing so, certain consumers will no longer be able to partake in the works.⁹⁸ In addition, any mention of the likely impact on the fan or doujinshi industries is missing from MAGP’s websites.

VII. MANGA ANIME GUARDIANS PROJECT AND COPYRIGHT

METI’S MAGP movement intends to combat streaming websites such as YouTube and MegaUpload that host millions of unlicensed copyrighted videos uploaded by their users.⁹⁹ However, MAGP’s approach is not likely to have its desired effect. MAGP’s website is difficult to navigate and only

Crowdfunding Caveat: Most Campaigns Fail, PC WORLD (Sept. 26, 2013, 4:56 AM), <http://www.pcworld.com/article/2049399/the-crowdfunding-caveat-most-campaigns-fail.html>. Authors vehemently disagree that copyrights should be shared with production companies.

96. See Akamatsu *supra* note 95; Akamatsu is very active in the copyright reform circles in Japan. Besides fighting the new strict policies, he ended his new manga and quit his publisher in order to fight against a new legislation that may go in front of Japanese parliament. The legislation would give publishers/editors shared copyright with authors. Akamatsu’s prior publisher, Kodansha, is a proponent of this legislation because of the monetary benefits to them as a production company. Almost all of Akamatsu’s posts on social media are in regard these copyright issues (and some other legal concerns for manga writers). *New Proposed Japanese Law the Reason Ken Akamatsu Ended “Negima!”?*, ASTRO NERD BOY, <http://anime.astronerdboy.com/2012/03/new-proposed-japanese-law-reason-ken.html>; 赤松健の連絡帳 (Akamatsu Ken no Renrakuchou), TUMBLR, <http://kenakamatsu.tumblr.com/>.

97. See *METI to Start the First Cross-Industry Anti-Piracy Measures for Manga and Anime*, *supra* note 9.

98. See *supra* note 95. This is easy to see with software. Software that was once available for free, but then becomes “locked up” by charging more than the average user will reasonably pay, will either lose that user entirely or invite the user to infringe or pirate the software in order to continue using it. For example, Microsoft Word is no longer a standard and included software on all Windows computers and Microsoft charges \$70–\$140 (even more if you are using a Mac) per year to license the software. MICROSOFT OFFICE STORE, http://www.microsoftstore.com/store/msusa/en_US/cat/Office/categoryID.62684700. Many students and young adults who are struggling with student loans and cannot afford the steep price. Free alternatives such as OpenOffice and pirated copies of the Microsoft Office software are common to fill in the gap that Microsoft caused by changing the price of its protected software. This same theory applies to artistic works such as television shows and movies.

99. See, e.g., *Let’s Play Videos, YouTube and Copyright: FAQ*, LONGZIJUN, <https://longzijun.wordpress.com/2014/03/13/lets-play-videos-youtube-and-and-copyright-faq/>; *MegaUpload: The Real Story*, RIAA, https://web.archive.org/web/20141029011925/http://www.riaa.com/news_room.php?content_selector=riaa-news-mega-upload-news-real-story.

includes a very small number of anime and manga titles.¹⁰⁰ Although some “big name” series are represented, many popular series are missing. The website describing the project to non-Japanese speaking anime and manga fans uses awkwardly translated English with grammatical errors.¹⁰¹ Although there are other legal channels to access some of this content, MAGP’s attempt to streamline online anime and manga consumption is underwhelming compared to the number of titles that similar streaming sites carry.¹⁰²

One of the primary purposes of copyright law is to serve as a push for creators to create new and original works. Although illegal streaming, downloading, and torrenting of copyrighted materials can steal profits from the industry, it is unlikely that this will be changed by creating this website. Firstly, the site does not host any “new” manga or anime itself. Instead, it links to licensees. Internet fans were likely already aware of these licensed options to watch or read series and likely took advantage of them when possible. Secondly, many of the works listed on the sites do not include any links to access them legally. This serves as an advertisement that invites interested visitors to watch through an infringing source, rather than through MAGP’s site. Thirdly, some of the sites linked on MAGP’s site are “pay to watch” sites. Any time that something available for free begins costing money, a number of consumers will no longer be able to afford the work. In these cases, consumers will either no longer support the work in any way or they will access it through illegal channels. Overall, this site does nothing that the already existing streaming sites have not attempted to do.

