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Lost Opportunities: Is Copyright Disincentivizing Creativity?

My background in remix art

I am a self employed writer and cartoonist. As an unmonetized hobby, I create remix art in the form of novels (fanfiction), images (fan art), comics, videos, and a videogame. The content I remix is drawn from popular TV shows, games, movies, etc. Whether my activities constitute fair use I could not say; at any rate, the legal teams of the corporations whose work I remix seem to view them as illegal. And, since they alone have the money and lawyers to get justice in the court system, I am forced to assume that their view of the situation is the de facto law.

I have never made money from my hobbyist activities. I have several novels I am not selling; several videos that I am not collecting ad revenue from; and many cartoons that I am not making into comic books and selling. Finally, I am a member of a volunteer group making a fan game. We actually received a license from the fan-friendly IP holders to make the videogame, but needless to say we are not allowed to sell our game or profit from it in any way.

One final remix activity that I do not currently participate in (but intend to soon) is making 3D printed objects, i.e. sculptures, toys, action figures etc. I plan to scan some of the copyrighted figurines I own, tweak their colors in the free 3D modeling program Blender, then reprint the modified figurines. Essentially this practice is a digitally enhanced version of the longstanding remix practice of “making custom builds” or “kitbashing.” I also intend to share the 3D files I create with other fans on UGC sites like Thingiverse, DeviantArt, etc. so that they can print out their own sculptures and toys. If it weren't for the threat of a lawsuit, I would sell the figurines directly to other users on Shapeways (a 3D print on demand service).

As both a “traditional” creator and a remix creator, I daily experience the dichotomy between the two sides of copyright. As a traditional creator, copyright allows me to protect my work and make money. As a remix creator, copyright threatens to censor my work and denies me a living. With one hand, copyright gives; with the other, it takes away.

Since I currently have more nonsellable remix art than sellable traditional art, copyright actually results in a net negative for me. It costs me more money than it earns. Whereas piracy is measured in lost sales, the cost of the current anti-remix copyright regime is measured in sales that are not made at all because I cannot sell my work, period.

In this comment, I would like to focus on three questions: 1.) How does the current legal climate affect remix art? 2.) What are some of the problems with the idea of remix licensing? 3.) How will ongoing technological development shape the general public's use (or non-use) of licenses?

A failed licensing model for remix art

Before discussing some of the ways in which remix art can be encouraged to thrive, I would like to discuss a recent failed attempt to monetize fanfiction, aka “fanfic.” Fanfic is a popular form of writing in which writers create new stories about existing copyrighted characters such as Luke Skywalker or Frodo. An analysis of Amazon's failure to monetize fanfic will be helpful in understanding some of the problems with licensing.

Recently the book, Fifty Shades of Grey became a megabestseller. The remarkable thing about the book is that it was actually “barcode-stripped” Twilight fanfiction—i.e. fanfic in which the names of the characters and settings had been altered so as to conceal the book's origins as a remix work. Publishers immediately realized that if Stephenie Meyer, the author of Twilight, had been able to collect a percentage of the profits made by the author of Fifty Shades of Grey, she (and her publisher) could have made a tidy profit. At this point, publishers began to consider how to make money off of fanfiction.

Amazon, the internet sales giant, came up with a method by which IP holders could license their IP to fanfic writers in a standardized way. The idea was that writers could sign up for a free license with Amazon and sell their fanfics through the Kindle Worlds program. The conditions were these: Amazon would examine the fanfic to ensure quality, appropriateness, and legality; Amazon would choose the price at which to sell the author's fanfic; and, depending on the story's length, Amazon would collect either 65 or 80% of the author's profits for themselves and the IP holder. The author would also give up many rights to Amazon in perpetuity, with license terms that were widely seen as exploitative by author's rights advocates.

