

is delivered to you. Your television and your computer are going to become the same device within the foreseeable future.”⁹ Official and unofficial authors were perhaps surprised to find themselves on the same side of the battle lines during the strike, allied as creative workers in the context of convergence. Participants in online fandom, who are uniquely equipped to realize the Web’s status as a commercial platform, banded together to support television writers by picketing, educating, and fundraising. Meanwhile, fans too are wondering how they will be contracted and compensated in a media economy that increasingly attempts to harness and monetize their activities. It is the potential queerness of convergence itself—transgressing the accepted boundaries of media formations, which makes for strange bedfellows and hybrid offspring—that enables the increasing fertility of queer viewing, and these proclivities necessitate new negotiations and protocols on the part of the industry. “Toaster Lover” allegorically represents Video Maker’s optimistic fantasy of a warm relationship between media producers and consumers: a romance between the monstrous automaton and the scrappy softy who find true love as war between their kind is waged around them. Vidders incarnate an alternative fantasy of kinship; collective, networked, and unsanctioned, they reproduce without a patriarchal center. It remains to be seen whether the constraints of sponsored initiatives such as Video Maker, with their intrinsic compromises and contradictions, can adequately channel fandom’s procreative potential into one big happy capitalist family. *

9 Eric Goldman, “*Battlestar Galactica* Producer Talks Strike,” IGN TV, November 7, 2007, <http://tv.ign.com/articles/833/833633p1.html>.

Living in a Den of Thieves: Fan Video and Digital Challenges to Ownership

by ALEXIS LOTHIAN

Picture some scenes from an Internet video: shots from the movies *Batman Begins* (Christopher Nolan, 2005), *Pirates of the Caribbean* (Gore Verbinski, 2003), and *V for Vendetta* (James McTeigue, 2005) captured from DVD, edited in a graphics program, and set to a Regina Spektor song. It’s a fair bet to assume that license holders would consider such unsanctioned use of image and music to be theft of their property and profit. But in the age of YouTube parody and viral reproduction, few amateur media makers would consider

that a reason to stop. Such familiar acts of digital reproduction have much to say about copyright and its enforcement, about piracy and the penalties it incurs, and about how ordinary people's actions complicate conventional assumptions about such things. I use one semiotically rich piece of digital video art, the 2007 fan video "Us" by Lim, to explore the implications of everyday digital thefts at the capital-saturated scene of online media production and consumption.¹ When politics and technology meet to challenge received definitions of what it means to own or to create art, cultural production that appropriates and transforms copyrighted material might speak to larger transformations taking place both on the Internet and in the wider world.

Fan Art and Copyright. "Us" both embodies and comments on practices of digital theft that take place among artists who sample, remix, mash, rip, and burn. In particular, it commemorates the practices of online media fan communities: female-dominated networks that cohere around affective investments in media properties and that produce and share textual, visual, and video art that is based on "their" TV shows or films. The video celebrates this "den of thieves," as the song's refrain goes, with special emphasis on one trajectory of the so-called slash culture that centers around the creation of male homoerotic fan art.² Lim modifies captured images to make them look hand drawn in a visualization of the way fans write their own narratives over and around the media's narratives. Karen Hellekson's essay in this issue describes the gendered relations at play in this subcultural world.

In the closing image of "Us" (Figure 1), we see a young, bespectacled woman taking off a mask. She is a figure for the geeky fannish women who craft their own art with corporate media's materials, who are the "Us" the vid addresses and celebrates. And her practices are beginning to matter to more than her fellow slash fans in the "user-penetrated" ecology of digital media that Julie Levin Russo describes in this issue. The self-conscious tradition of the fan video-making (vidding) subculture is intersecting messily with public fights between big media companies over who will gain revenue from the expansion of digital video, mirroring the long-standing fights over musical appropriation that Abigail De Kosnik discusses in this issue.³ Does Lim's geek girl pose a danger to the copyright regimes of the big media companies whose products she reinterprets?

