

Intellectual Property

concepts illustrated through anime

Physical property is not hard to identify. There are laws and cultural rules formed to protect property rights, rights we view that we have unconditionally. Harder to define and control are intellectual property rights. A popular issue today focuses on downloading music from the internet, usually for free, where no due is paid to those who originally created the works. Similar to this issue, but covering much wider grounds, is that of anime bootlegs and fansubs.

Developed in Japan in the 1950s based on Disney art, anime was created as a style to allow easy, fast drawings. Anime art has few lines, so a small difference in the angle of a line can change a face expression. Nowadays it can get more complicated with detailed backgrounds and more distinct face lines. Although 'anime' simply comes from French meaning 'animation', it has come to stand for this particular art style. Anime can be individual movies, like those by acclaimed director Hayao Miyazaki whose most recent film *Howl's Moving Castle* (based on an excellent British fantasy novel) made it to some theaters in the U.S. More commonly anime are series running from 26 to a whopping 500+ (22 min.) episodes. In Japan, anime is the main film industry. The most commonly read books are actually manga (or 'graphic novels'), the book forms of anime. The U.S. has only recently caught on to the anime craze, and now runs multiple series on TV (mainly on Adult Swim and CN). In bookstores, manga can take up entire bookshelves. Yet, it's still small enough that unless you mention Pokemon (arguably not anime) or DragonBallZ people have no idea what you're taking about — and sometimes not even after that. There are only notably 3 companies that license and distribute anime in the U.S.; FUNimation, ADV, and Viz. Big company Geneon just recently died, not showing promise for the anime industry, although with anime offered on iTunes now there seems to be hope.

Terms

I'd like to quickly clarify some terms here. A bootleg is a copied physical DVD, which includes obvious copies (no cases, artwork, etc.), nicer copies (hard to tell from legal sets), and those with subtitles taken from U.S. companies, and those with subtitles made (translated) by fans, called fansubs. The term 'fansubs', though, typically refers to anime that can be found (and sometimes

downloaded) online, while by 'bootlegs' we mean the physical set. However, the issues surrounding these are typically the same, as they both involve copying material without permission. The only difference in issues are that fansubs are usually *free*, or very cheap, and bootlegs are almost always for sale.

The Issue

Even with this growing market of anime, there are huge amounts of bootlegs floating around the internet. Illegally created, illegally sold, with nothing given to the makers of the shows. Sometimes the bootleggers will add menus, subtitles, or other features, if the show has not yet been released in the U.S. If it has, they typically won't add anything (they only copy). Temptation to buy bootlegs lies in the price of the licensed releases: \$20-30 per DVD (usually with 4 episodes). Bootlegged sets can be found on Amazon, eBay, etc. for \$30-60 for an entire 26 episode season.

It may not be as big of a deal as music downloads in the amount that is done, but the issue of anime bootlegs encompasses not only intellectual property rights here in the U.S., but across borders. The issue of anime bootlegs is as important as that of downloading music, if not more so, for it can be expanded to include a wide range of products, boasting intellectual property rights or not. It hits on the issues of education and globalization, and pure entertainment of the individual. Bootlegs allow fans to watch anime that isn't available to them anyway. This doesn't hurt Japanese companies or even American companies, and provides advertisement for further anime series and merchandise (which is a large part of the industry). On this level, it seems a win-win situation. But what about bootlegs of series released legally in the U.S.? What of competition between series? Should the intellectual property rights of the companies prevent there from being bootlegs?

Even when we answer these questions, we have to look at possibilities. Right now, there is nothing being done to prevent bootlegs. The American companies will look online and try to close down any stores/buyers selling what they know to be illegal sets, lovers of anime will try their hardest to stick with legal sets, but other than this bootlegs are allowed to float around freely. The way I see it, those bothered can't do anything about it. For American companies, they can't regulate where the information is coming from (Japan/China) or where the DVDs are

being manufactured (mainly Taiwan and Hong Kong). Japanese companies can't put a check on sales in the U.S. What is being done in these situations? For music, there is some protection:

...The Recording Industry Association of America has come down hard on the practice because the unauthorized trading of music could prevent people from spending money on CDs. The RIAA has the law behind it. According to the No Electronic Theft Law, the infringement of sound recordings can be criminally prosecuted even if there is no monetary gain or profit involved in the act.¹