Some noted that Amazon appeared to be taking advantage of the questionable legal status of fanfic in order to force authors to accept poor terms. (By comparison to the above deal, Amazon will give 70% royalties to authors of non-remix stories, taking only a 30% cut for themselves.) Copyright law grants IP holders a legal monopoly on the reuse of their IP; as such, remix artists have no recourse but to accept whatever terms copyright holders demand, even if those demands would be considered unfair or unreasonable in a free market. And not only can IP holders deny remix artists the means to sell their work: they can also charge them with copyright violations; sue them for unrealistically high statutory damages; and even secure a judicial order for the artist's work to be destroyed. Perhaps it was this complete lack of rights that led one commentator on the situation to call remix artists “an artistic underclass.”

After several months of operation, Amazon's Kindle Worlds marketplace does not show the continuous, exciting UGC activity of a typical fanfic site. If the website were a playground, the Kindle Worlds market would have five quiet, clean, polite children carefully playing together while helicopter parents hovered overhead. Meanwhile, at the community-run fanfic site across the road, mobs of screaming children are climbing unsupervised over the swingsets and throwing gravel at each other. Whatever Amazon has created, there is no life in it. Why is this?

No one goes to Amazon to enjoy themselves or talk with their friends. On a real fanfic site, there are writing contests and games, other fans to chat with, free daily story updates from your favorite authors, instant reviews and “likes” on your work, feedback from “beta readers” who provide advice on how to improve your story, discussion groups where you can trade ideas with fellow fans, a huge free archive

of previously published work to browse through, constantly updated user blogs, group writing projects, and more. Amazon doesn't have any of that. They just *sell books*. This is the main reason why Amazon has not succeeded in monetizing the fanfic marketplace: when authors were presented with the choice between publishing with Amazon for money or publishing on fanfic sites for rewards like social engagement, entertainment and attention, they overwhelmingly chose the latter alternative. It will take more than a license to truly monetize fanfics. A working monetization solution will also need to provide a complete social experience for the writers.

Of course, there is no reason why a corporation such as Walt Disney or DC Comics could not create their own fanfiction portal, complete with all the features one expects from such a site. They could then offer a fanfic license and collect a cut of the profits from any authors publishing through their site. However, there are reasons why they might be reluctant to do so. Furthermore, there are also reasons why fans might be reluctant to frequent such sites or buy fanfiction from them.

There was a time when Walt Disney would not depict handicapped or sick people in its comics because they believed it would detract from the idealized world they were trying to create. Clearly, Walt Disney cares a great deal about their public image. Imagine, if you will, that you are a young person visiting the official Walt Disney fanfic portal. You open a G-rated story with five stars, and discover that it tells the tale of how--despite initial conflict--the Little Mermaid falls in love with Ursula the Sea Witch, and also Snow White, and the three of them live happily ever after in a polygamous marriage. The story contains no explicit content; it is simply a three-way homosexual romance, nothing out of the ordinary in the world of fanfic. In the Supernatural fandom, where the two main characters are brothers, the brothers are often shown as being in a romantic relationship with each other. In the Chronicles of Narnia fandom, where many of the main characters are animals, the animals are depicted as being in romantic relationships with humans. Here's the question: is Walt Disney ready to host fanfiction containing depictions of homosexuality, polygamy, incest, and bestiality—even if said works are actually G-rated? I very, very much doubt it.

Thus, Walt Disney will be forced to moderate their content, just as Amazon does. This will obviously be a blow for the censored remix artists, who will be deprived of the means of obtaining a legal venue to sell their work. It might also open up Walt Disney to discrimination lawsuits. But there is also an interesting paradox here, because the content that Walt Disney censors will actually be the best written, best selling content available.

I recently conducted an informal study on fanfic in order to determine if there was a relationship between writing quality, G/PG/PG-13/R ratings, and societally inacceptable content (homosexuality, polygamy, etc.). The sample included 50 randomly selected fanfics drawn from one particular fandom. The fanfics were hosted on the internet's most popular fanfic site, fanfiction.net.

I found that about half of the fanfics contained societally inacceptable content and about one third had a Mature rating. As writing quality increased, fanfiction was more likely both to have a Mature rating and to contain societally inacceptable content. The progression towards Mature ratings probably reflects the journey of young writers as they grow up into adults and begin smoking, drinking, having sex, and watching R-rated movies. The progression towards societally inacceptable content probably reflects the writer's gradual acculturation to the social norms of the fandom. (Eating human flesh doesn't seem so shocking after you've been living with a tribe of cannibals for years.)