For most vidders, valid fears of not being recognized as owning the product of their recombinatory labor—often, as in Russo's case studies, perceived as an undifferentiated feature of the online "public" domain—are of more concern than whether their disregard of copyright is likely to usher in new forms of digital ownership. Many valid arguments for the righteousness of Lim's artistic production leave intellectual property laws intact, insisting that the geek girl poses no threat. Putting transformed images to music

1 Lim, "Us" (2007), http://sublim.imeem.com/video/LQU2ToIY/lim_us/. All URLs cited herein were accessed on November 28, 2008. Thanks to Lim, Kristina Busse, Judith Halberstam, and Laura Shapiro for their help and engagement.

2 Lim draws on films and television shows that have large fan followings and that have been central to the history of science fiction- and slash-oriented media fan subculture, including *Star Trek* (NBC, 1966–1969) and *Buffy the Vampire Slayer* (WB, 1997–2001; UPN, 2001–2003).

3 For discussion of early conflicts over digital ownership, see Siva Vaidhyanathan, *The Anarchist in the Library: How the Clash Between Freedom and Control Is Hacking the Real World and Crashing the System* (New York: Basic Books, 2004).



Figure 1. A young girl stands in for fandom in a digitally altered shot from *V for Vendetta* (James McTeigue, 2005) used in Lim's fan vid "Us" (2007).

in a new order creates a new artwork worthy of recognition, and (as Hellekson outlines and De Kosnik challenges) Lim does not profit from her production. These arguments have been publicized by the Organization for Transformative Works (OTW), a non-profit organization of media fans who work for "a future in which all fannish works are recognized as legal and transformative and are accepted as a legitimate creative activity."⁴ For OTW, being transformative positions fan art forms such as vidding outside the realm of theft and in the realm of artistic transformation. That permits them protection under fair use laws that allow media properties to be cited but forbid their wholesale reproduction.⁵ I am a member of OTW and support their advocacy unequivocally. But it seems essential to me to recognize that fans' appropriative art is not necessarily complicit with legal and economic structures as they stand. It is worth determining who defines the use as fair, and what it might mean to place a value on unfair uses.

When the transformativity in "Us" extends to altering the semiotic content of an image, which happens only once, Lim does so to remind the viewer of the legally dubious status of fan production. As Spektor sings "though our parts are slightly used," we see a Bat signal transformed into a copyright symbol beamed into the sky (Figure 2). It is difficult to define where the stolen image ends and Lim's original artwork begins, but the music that accompanies it is borrowed with minimal adulteration. This audiovisual

4 Organization for Transformative Works, "About Us: What We Believe," <http://transformativeworks.org/about/index.html>.

5 Rebecca Tushnet, "Payment in Credit: Copyright Law and Subcultural Creativity," *Law and Contemporary Problems* 70, no. 10 (2007): 135–175.



Figure 2. Batman's call sign morphs into a copyright symbol. Digitally altered shot from *Batman Begins* (Christopher Nolan, 2005) used in Lim's fan vid "Us" (2007).

moment reminds us that mashups, vids, and similar arts of juxtaposition challenge the idea that creative legitimacy relies on original ideas that belong only to those who initiate them. Will transformation be the new originality? Further, defenses on the grounds of transformation disconnect vidders from the other culture thieves on whom they rely: file sharers, for example, cannot declare their works transformative, and many of these are not only closely linked to, but may be the same people as, vidders. What does appropriative art imply if we don't try to justify it within the terms of existing legal systems, but rather use its potential illegality to imaginatively liberate music and images from structures of corporate ownership?

Freeing Culture. Henry Jenkins and other scholars of fan practices have compared fannish models of creativity to the cultural commonality of ideas, images, and plots that was considered normal before legal definitions of intellectual property were determined by corporate media interests.⁶ The history of material and cultural commons and their enclosure is frequently invoked to make sense of the way in which digital copyright thefts—both more and less transformative—have come to function as unexceptionable cultural practices. Lawrence Lessig argues for the “innovative” benefits of nondepletable “resources held in common” online;⁷ Creative Commons licensing has created a structure of licensing to encourage content producers to “Share, Remix,

6 Henry Jenkins, *Convergence Culture: Where Old and New Media Collide* (New York: New York University Press, 2006), 134–138; Tushnet, “Payment.”