Established in 1997, the NET act is made to punish copyright infringement. In the UK and Australia the governments are considering a 'three-strikes policy' (warning, internet access suspension, internet access cancellation) to battle against those who offer music free of charge on the internet.² In the U.S., there isn't much being done [either]. In recent years the U.S. government and the entertainment industry have gotten together to try and deal with some of these issues. A huge piracy port in Sweden was found, closed down, and re-opened a few days later with a new logo: a ship saying 'Hollywood' sinking, showing how impossible it is to get rid of anything on the web.

The U.S. government and the entertainment industry have a right to raise such issues with foreign nations, the RIAA's Turkowitz said. Movie and music piracy, he said, "is a problem that really doesn't know any borders."³

For internet music downloads, there are problems, but there are policies. What about bootlegs? They possess many of the same problems, and give a lead on the bigger picture. With no policies in place, is it time we instituted one to protect the intellectual property rights of the producers in Japan and the U.S.? If so, how strong should these policies be? Can they be successful while protecting not only other rights but also other factors of human interaction? Who would win, who would lose, and would it improve the situation? But I'm getting ahead of myself. What are 'intellectual property rights', are they reasonable as objections, and do they apply in this situation?

Learning and Globalization

¹ Holmes, Tamara E. 2005. A Music-Downloading Policy Can Keep Your Business Out of Legal Hot Water. NFIB: http://www.nfib.com/object/IO_21573.html

² Gilmore, Heath. 2008. War on music piracy. The Sidney Morning Herald: <http://www.smh.com.au/articles/2008/02/16/1202760662778.html>

³ Ahrens, Frank. 2006. U.S. Joins Industry in Piracy War. Washington Post: <http://www.washingtonpost.com/wp-dyn/content/article/2006/06/14/AR2006061402071.html>

Dr. Ian Condry, who specializes in contemporary Japan, specifically focusing on media, popular culture, and globalization, said this in an interview:

Both hip-hop and anime are media forms that were initially denigrated by media elites as not being something that could gain a wide audience. They both show the power of globalization from below, and they provide hope that ideas and practices that are seen as unimportant, fringe or sub-cultural can nevertheless become global powerhouses in their own right.⁴

Culture and concepts created overseas, anime embodies an important learning factor for us in the U.S. As our economy integrates into others, and embraces concepts from others, we find ourselves in the midst of globalization. People in other countries try hard and learn English, what has been called the language of the business world, and familiarize themselves with our business practices and cultural norms. They absorb aspects of our culture into theirs. Japan especially can be seen, coming out of its shell, to take on American fashion, music, speech, and other things. But what I have started to notice, and it has been observed by others, is that typical Americans... don't seem to have much interest in cultures other than their own. It could be because we are arrogant, we think we don't need anything from other cultures, or it could be just a lack of interest. Whatever the reasons, Americans are not learning much about other countries. I won't dwell on the obvious things like someone who thought Europe was in Africa... but the more subtle things, the cultural differences that really aren't that hard to learn but tell you so many things about why people act like they do, and broaden the mind. Anime provides an easy, fun, and vastly informative way to learn cultural aspects of Japan. By entering slowly but surely into the American markets, it's placed a bit of Japan in here as well. But it seems obvious that it's not entering fast enough, as the bootleg market is thriving. Aside from the websites of the production companies, anywhere else you look you can't be sure the anime is not bootlegged. Even when you examine the physical product it's hard to tell. What makes this such a big market? Why do people want these things so much? I suspect it's because it's different. Looking at the stereotypical 'action-that-must-have-romance-and-badguy' and 'comedy-that-isn't-actually-funny' from Hollywood, the old jokes on TV, the repetitive dramas, anime is a breath of fresh air. Not to say it doesn't have similar categories, but in the whole everything will be a little different. For example, many anime center around children and thus schools. The schools are

⁴ Mochi. 2007. Anime & Manga News (Interview Edition).
<http://theanimeblog.com/2007/12/16/anime-manga-news-interview-edition-2/>

orderly, there are dress codes, teachers rather than the students change rooms, it's not unusual to get a 7/100 on a test, students attend after-school cram classes for the intense tests for higher schools that will determine their entire future, the failure of which tests may lead to suicide... all these are things that show up in anime, and are very true parts of Japanese culture.⁵ In every home, be it in Western style or traditional, there will be a little shrine, usually with a photograph of a deceased family member, showing their firm attachment to Shinto (and Buddhism). If you watch a show in Japanese, and know a little of the language, you can see the differences in speech between the women and the men, remnants of women holding a lower place in society. This is only the beginning of what can be gleaned from anime.