The inevitable conclusion is that the best written (and most lucrative) fanfics will be banned from corporate websites and refused a license if possible. IP holders would basically be skimming the cream off the top and throwing it away. Note that this applies specifically to Fifty Shades of Grey, which features BDSM, i.e. Bondage and Discipline. BDSM is defined as, "A variety of erotic practices involving dominance and submission, role-playing, restraint, and other interpersonal dynamics." Both IP holders hoping to profit from megabestselling works like Fifty Shades of Grey and remix artists hoping to create freely will be disappointed under this arrangement. If the random sample used in my study could be taken as representative, then fully one third to one half of remix literature would be censored and unmonetizable, or else the authors would be forced to baudlerize their work to comply with license requirements.

Let us assume for the sake of argument that Walt Disney does succeed in getting a societally acceptable fanfic portal running, and hundreds of fans sign up to publish with them. But here we come to the devil in the details. How is a buyer to know if a particular fanfic is any good? The quality of fanfic is so variable—and often so poor—that a good half of it is not worth reading, much less paying money for (especially after all the highest quality fanfics have been weeded out on moral grounds). There are other pertinent questions that a reader would like to know before laying down money: "Is this fanfic about a character that I like?" "Is said character portrayed in the specific way that I like?" "Is the information given about ratings, content, etc. actually accurate?" Such questions are difficult to answer without actually opening the fanfic to check.

Another problem customers face is most longer fanfics are published a chapter at a time rather than all at once; it is also common for fanfics to be left unfinished. Customers who pay for a fanfic only to have it left unfinished may will think twice before buying again.

A potential fanfic buyer faces many dilemmas that do not apply to other book buyers. Half of all fanfic will be poorly written; most fanfic will revolve around a character the fan isn't interested in reading about, and half of all fanfic will never be finished. All these factors greatly complicate a customer's decision of whether or not to buy.

There are many potential solutions to this problem, of course: a rating system; giving the first chapter away as a free sample; a "Search Inside" feature like Amazon provides; or a "recommendations" feature. But none of that is half so convenient, fast, or easy as just opening up the fanfic to see what is inside. When browsing through fanfics, I open 20 stories in 20 tabs, take a cursory glance at each one, then close all but three or four of them because they were too poorly written or dealt with topics outside my realm of interest. This "shot gun approach" fails on an Amazon system, despite all of the features that the company helpfully includes for assessing quality before purchase.

When faced with such inconvenience and uncertainty, I suspect that the average reader will become risk averse. Rather than wasting money on purchases that may turn out to be worthless or spending excessive amounts of time trying to determine if a fanfic is really worth paying for, they will cherry pick only the very best and most highly recommended fanfics. For the rest of their reading needs, they will go to free sites.

Under this system, only the most popular authors will make money; the middling and amateur authors will not be able to monetize their work. After reaping poor returns, the less popular authors will probably return to the free sites, where at least they will enjoy the attention and praise of their

readership--if not their money. After the exodus of the middling and poor authors, Walt Disney's site will cater to only the top 1% of all authors. At this point it will look exactly like Amazon's Kindle Worlds marketplace: controlled, quiet, perfect, and dead. All the action and activity will have moved elsewhere. Needless to say, the vast amount of remix artists will not be making money under this system, despite the availability of licenses and the good intentions of the company.

To be optimally successful, a system of remix licensing should not force artists to use a single controlled website or a single monetization strategy. Rather, the license should reach artists on the sites they already frequent and allow them to select their own business models. Such a license would need to allow remix creators to continue to share their work on popular sites like fanfiction.net, Wattpad, DeviantArt, YouTube, Tumblr, Facebook, etc.