Reuse—Legally.”⁸ In all these cases, the commons signifies a nonownership of ideas, words, sounds, and images within what Creative Commons describes as a model of “moderation” and “balance” between “anarchy” and “total control.” Creative Commons licensing enables culture makers to dictate how others will steal their work, but they cannot account for the more anarchistic commonality of the den of thieves that nurtures “Us” and other artworks that are based on mainstream media properties for which “copyleft” licensing would be unimaginable. Some suggestive clip choices in “Us” hint at prospects—doubtless utopian, but nonetheless worth articulating—of a more radical vision for digital communality.

Images from the Wachowski brothers’ 2005 film *V for Vendetta*, which portrays a masked revolutionary, V, instigating revolt against government oppression, punctuate the fannish history in “Us.” In the film, V preaches popular democracy, reminding cowed citizens that “people shouldn’t be afraid of their governments, governments should be afraid of their people.” This is visualized when a crowd of ordinary people, given masks and incited to protest by V, show their faces at the film’s close. Lim appropriates this scene to show that the V who is associated with creative destruction, piracy, and radical theft is the “us” of media fandom: her geeky woman is part of V’s masked multitude, and she reminds us that if the world is changing, fans may have a hand in it. However, this gratifying narrative is complicated when compared to the darkly complex graphic novel on which the filmed version of *V for Vendetta* is based. The V of writers Alan Moore and David Lloyd aims not to involve people in government but to smash structures of governmentality, telling the people that “in anarchy, there is another way. . . . From rubble comes new life, hope reinstated.”⁹ Anarchy’s hope here is also signified by a woman taking off a mask: Evey, the female protagonist who takes on V’s role after his death—in print but not on film—pauses for a moment of respite before she moves to fight further for a dangerously material vision of an absolutely free political commons, “the land of do-as-you-please.”¹⁰ Ought we to imagine Lim’s closing figure as a similar revolutionist? Even if neither Lim nor I subscribes to such a simplistic utopianism, V/Evey allows us to read “Us” in a way that suggests possible links between demands for cultural commons and claims to material ones that scorn law and ownership altogether in favor of the freedom to imagine differently, dangerously, and (perhaps) unrealistically that an anarchist politics allows.

Freedom is a slippery concept, especially when it comes to digital media. When we think about questions of copyright and digital ownership through cultural theft, freedom from domination lines up with freedom from having to pay—at least on the surface. Theft, piracy, and the commons are all concerned with getting things for free, and current configurations of online media and culture are hospitable to their insurrectionary modes of ownership. Online theft comes with comparatively few sticky logistic and ethical quandaries; with a little geek knowledge and some access to technology, one can

7 Lawrence Lessig, *The Future of Ideas: The Fate of the Commons in a Connected World* (New York: Random House, 2001), 23.

8 Creative Commons, *History*, <http://wiki.creativecommons.org/History>.

9 Alan Moore and David Lloyd, *V for Vendetta* (New York: Vertigo, 1990), 258.

10 *Ibid.*, 181, 262.

steal as much culture as one has access to bandwidth and has storage space. And yet, as Wendy Chun asserts in *Control and Freedom*, although it may be impossible to wholly enclose the traffic that passes through the ether and the Ethernet cables, the Internet and the files we find there are always already owned. Fiber optics, computers, and data that we send down wires are made by and belong to companies whose surveillance of users is as complete as they can make it. Chun reminds us that the “free” culture I have been glorifying is able to thrive because “for now, data is cheap and reproducible in ways that deny, rather than support, private property.”¹¹ For now, regulation and enclosure of the Internet’s commons is constantly increasing, and a few more technological upgrades paid for by those with property to protect could change the scene of theft culture dramatically. Even without the fears of surveillance and further enclosure (some more justified than others) that run rampant around digital traces, our experience of the freedom of the Web—the ads we see and the social networking sites we navigate—is constituted by capital’s control even when we use that freedom to steal from capital.

Capital and Fan Labor. If every user of the Internet is complicit with capitalism, fans are by definition more complicit than most. Fans are, as OTW is keen to remind us, “great customers.” In “Us,” pirate captain Jack Sparrow tips his hat to viewers who embrace their subversive status as media pirates. But to join Jack’s crew is, of course, to fuel the engines of capital even as it is to play with theft and rebellion. Disneyfied piracy is sold for profit and bought by fans; media piracy is (although not exclusively) a trespass of the privileged. “Though our parts are slightly used,” goes the song “Us,” “new ones are slave labor you can keep”: although sharing stolen parts in a mutualistic and egalitarian manner suggests a delightfully subversive alternative to media enclosure, fandom also demands to be provided with the capitalist new on which to build. It wants to have its used parts and keep the new ones too, even if the globalized expansion involved in producing them requires slave-labor-like working conditions for some.