Learning about these cultural differences not only broadens our minds, but also increases our understanding of the Japanese people and creates a familiarity with them. Xenophobia, I think we can all agree, is ridiculous, but it exists because people aren't familiar enough with others. The point of all this is to wonder if, instead of figuring out how to get rid of them, we should be applauding the bootleggers. It's probably not their intention to spread knowledge of Japanese culture, but that is exactly what they are doing. Of all there is out there, the anime licensing industries in the U.S. have brought over a small percentage of it; things of their choice, which I assume they think will sell best — not usually the more informative.

Different from other aspects of globalization, which I have heard it being said of that it benefits large corporations and hurt small ones, that it crushes unique cultures in the other countries, it imposes American values on them — anime bootlegs do the opposite in their 'globalization process'. First, they aren't large corporations, and those benefiting are the consumers. Second, as anime teaches us about Japan, nothing on this side of the equation is doing anything to squish their values — unless you look at some things the U.S. anime corporations have done to series they've licensed. For example, smoking is a norm in Japan, but because of it's unacceptability here, it's censored (sometimes along with blood). Occasionally when the English dub is created, it leaves out cultural/historical references.

From an article looking at the influence of American culture on anime, and much more of the opposite (like the Matrix and the Ring),

⁵ There are real problems with suicide rates in Japan among high-school students.

Anime series are still regularly edited for overseas TVs and movie screens, although a greater interest in "authentic" Japanese animation and the greater capabilities of DVD and computer technology have resulted in uncut, restored or subtitled video versions for many titles. With the vague odor of culture as a selling point, the tables have turned; a Japanese origin is now emphasized while Western intervention is hidden in the shadows.⁶

Arnold quotes Douglas McGray, a contributor to the magazine 'Foreign Policy', where he wrote an article called "Japan's Gross National Cool". In this he argues that despite its recession and recent misfortunes, Japan is now a bigger cultural influence than when it 'was a global superpower'. I suggesting reading the article for an idea of how Japan's culture is spreading. Japanese cartoons are becoming a colorful illustration of Japan's status as a "perfect globalization nation".⁷

Others agree with these views. I actually found an annual publication on the topic, with an entire article on "Globalizing Manga: From Japan to Hong Kong and Beyond".

Japan, the author says, is a "manga superpower", and has "replaced the United States as the world's largest exporter of comics and animation."⁸

As mentioned before, manga is the 'book' form of anime. While in a typical DVD store or rental you may only find a few samples of anime (if any), manga take over entire bookshelves in bookstores such as Borders and Barnes and Noble. If you enter the latter store almost any time in the afternoon, you will find kids of many ages sitting in the aisles reading the manga. Many fans who like a certain manga series will watch the anime, and visa versa.

In this article, author Wendy Siuyi Wong says;

The role of Japanese manga in counterbalancing Western cultural imperialism and understanding of globalization theory cannot be overstated. More than just an alternative to the hegemonic position of the West, the global flow of manga is the new era of "imagined communities of global media reception." Without question, more studies on this aspect of globalization are needed.