But in an absence of a IP holder controlled website, how would rights owners determine, for example, which pseudonomous DeviantArt users have a license to remix their work? The vast majority of fan artists do not publish under their real names, nor is any contact information provided. If IP owners cannot determine which users have a license, then how can they collect a cut of the sales or prosecute remix artists who earn money without permission? Furthermore, how can remix artists sell their work on popular sites like Facebook or fanfiction.net? These sites don't even have a “Checkout” or “Paypal Donate” button anwhere. Is it possible for a remix artist to earn money online without the services of a store provider?

A brief primer on bitcoin

You asked, “What specific changes to the law, if any, should be considered? To what extent are there approaches that do not require legislation that could constructively address these [remix] issues?”

Does “give up all hope of regulating it” count as an approach that doesn't require legislation? Copyright law has historically been sufficient to stem large scale commercial infringement by companies, but it has never stopped mass infringement by ordinary people.

- When the process of creating and sharing text over the internet became simple and user friendly, people immediately began to do so—ignoring copyright law as quickly as they could cut and paste.
- When the process of creating and sharing digital images over the internet became simple and user friendly, people immediately began to do so—trampling on the rights of photographers and artists.
- When the process of creating and sharing movies and music over the internet became simple and user friendly, people immediately began to do so—flooding the web with millions of infringing YouTube videos to the accompaniment of unauthorized music.
- When the process of monetizing every story, video, and piece of artwork online becomes simple and user friendly, people will immediately begin to monetize their work—regardless of what copyright law may allow.

Most popular fanfic/fan art sites do not make it easy or convenient for creators to monetize their work. Some sites explicitly forbid monetization in their terms of use, despite the fact that some fan submissions are perfectly legal (i.e. Pride and Prejudice fanfic is legal because the book has fallen into the public domain). Yet even for sites like DeviantArt, Wattpad and YouTube, which include monetization features like print sales, crowdfunding or ad revenue respectively, there is no simple way for an artist to add a “Donate” button next to their story, video, or artwork. Furthermore, in order for users to do business on these sites, they must first provide their real name, tax information, and a verified bank account—a big turn off for the average creator, who simply wants to share their work without any extra hassle. Finally, the sites take a middleman's cut of the creator's profits.

In sum, artists who wish to monetize their work on UGC sites face an inconvenient and intrusive process. Official channels are often difficult to use and lack useful features (such as a basic “Donate” button). Furthermore, many remix-dedicated sites do not provide any monetization options at all, or actively forbid monetization in their terms of use.

Due to technological development, this situation is set to change in the next few years. Bitcoin, an increasingly popular internet currency (see here for more information: http://bitcoin.org/en/faq), will make it possible to monetize any website where a user can enter text or insert a scannable QR code. In fact, I can monetize the document you're reading now. If would like to send me money, simply copy/paste my bitcoin address, 1HJQxpZrdVg3wTRjrtd2aoaZDSdDRVqSrH, into your bitcoin wallet (you can get one here: http://bitcoin.org/en/choose-your-wallet). Type the amount of bitcoins you would like to give me and click send; they will arrive in my wallet within minutes. I will put the money to good use buying merchandise at online retailers. You can already pay directly in bitcoin at companies like Reddit, Foodler, Wordpress, OK Cupid, Baidu and countless others. Due to the

merchant friendly nature of the currency (fees are less than 1%, there are no geographical restrictions, and chargebacks are nonexistant), bitcoins are predicted to enjoy growing popularity with online sellers.

A bitcoin wallet and its associated bitcoin address(es) are obtained as easily and anonymously as an e-mail account and e-mail address. Since bitcoin requires no special preconditions for use, it is possible to make online transactions without a credit card, bank account, driver's license, address, or phone number. For obvious reasons, many illegal websites already take advantage of bitcoin's anonymity to sell drugs, guns, contraband, and yes, copyrighted materials. (There is even a bitcoin address posted at the bottom of the Pirate Bay main page.) Bitcoin users do not require the services of intermediaries (Paypal, credit cards, banks) to enjoy the benefits of online commerce, nor do they need a working knowledge of javascript, a $25/month online store, or a cumbersome tax registration with the IRS. As such, bitcoin is an ideal way to make money on sites that lack built-in monetization options.