In recent years, media producers have explicitly sought to solicit fan participation as labor for their profits in the form of user-generated content that helps build their brand. Many fans perceive these developments as a desirable legitimation of fan work, but they can also be understood as an inversion in the direction of fannish theft. Rather than fans stealing commodified culture to make works for their own purposes, capital steals their labor—as, we might consider, it stole ideas from the cultural commons and fenced them off in the first place—to add to its surplus.

In Chun’s paradigm of control and freedom, the two are “obverse,” not “opposite.”¹² I think that the same is true for vidders—and other digital media makers and commentators more and less political, including critical academics—undermining and supporting capital. I’d like to close by suggesting a refinement to the idea of appropriative online culture as a digital commons, one which allows for the simultaneous incorporation and resistance we see in Lim’s use of the commodified Hollywood rebellion of Captain Jack and V. It may be productive to look on fannish labors of theft and

11 Wendy Hui Kyong Chun, *Control and Freedom: Power and Paranoia in the Age of Fiber Optics* (Cambridge, MA: MIT Press, 2006), 4; emphasis in original.

12 *Ibid.*, 5.

transformation as an *undercommons*: an unofficial and transient space in which work simultaneously reproduces and undermines the structures that enable it.¹³ Fans mobilize for a purpose that is neither radically disruptive of, nor fully incorporated into, the media industry's systems of ownership, but simultaneously supports and undercuts them while producing a collectivity of its own. And that collectivity, while it holds the media properties up, steals from them: abusing the hospitality of those who own the servers, the ISPs, the copyright, and taking its productions more seriously than they intended. In Lim's vision of fandom, vidders sneak in to rework images and songs, then do their best to disappear into a subcultural commons out of sight of the powers that be. In their hands V's disciple, the Bat signal, and even the figure of Captain Jack Sparrow have a chance to mean what they seem to say: these symbols of fictionalized rebellion briefly become what they can only pretend to be within their conditions of commercial production. This den of thieves, in all its ambiguities, shows us the occasional spaces that stealing culture makes within seemingly indomitable structures that ensnare all the more those who oppose them. Its very contradictions may offer a way to place possibilities, rife with vulnerability and interdependence, in those gaps. *

13 I borrow the term from Fred Moten and Stefano Harney, "The University and the Undercommons: Seven Theses," *Social Text* 79, no. 2 (2004): 101–102.

Kristina Busse is a fan and independent scholar. She is coeditor of the essay collection *Fan Fiction and Fan Communities in the Age of the Internet* (2006) and founding coeditor of the media and fan studies journal *Transformative Works and Cultures*.

Francesca Coppa is Director of Film Studies and Associate Professor of English at Muhlenberg College. She is also a founding member of the Organization for Transformative Works, a nonprofit organization established by fans to provide access to and preserve the history of fan works and culture.

Karen Hellekson is an independent scholar who works in the fields of science fiction and media studies. She is a founding coeditor of the media and fan studies journal *Transformative Works and Cultures*.

Abigail De Kosnik is an Assistant Professor at UC Berkeley in the Berkeley Center for New Media (BCNM) and the Department of Theater, Dance & Performance Studies. She is co-editing a volume of collected essays on soap operas in the digital age with Sam Ford and C. Lee Harrington, forthcoming from the University of Mississippi Press.

Julie Levin Russo is a doctoral candidate in Modern Culture and Media at Brown University, completing a dissertation entitled "Indiscrete Media: Television/Internet Convergence and Economics of Online Lesbian Fan Communities." She currently serves as a HASTAC (Humanities, Arts, Science and Technology Advanced Collaboratory) Scholar for 2008–2009.

Alexis Lothian is doctoral student in English and Gender Studies at the University of Southern California, where she is working on a dissertation provisionally entitled "Polytopia: Queer Futurity and the Politics of Science Fiction." She has published on fan cultures' intersections with queer politics.