⁶ Arnold, Michael. 2004. Japanese Anime and the Animated Cartoon.
http://www.midnighteye.com/features/animated_cartoon.shtml

⁷ McGray, Douglas. 2002. Japan's Gross National Cool.
<http://www.chass.utoronto.ca/~ikalmar/illustex/japfpmcgray.htm>

⁸ Wong, Wendy Siuyi. 2005. Globalizing Manga: From Japan to Hong Kong and Beyond. *Emerging Worlds of Anime & Manga*, edited by Frenchy Lunning
<http://books.google.com/books?id=CMYwUzMCj-gC&pg=PA42&lpg=PA42&dq=anime+role+in+globalization&source=web&ots=dHzb7DnkRa&sig=IjgFuITmDd-7gyoWnNOJMH9kps&hl=en#PPA41,M1>

The stories we hear about globalization are the ones about McDonald's, Coca-Cola, Starbucks, Wal-Mart and other superpowers spreading American culture, often blamed of driving local companies out of business. Arguments of Globalization are laced with worry of squashing unique cultures under our big American toes. Wong points out that Japan is passing smoothly through this. "Japanese popular culture has been deeply influenced by American media. Rather than being dominated by American products and 'colonized' by America, Japan quickly localized these influences by imitating and partly appropriating the originals."

She marvels over Japan's ability to spread its influence, sometimes without even trying, and quotes Harumi Befu to agree that "by examining Japan's cultural globalization we should be able to uncover processes of globalization that will help to build a general theory of how globalization occurs."

Despite Japan's success at spreading its culture, America doesn't readily accept products from other countries. Wong mentions how all these products must be adapted for local tastes. However, we're becoming more acceptant of Japanese things through use. The audience of Japanese media "might have found 'a mixture of familiarity' in Japanese manga from their imaginations and the collective memories within their own cultural context." Also, "Like manga readers in Asian countries, both European and North American manga and anime audiences "can take on Japanese culture without loving Japan."

Wong quotes an agreement from Anne Allison (author of a book on Japanese influence in Hollywood), who discovered that American children who play with Japanese cultural products have "a greater openness towards, and awareness of, Japan."

She talks about Jiwon Ahn, who wrote a book on anime as 'global cultural products' and says the medium of anime is "the most personal yet social activity, the most schizophrenic yet possibly liberating experience in the context of globalization."

Wong sums up the power of anime here;

Given the long worldwide domination of American cultural products, the challenge being posed by manga and anime can be seen as a good sign that the world is developing more balanced and tolerant practices. At the moment, Japanese cultural products are the only major alternative choice outside the American cultural hegemony.

With this in mind, the idea of stemming the flow of anime to America is ridiculous. However, we can't simply leave it as it is. Bootleggers are violating rights, especially with the things taken

from American companies. Japanese companies have mixed feelings about bootlegs. While they say they don't like them, of course, they also fail to do anything where they might be able to. This is probably because they know the power the bootlegs have, in advertising anime in general. What can we do, then, if we want to keep this cultural integration alive?

In Taiwan, if something is not licensed within a month of it being available in other countries, copying these DVDs is not illegal. People want it, it's not available, the owners aren't going to do anything about it — hence, “bootleggers” provide the equilibrium. It's possible a similar thing could be done over here, but this still wouldn't solve the whole problem.

It may be a far-fetched idea, but I suggest the government give subsidies to anime companies in the United States. By doing so, they will allow these companies to license more shows, and cut prices on the DVDs. When we remember the greatest attribute of bootlegs is that they offer more and are cheaper, we see that these acts together could wipe out the bootleg market. This would give power back to the anime companies, who actually own the products, without decreasing the globalization influence these shows have.

Where would these subsidies come from? Unfortunately, we know very well, the money would be taken from taxpayers, many of which have no interest in or knowledge of anime. But some sacrifices must be made. The subsidies shouldn't go on for long. We can view this as an infant-industry case, where we are hoping that, once giving this leg to stand on, the anime industries will grow and be able to do this themselves. Right now it's a hard industry to be in, as was proven by the shutdown of one of the three largest anime industries, Geneon, only a couple months ago. With the subsidies being offered, more firms may enter the market, bringing more shows over and driving prices down. The producers in Japan win, the producers here win, and the consumers win most of all.