Fan culture is a creative and scholarly culture of its own. For example, fans of the Marvel movie *The Avengers* began to watch obscure British television shows starring the villain’s actor, Tom Hiddleston, after becoming fans of the movie.¹⁰³ Japanese fans show similar levels of intensity, including the infamous news story where a fan married a pillow with an image of his favorite character.¹⁰⁴ It is not unimaginable that

100. *Manga-Anime Here*, *supra* note 11; Manga and anime combined, MAGP hosts only a few hundred titles. MyAnimeList.net lists more than 28,000 anime titles and more than 85,000 manga titles. Unless MAGP vastly expands its selection, the chances of users beginning to depend on their site, rather than infringing sources, is slim to none. MY ANIME LIST, <http://MyAnimeList.net>.

101. *Manga Anime Guardians*, MANGA ANIME HERE, <http://manga-anime-here.com/guardians> (“Through everyone enjoying content in its official form, creation is spurred and new works that stretch beyond imagination can be born.”).

102. *Supra* note 60.

103. See Tom Hiddleston (Fan Page), <http://www.tomwhiddleston.co.uk/hiddlestoners>.

104. John Funk, *Korean Otaku Marries Anime Body Pillow*, THE ESCAPIST (Mar. 5, 2010, 3:57 PM), <http://www.escapistmagazine.com/news/view/98910-Korean-Otaku-Marries-Anime-Body->

anime and manga fans would want to access more than a few of the shows that have aired and are airing in Japan. Unless MAGP is able to extend its reach beyond a few companies (no matter how influential those companies may be), it will never be able to feed the “fan” consumer’s appetite for new media.

Some of those seeking copyright reform in Japan argue that, in order to avoid the possible ban on fan works, fansubs and other fan created works should be part of an exception to copyright infringement for “Fair Use.”¹⁰⁵ Fair Use includes works used for parody and education, among others.¹⁰⁶ This seems like a logical step for Japan. One of METI’s chief reasons for implementing MAGP is the loss of profit that the anime and manga industry is experiencing from online piracy.¹⁰⁷ However, based on the few non-infringing options for non-Japanese-speaking fans to view anime and manga, it is likely that, should their project succeed, they will alienate these viewers by restricting access to the material.¹⁰⁸

Another option for Japan’s copyright law is to make getting a license to translate anime and manga easier. While this might be initially difficult, MAGP was able to gather a large number of media professionals for their project, and other professionals have expressed support for fansubbing and other fan works in the past, so it is a viable option. It would not be unthinkable to create a YouTube-like streaming site where fan-made translations can be submitted and monitored for validity. Fans want to support their fandom where possible and will move their activity to a new

Pillow. Although this is a very extreme case, many fans are very devoted to the source material and spend thousands of dollars on books, movies, toys, posters, and other collectible goods each year.

105. Susan Wilson & Cameron J. Hutchison, *A Comparative Study of ‘Fair Use’ in Japanese, Canadian and US Copyright Law* (Sept. 1, 2008), Hosei Riron, available at SSRN: <http://ssrn.com/abstract=1628711>.

106. *Id.*

107. *Manga Anime Guardians*, *supra* note 101 (“The estimated cost of damage from online piracy is as much as JPY 2 trillion (approximately US\$ 20 billion). In addition, a report by the Agency for Cultural Affairs of Japan indicates that in the major cities of China (Beijing, Shanghai, Guangzhou, and Chongqing) the damage cost to Japanese content is JPY 560 billion (approximately US\$ 5.6 billion) per year.”).

108. *Id.* On their site, METI states that “Pirated videos of a popular feature-length Anime have over 12 million views on a well-known video hosting site, which likely brought in a lot of illicit profits to the ‘pirate’ from advertisement space.” *Id.* It is true that the pirate may have gained illicit profits from the video. However, this does not confirm that the copyright holder would have gained these profits. Rather, it is more likely that a large percentage of these viewers would not have accessed the content at all. Also, consider that web purchases often require a credit card or bank account and a good portion of fans that are using online streaming are in middle school and high school and may not have access to a method of payment even if they were willing to pay.

site if they feel it is for the best fan content.¹⁰⁹ By opening up the floor to fan translators, not only will content be available to all consumers faster, but through the monitoring process, no possibly disparaging or incorrect translations will be published.