When bitcoins become widely used, it will be easy for anyone—anyone—to monetize their story, picture or video by prominently displaying a bitcoin address or QR code alongside it. Soon UGC sites that have traditionally been unmonetized (and unmonetizable by design or decree) will suddenly become as easy to monetize as this document. (Are you sure you don't want to send me money? It's as easy as sending me an e-mail: 1HJQxpZrdVg3wTRjrtd2aoaZDSdDRVqSrH Donate within the next seven days and I'll send you a free copy of my satirical essay, “Why We Need Tougher Mind Control Laws to Stop Piracy.” Give more than $5 in bitcoins, and I'll throw in the associated prize-winning story, “A Penny for Your Thoughts.” A perfect Christmas gift for the copyright-obsessed employee in the office next door! Please be sure to put your preferred e-mail address in donation's text field so that I'll know where to mail your gift.)

If site owners wish to stop their users from exchanging bitcoin addresses and soliciting payments, they will have to install software to scan for pictorial QR codes and text addresses. However, users have shown ingenuity in circumventing such filters, i.e swear word filters are commonly tricked by using “@” instead of “a” and “$$” for “ss.” In addition, human readable bitcoin addresses are on the way; this means that bitcoin addresses will someday look like “Tom's Cool Donation Pool – Donate Here!” instead of a string of random letters and numbers. Thus it will eventually be almost impossible for web filters to detect or block donation addresses. As for the algorithmic bots that copyright enforcement companies use to take down pirated movies, games, etc., these machines will not be able to differentiate between human readable bitcoin addresses and normal text. Without continuous monitoring by actual paid humans, it will not be possible to stop users from posting bitcoin addresses and receiving payments.

What new business models could bitcoin enable for remix artists?

If you click on an e-mail address displayed on a website, your e-mail client will automatically pop up and provide a blank e-mail with the address prefilled in the Send field. This interoperability between your browser and e-mail client is possible thanks to a common set of web standards. But would it be possible to do the same thing for payments? The answer is yes; in fact, a similar addition to the web standards is in the making for bitcoin. The idea is that when a user clicks on a bitcoin address, their virtual wallet will open automatically with the Send field prefilled—just like for e-mail.

Let's take this one step further. E-mail clients allow users to set up an automated response like "I'm on vacation till the 28th." It will eventually be possible to set up similar automated responses for bitcoin wallets. However, these autoresponses will not just send "I'm away from the office" notices. Rather, they will perform actions like sending a thank you message, returning a receipt, sharing a password for a site, or providing a file download such as a musical track, video, or PDF. Users will be able to customize autoresponses for various kinds of triggers, i.e. a payment of a certain amount made to a certain address will trigger the bitcoin wallet to send back a receipt with an attached PDF, while a payment made to a different address will trigger the wallet to send back a thank you note. The bitcoin wallet is in essence behavinglike a digital a store: a user is receiving money and sending back merchandise (a file download, password-protected link, etc.). Bitcoin will make running an online store as simple, free and painless as using Gmail or Outlook Express. The phrase "everybody is a creator" will become "everybody is a small business owner."

Obviously this development will have a major impact on online commerce as a whole, but consider the scenario that it enables for remix artists who want to monetize their work. It no longer matters that DeviantArt has no donate button or that fanfiction.net doesn't have a crowdsourcing feature. A fanfic writer can simply paste the following statement at the top of their story, "Send me donations at 'My Awesome Donation Pool'" or "Help me crowdfund a hard copy version of this story! If we can raise $600, I can..." Their bitcoin wallet will handle the rest automatically; the UGC sites don't even come into the equation. There is no registration required; no need to share a cut with the middleman; and no need to give out one's personal information online. Bitcoin is an ideal financial instrument for casual creators and consumers.