Economics of Anime

For over two decades Japanese Anime has held the top spot in world animation. According to the Japan External Trade Organization (JETRO)⁹, “Over 60% of the animated

⁹ Japan External Trade Organization 2005 Economic Research Department ““Cool” Japan’s Economy Warms Up”
http://www.jetro.go.jp/en/market/report/pdf/2005_27_r.pdf

cartoons broadcast around the world are made in Japan.” Within the United States alone the market is worth roughly \$5 billion dollars (for film and DVD sales). That isn’t including the market for similar merchandise from Anime shows, roughly \$18 billion worldwide (Wharton)¹⁰. The Japanese Animation Industry has shown increasing trends over the pass few decades with prominent releases such as Ghost in the Shell (2004). Spirited Away won the Golden Bear award and also won an Oscar for being the best animated feature film in the United States (JETRO)¹¹. Anime has continued to influence or culture through its art. It is plain to see that Anime has picked up the industry of Japanese culture, just like what Walt Disney did for American culture. It has built global interests in Japanese culture especially in neighboring Asian countries. But unlike Disney the Japanese animation industry has a different management structure and isn’t run by just one company. In fact many types of companies take on the risk of the product long before the actual series or picture is created. These Japanese companies include the production companies, the TV stations, the ad agencies, the toy and game producers all investing into the finished product to minimize loss if a series flops. This has caused much grief over in the American companies when wanting to obtain the rights to manufacture legal copies of Japanese work. Long negotiations delay release times and cause more competition between bootleggers and fansubs. So how and why did Anime get popular in the United States?

As it was said in the introduction the Japanese companies did try to enter the American market early in the 1950’s with cartoons very similar to its Disney inspiration. Astro Boy was one of the cartoons that made in the American market, but due to content other series had a hard time. This caused the Japanese companies to later abandon the market because of American censorship (Leonard)¹². Japanese Anime had made animation into an art form for all ages dealing with complex characters and issues facing society, while in the US cartoons took on a social connotation that they were for children’s entertainment. American companies took to butchering the Japanese shows to eliminate the cultural references and to make them more like

¹⁰ Wharton School 2006 “Anime: Japan’s ‘Gross National Cool’” Knowledge@Wharton <http://knowledge.wharton.upenn.edu/article.cfm?articleid=1613>

¹¹ Japan External Trade Organization 2005 Economic Research Department ““Cool” Japan’s Economy Warms Up” http://www.jetro.go.jp/en/market/report/pdf/2005_27_r.pdf

¹² Leonard, Sean 2005 “Progress against the law: Anime and fandom, with the key to the globalization of culture” International Journal of Cultural Studies <http://ics.sagepub.com/cgi/content/abstract/8/3/281>

the classic happy Hollywood endings. “The Japanese were unsuccessful in accessing the American market because the barriers to entry through their targeted channels were too high” (Leonard). Many Japanese still feel sorry for the censorship surrounding American cartoons; in 1999, Kazuhiko Torishima (editor of Shonen Jump) said, “I feel sorry for American kids stuck in an adult-filtered Disney world.”¹³ In the 1970’s, Japanese companies left the American market and focused more on home industries which seemed much more receptive to the mature content. American audiences having a taste of Japanese Anime found other ways of watching anime, by starting Fansubs. Anime being released only in Japan and neighboring countries was being taped from Japanese television broadcast and then sent via the United States Postal Service to small university clubs. These small factions would watch the anime in a RAW state (without subtitles) and share the video tapes among their friends. Later the clubs and groups wanting to watch the anime grew to such numbers that conventions were held. But because the shows were all in Japanese the conventions were limited in the ability to convey the Japanese culture in an understandable medium. As technology increased fans started the subtitle all of the Anime so that more people could enjoy the Japanese culture. Fansubs are done by non-professional translators that do not expect to get compensation for their work, and usually stop releasing downloads for an anime once it has been licensed in the United States. These avid fans release the anime sometimes within a few days since the airing of the episode in Japan. Consumers go after the fansubs or the bootlegged copies of anime mostly for speed and quality. In fact if the bootleggers and fansubs didn’t exist, it is very possible that anime wouldn’t be available at all within the US, or at least not as prevalent.