Overall, this is an issue because copyright laws cannot change quickly enough to keep up with technological advances in file sharing. Although protecting the rights of the authors is important, it is vital to consider and balance the public's interest in access to the works against these rights. Just as the United States copyright law changes based on the type of copyright holder lobbying for change,¹¹⁰ the current changes in Japanese copyright law seem to be focused not of the needs of the consumer or of the authors themselves, but on those of the publishing companies. The companies are willing to post copies as long as it is on websites where they control the viewership and their reaction to the work.¹¹¹ However, not all creators agree with this level of industry control. For example, Akamatsu, the manga artist, left his publisher for attempting to usurp his author's rights to exploit the work, and other manga and anime creators are also combating the publishing companies' control of the industry.¹¹²

It is important to consider the audience, the author, and the industry when allocating copyright rights. This can be difficult in copyright because of the long term of protection. Perhaps it is time to consider shorter protection, like the twenty-year term afforded to United States patent creators.¹¹³ Strict rights to exclude or prosecute infringement are more appropriate when the protection lasts for a shorter span. However, when the rights continue for fifty years after the death of the author, not only is the author no longer receiving any benefit from the exclusion or prosecution of copyrights, but it also prevents new innovations that take inspiration from the previous copyrighted work. When determining the strictness of copyright rights, it is important to consider how important it is to keep the particular work away from the public domain for such a long period of time. Certain works, such as feature-length movies, photographs,

109. For example, when fan literature site "http://fan-fiction.net" began implementing strict regulations, most fan literature writers transferred their content to Archive of Our Own, a new site created by fans. ARCHIVE OF OUR OWN, *supra* note 45.

110. See, e.g., Associated Press, *Opposing Copyright Extension*, CHI. TRIB., Oct. 17, 1998, available at <http://www.public.asu.edu/~dkarjala/commentary/ChiTrib10-17-98.html>.

111. MAGP is an example of this. See *METI to Start the First Cross-Industry Anti-Piracy Measures for Manga and Anime*, *supra* note 9.

112. *New Proposed Japanese Law the Reason Ken Akamatsu Ended "Negima!?"*, ASTRO NERD BOY (Mar. 22, 2012), <http://anime.astronerdboy.com/2012/03/new-proposed-japanese-law-reason-ken.html>.

113. 35 U.S.C. § 154 (2006); *Patent FAQs*, USPTO, <http://www.uspto.gov/inventors/patents.jsp>.

or artworks of trademarked characters may warrant a long time span of protection.

However, manga and anime is not something that is so lasting. Like comics and TV episodes in the United States, they are a type of “disposable” culture. Many consumers engage the text only once for a short while and then forget about it to move on to the next and newest media. What TV shows are popular is constantly changing, and ratings can drop in less than a week. This is not the type of copyrighted material that will be important for an author to keep sacred for many years after his/her death. Besides a few outliers, most anime and manga’s popularity lasts a few years at most. A 20 or 30-year period would likely be sufficient to make most, if not all, of the profit that is possible from a particular media. This would also allow other creators to use the material to further innovate sooner without encumbrances caused by the long rights period.

VIII. CONCLUSION

Copyright is an ever changing field that is always struggling to find the correct balance between current and future artists’ rights. The law in Japan is no different. Although METI was creative and put effort into the MAGP website and plan, it is not the answer to the problem of illegal video streaming and downloads. METI underestimated the zeal and devotion of overseas fans. Fans are not passive consumers. They are always searching for the next thing, the hidden symbolism, the new interpretation, or even just the newest phone snapshot of their favorite actor. Besides actively consuming, fans also actively give back to the fan community by producing fandom related content. They are not submissive watchers. If production companies are determined to alienate fans by cutting them off from the source material, then they are on the right track. Otherwise, companies need to consider what they are willing to give up in order to balance the fan base’s desires to create with their own control over the copyright. Copyright is a delicate balance between providing incentive to creators and allowing the public to access and fully enjoy the media. Although many believed that the dawn of internet sharing required stricter copyright protection, I believe this was simply a fear of the unknown, rather than a necessary step towards protection. Today, the internet has become an important part of everyday life and almost all media consumption is changing to digital forms in things like iTunes, ebooks,

video streaming, and computer games. In changing times, perhaps it is time that the balance also shifts to give users more control over the media they are engaging in.

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