To license remix artists, you'll have to catch them first

Bitcoin is also an ideal financial instrument for piracy. For example, a remix artist might create a popular video and publish it on YouTube. They decide to upload the video at an internet cafe in order to hide their IP address. The reason they conceal their online identity is that instead of getting a license, they opted to put a QR code for a bitcoin address at the end of their video. They promise viewers that they will release a sequel when a certain donation amount is reached (due to the nature of bitcoin, it is possible to see how much money has been deposited at a certain address unless steps for concealment are actively taken. Thus users can see how much more money needs to be donated to the pool and verify whether the creator has kept their promise or not).

In this scenario, the IP holder receives nothing, while the video's creator makes 100% anonymous, tax-free profit. When one considers that Amazon asks remix authors to give up 65 – 80% of their profits, it becomes obvious why this route might be tempting. True, eventually the infringing content might be discovered and removed, but what would stop the artist from republishing it under a different name, or

even publishing it on a site like Pirate Bay? (Thanks to the QR code, the creator can continue to make money even on illicit sites. Therefore peer-to-peer sharing simply increases their exposure and hence their profits.) The artist-as-pirate scenario will become increasingly attractive if licenses are exploitative or difficult to obtain.

Business models for the fans, by the fans

Traditional business models do not necessarily provide a good fit for existing remix art practices. For instance, serialization is the norm for fanfic, but Amazon's Kindle Worlds program does not provide any options for this model. Bitcoin, by contrast, is a flexible tool that will allow artists to choose their own monetization strategy.

Suppose an author wanted to monetize a free serial fanfic on a site that does not provide built-in monetization options. To a traditional publishing company, the idea of making money under such circumstances would be well nigh unthinkable, but to the forward looking remix author, it is a simply a matter of posting a bitcoin address at the top of the fic with the explanation that, "When I reach $20 in BTC, I'll release the next chapter. If we reach the goal in a week, I'll also throw in a free comic on my DeviantArt page! Those who donate $2 or more will receive a sneak peek at the next chapter, while the first person to donate $10 or more will get to name the new character who turns up in the next chapter." There might even be bidding on the plot of the story, i.e. "Should Archie go to the prom with Betty or Veronica? Send me a donation with the name of the girl he should choose. Whichever girl receives the most donations by October 18th will be the victor. 20% of the proceeds will go to buy comics for the Children's Reading Charity." The author could even create a market for previews, bonus content, commentary, deleted scenes and incentives.

Since bitcoin has such very low transaction fees (<1% per transaction), it is practical for websites to use micropayments. A micropayment-enabled fan site could allow users to browse archives without restrictions—after the user signs up and agrees to give $0.03 in BTC for each chapter they read. This strategy could also work well with an advertising or subscription-based Spotify model. The illegal book site Torboox ran into the interesting problem of earning *too much* revenue this way (see full story here: https://torrentfreak.com/too-much-cash-causes-pirate-admin-to-quit-43k-ebook-dump-imminent-131103/).

One other monetization strategy that bitcoin simplifies is the commissions market. Fan authors and artists commonly accept "commissions" to make works at a set fee (for example, $5 per 400 words or $20 for a black and white ink drawing). However, the commissions market has never been fully exploited in the sense of a website devoted purely to such activity. The closest equivalent is the FandomAid page, where fans offer to write stories or draw pictures in exchange for payments made to charitable causes. Doubtless the reason this market remained untouched is the questionable legal status of remix works. Indeed, fan charity drives have been shut down by IP holders in the past.

Could remix art hold the key to piracy-proof business models?

Since bitcoin-based business methods will be designed by remix artists rather than for them, the methods will evolve organically as the community experiments and develops its own best-fit models. Fan creators may discover that Amazon's pay-to-read model is not the only way—or even the best way—to monetize their work.

One of the interesting traits of fanfiction writers is that they do not, by and large, worry about piracy. While traditional writers have struggled to adapt to the idea that their books can be shared freely on the internet without compensation, fanfic writers take it for granted that their books can be shared freely on the internet without compensation—because that is the only way they have ever done shared their books. Fanfic monetization strategies that emerge from this "free-as-default" mindset will probably be better suited to the realities of the internet than the pay-to-read mindset of traditional publishers.