Still in the early 1990’s, Japanese culture came back to the US market after the popular game “Pocket Monsters” later known as Pokemon was brought to the states. Pokemon later became an a video game and card game that rocked the nation. It showed how promising the American market could be for other anime and manga. Japan soon found out how much of a fan base they had within the United States and decided to work at getting back in the American markets. The problems that the Japanese face coming into the market are time and money. American producers don’t want to make shows that aren’t going to make them profit, so some

¹³ Kazuhiko Torishima quoted from Fulford, Benjamin 1999 “Anime opens on Main Street” Forbes Magazine
<http://www.forbes.com/global/1999/1018/0221023a.html>

series are overlooked because of the different tastes developed in the American market. The Japanese are still seeing “problems with production costs cutbacks, a lack of animators and a dependence on production outsourcing.”(JETRO)¹⁴ Since it costs roughly \$10,000 to produce one 30 minute TV show we haven’t seen as many series produced over in the US. With the risk of a series most American companies like to see at least 5 to 6 episode to even decide on producing it within the US. This gives both the bootleggers plenty of time to translate and make money on series without giving any of the profit back to the Japanese companies. It gets really difficult to trade intellectual property over borders especially with the way technology has grown.

Global Intellectual Property Rights

“Plainly, the world is a much smaller place than in earlier times. To be effective, IPR protection must occur on a global scale. Certainly, this is easier said than done, but efforts in this direction over time will lead to incremental and important progress. [There must be] global protection of intellectual property rights,” says Eric Sinrod from USA Today ¹⁵ But who wants to deal with not only the United States’ copyright infringement but other countries like China and Taiwan against illegal bootlegging? The United States has actually been trying to crack down on China’s disregard for American copyright laws. In March 2005, the Office of the United States Trade Representative (USTR) said that Japan and the United States had partnered up in “an initiative... aimed at reducing trade in counterfeit and pirated goods as well as on-line piracy.” ¹⁶ Japan is willing to crack down on certain bootlegging cases, but they still are turning a blind eye to fansubs, because they don’t want to alienate the growing market they are developing. Evelyn Dubocq (Viz Media’s Director of Public Relations) has stated numerous times that “[Viz] request[s] cooperation from fans not to promote piracy but to join us in supporting the growth of manga and anime in North America and help VIZ Media to continue to bring the best titles

¹⁴ Japan External Trade Organization (JETRO) 2005 “Japan Animation Industry Trends” (Industrial Report) Japan Economic Monthly

www.jetro.go.jp/en/market/report/pdf/2005_35_r.pdf

¹⁵ Sinrod, Eric J., 2005 “Global protection of intellectual property rights” USA Today

http://www.usatoday.com/tech/columnist/ericjsinrod/2005-05-11-global-ipr_x.htm

¹⁶ The Office of the United States Trade Representative (USTR) 2005 Special 301 Report (Executive Summary)

http://www.ustr.gov/assets/Document_Library/Reports_Publications/2005/2005_Special_301/asset_upload_file195_7636.pdf

from Japan to our fans here in the U.S.” She also sees the problems associated for fansubbers and Bootleggers; for example: This “piracy could undermine [us], leading to fewer anime series being created and even fewer being released in North America.”¹⁷

It seems that Japanese Anime has a long way to go before it can feel at home within the United States, and while most of the time Japanese companies turn a blind eye to bootlegs until the series can be licensed there is more “free” anime out there then ever before. Japan will continue to produce great stories and hopefully it will continue to find solutions to combat copyright infringement. The Global Intellectual Infrastructure needs to change the Japan Times notes this and responded with:

Motivated by lofty goals — upholding the common good, preserving safety and security, compensating creativity — attempts to rein in the disruptive nature of modern Web technologies nonetheless run counter to basic properties of online information... Before the days of YouTube, "broadcast" was a term relegated in Japan to the transmission of television and radio, an area dominated by NHK and major commercial TV and radio stations. Legislation of broadcast media historically strives to balance freedom of expression with the welfare of society as a whole.¹⁸

The proposed outlawing of "illegal downloads," coordinated by a different group under a separate ministry, faces a similar conundrum. Currently in Japan, while reproduction of copyrighted information is illegal, copies for "private use" are allowed. In their bid to make Japan a "nation built on intellectual property," government and industry groups are pushing to change this by revising Article 30 of Japan's Copyright Law, aiming to ban all downloads of copyrighted material... Yet while the government received more than 8,000 public comments — a relatively high number — largely opposing the proposed download policy, officials have described the revision of copyright law as "inevitable."

The laws will change and eventually Japan will be able to receive at least some of the credit they are due.

¹⁷ Dubocq, Evelyn 2006 “Active Anime interviews VIZ Media's Director of Public Relations, Evelyn Dubocq on issues about piracy”

<http://www.activeanime.com/pn/index.php?name=News&file=article&sid=3114>

¹⁸ Salzberg, Chris 2008 “Japan toughens up on Internet regulation” The Japan Times
<http://search.japantimes.co.jp/cgi-bin/nc20080116a1.html>

In the United States, the RIAA claim that illegal file sharing hurts music sales has been criticized by professors at the University of North Carolina. They argue that RIAA studies are typically biased since they were based on untrustworthy data. They also point out various reasons why file sharing doesn't hurt the record industry as much as is expected, including the assumption that most people who are willing to download copious amounts of media from the internet wouldn't buy any of it in the first place (no lost revenue, zero marginal cost).¹⁹

Intellectual Property Rights

Title 17 of the U.S. Code states that "it is illegal to make or distribute copies of copyrighted material without authorization" (Section 106). The only exception is the users' right to make a backup copy for archival purposes (Section 117).

Bootlegging is illegal, and it is illegal because it is wrong (not merely wrong because it's illegal). Someone made something through their own hard work and time, and this has been taken without payment. It violates our notion of property; you have a right to keep and protect or sell that which you own. If you can steal something, spending much less effort to get it than the person who made or worked for it, what incentive do you have to create something yourself? And if something is stolen, what incentive does the original producer have for making it in the first place? Copying the content of the original DVDs, stealing the work of producers, directors, seiyuu (voice actors), and other crew, and selling them without permission, is wrong.

How do people rationalize their actions, then? Bootlegs, for most fans, are simply samplers. If you like the sampler, you buy the real thing. This is especially true if it's a series particularly loved, or the bootlegged version has a problem. Also, despite what some think, people are usually good and have a sense of duty. They feel guilty that the set they have is not legal, and purchase the licensed set because of that. A real problem with this arises when people do not see it as theft; look at how many people download music from the internet without blinking an ethical eye.

¹⁹ Ronald Roach (2004). Record Industry Sales Not Hurt by File-Sharing, Professors Say. *Black Issues in Higher Education*, 21(8), 82. Retrieved April 19, 2008, from Ethnic NewsWatch (ENW) database. (Document ID: 798162671).

“Lord Hugh Cecil... declares that whether private property is mischievous or not, society cannot interfere with it, because to interfere with it is theft, and theft is wicked.”²⁰

Conclusion

In the US, it would be hard to imagine if anime would enjoy the success and market size it has today if it weren't for pioneering file sharers with VCRs. This matured fanbase encouraged new companies to flourish in order to redistribute media. Where these companies cannot meet the demand, fansubbing continues without money changing hands and arguably without harming the industry. Fansubbing can also benefit the anime industry by lowering the barriers to entry of new material into the US markets. This can allow some Japanese firms to test the waters in our country with zero marginal costs above and beyond developing films in the first place for domestic consumption. American's have been exposed to original Japanese culture because of anime, and it appears that many have benefited from this exchange.

But as always with positives also come negatives. While it is possible that bootlegs of previously unreleased material in the US can further expose new audiences to anime, and that since many anime consumers are well versed with living in a grey area of legality when they struggle to obtain new material, they might purchase these if no convenient alternatives exist. However, bootlegged DVD sets sold for profit can directly undermine the Japanese anime industry's ability to generate revenue through US distributors. Perhaps the worst part of this issue is that the Japanese anime studios haven't done enough to get their wares to the US in the past. By silently ignoring fansubbing, which seems to have been a calculated gamble on their part, the anime industry allowed a new culture of intellectual property theft to flourish. Lucky for them it worked well for the most part in that it developed a fanbase, but it also helped foster an expectation that paying for bootlegged media is an acceptable practice. While federal subsidizing of anime distributions seems like a radical idea, it likely wouldn't be the strangest thing that our tax dollars are spent on. At least in this case, it results in a culturally diverse exchange of ideas seldom seen before. Would it not be intriguing to see anime cartoons on PBS in between episodes of Masterpiece Theater and Sherlock Holmes?

²⁰ quoted from the Acquisitive Society, Harvest 1920, Tawney (R.H.) pg 23