One natural consequence of the current fanfic publication model is that readers have few incentives to search out pirated fanfics. Fanfics are free, have no restrictive DRM, are accessible with a single click, and can easily be discovered on Google. Furthermore, since fanfic authors continuously update, edit, and improve their work over the course of years (as opposed to a creating a single, definitive edition that remains unchanged forever), readers have an incentive to seek out the original author's most up-to-date version as opposed to a pirated alternative that may not have the most recent content. (Who would pirate a book which didn't include the last five chapters?) Fanfic authors also release short 1 - 4 page stories ("drabbles" and "shorts") that are marginally related their longer works. Readers who wish to enjoy all the drabbles and shorts that go with a story need to have access to the author's real user profile and its updated list of works. For all these reasons, fanfic is much more resistant to piracy than traditional books.

It is important that fan creators be allowed to experiment with business models that work natively on the internet. Instead of trying to squeeze new wine into old wineskins, new forms of content should be allowed find new business models that fit them. Perhaps traditional writers could learn a thing or two from fanfic writers.

Amazon vs. Bitcoin

Let's briefly contrast the Amazon licensing model with bitcoin's free model.

- **Amazon model:** Author can publish in Kindle Worlds and only in Kindle Worlds.
- **Bitcoin model:** User can publish on any website they feel comfortable with.

- **Amazon model:** Amazon & the IP holder take a 65 – 80% cut of the user's profits; the IRS gets the rest.
- **Bitcoin model:** User keeps 100% of the profits for themselves.

- **Amazon model:** Amazon decides what price the user's work will be sold for.
- **Bitcoin model:** User decides what price they will sell their work for.

- **Amazon model:** User must use the standard pay-to-read model.
- **Bitcoin model:** User can use whatever business model suits them best.

- **Amazon model:** User must go through a lengthy sign up process, verify their identity, and get a license before publishing. User must give up their real name, bank account number, and full contact information.
- **Bitcoin model:** User just publishes; no sign up or verification is required. User maintains comfortable internet anonymity.

- **Amazon model:** User's work is scrutinized by Amazon for quality, appropriateness and legality before publication.
- **Bitcoin model:** User just publishes, utterly ignoring quality, appropriateness and legality. Other users decide if the work is valuable or not.

- **Amazon model:** User signs contract giving up most of their rights to Amazon & co. in perpetuity.
- **Bitcoin model:** User keeps all rights for themselves.

- **Amazon model:** Authors and readers don't interact on website. Site lacks interesting activities and social engagement. There is limited choice; users publish on Kindle Worlds or not at all.
- **Bitcoin model:** Authors and readers are knit together by social bonds. Sites have ongoing activities and entertainment. There is a huge variety of publication sites to choose from. The user can make their own site if they aren't satisfied with any of the current offerings.

It's pretty obvious that Amazon's fanfic store is a cassette player in an iPod world. The average person will go for simplicity, convenience, freedom, profits, choice, and enjoyment every time. Licenses are a dead end.

Given the rise of bitcoin, should there be any changes to the law to enable remix art?

Derivative works should be fully legalized without any need for a license--whether compulsory, micro or otherwise. The remix artist should not be required to give any compensation to the IP holder. This is in line with the expectations and practices of the vast majority of remix creators, and shows consistency with current law regarding parody. (It is perfectly legal for a parodist to "steal" a copyrighted work, mock it savagely, then sell the resulting product for profit. No one objects to this practice, yet when a remix artist wants to create something new with old materials, there are threats and fines. This a clear double standard.)

What will happen if copyright law does not adapt to meet the expectations of everyday users who monetize their work with bitcoin?

One of the interesting things about bitcoin is that it is an ideal currency for children. Paypal, Visa, etc, require an ID, bank account, and tax information. Children have no bank account, are too young to apply for a credit card, and are generally discouraged from giving out personal information online for fear of pedophiles. For children there is only one real financial option: cash. Parents pay allowances to their children in cash for several reasons: 1.) Cash is easy and convenient. 2.) Cash has a built-in spending control. The child can't go into debt as they could with a credit card. 3.) Parents have no choice—there is no other payment system that minors can use.

Bitcoin provides all three of these features, and makes an effective substitute for cash. If a parent gets their child a bitcoin account, they won't have to go to the hassle of breaking out their credit card every time the child wants to make an online purchase. Instead, the child can simply use their own allowance to buy the item themselves. Many children will doubtless prefer bitcoin over cash because it opens up the internet's game arcades (game apps) to them. An additional benefit is that bitcoin allows parents to transfer money to their children instanteously from a distance. This comes in handy if the child forgets their lunch money or their field trip fee.

How does the concept of children using bitcoin fit in with remix art? The connection is this: I started writing fanfics when I was in elementary school. By the time I reached 7th-8th grade, I was posting my works on internet sites. There were many users my own age on the sites I frequented; apparently we headed for remix sites as soon as we had access to the internet. Even then, I knew how to post my e-mail address at the top of my fanfics to receive feedback. It would have been just as easy for me to include a bitcoin address.

I am convinced that nothing, nothing, is going to stop kids from writing fanfic and posting fan art online. And since the youth of tomorrow will have bitcoin addresses as well as e-mail addresses, how are they to be stopped from monetizing their work? Do we really expect 7th graders to learn copyright law, apply for the appropriate license, pay fees to the original IP holders, or give a cut of their income to distant corporations and the IRS? Do we expect it from 8th graders? 9th graders? 10th graders? The average adult is completely unaware of what copyright law says. In fact, most of the remix artists I know (even the adults) are blissfully unaware that they open themselves up to a lawsuit every time they publish. They believe that it must be legal to publish remix art since nobody is taking their work down. “Everybody's doing it, so it can't be wrong,” they reason. Someday that argument will hold true for

collecting money on remix art. Indeed, this is already the case on DeviantArt and Etsy, where monetized remix art is a common feature of the landscape. Norms before more permissive every year.

For the sake of argument, let us pretend that we expect a freshman college student to be able to figure out who the rights holder(s) are, apply for a license, pay any required fees, etc. However, let us also suppose that the student has been using the simple, free, user-friendly bitcoin monetization method since they were a child (because the legal monetization options were too complicated and intimidating for children). What is going to make the now-adult give up their bitcoin monetization habit and start complying with copyright law? What will precipitate their conversion from the "unofficial economy" to the licensed economy?

Enforcement, perhaps? But how well will this actually work? Recently in Finland, a nine year old girl went searching for a favorite song and found it on Pirate Bay. Later the police came to the young pirate's house and seized her Winnie the Pooh laptop for illegal downloading. The result? A swell of popular outrage among Finnish citizens that eventually resulted in a crowdsourced citizen's initiative to reform the nation's copyright laws. Legislators will be voting on said initiative later this year.

As they say, "On the internet, no one knows you're a dog." So how will enforcement agents (or enforcement algorithms, as the case may be) tell the difference between innocent young artists and hardened adult artists? Most children don't accidentally download torrents, but nearly all children draw pictures and write stories about Batman, Spongebob, and My Little Pony. What will happen when Disney accidentally sues a twelve year old for the crime of soliciting bitcoins donations on her fanfic about Winnie the Pooh? ("I just wanted money to play Angry Birds," the tearful child told reporters.) It would be absurd to expect parents to explain to their children that they aren't allowed to post doodles of Batman online, "because when you draw pictures of other people's characters, it's stealing." Legislators should think long and hard before regulating an activity that children do on a weekly basis.

Does it matter what nine year olds do online? Yes, because nine year olds turn into ten year olds, and ten year olds become eleven year olds, and then finally you have a surly teenager demanding, "Why the bleep should I have to get a freaking license for something I've been doing with bitcoin all my life? This is stupid!" Then they'll keep ignoring the law, just as they have since they were children. Once users become addicted to the simplicity, flexibility and convenience offered by bitcoin, it will be difficult to convince them that they should go back to the old way of doing things.

Yet it is important to note that most remix artists do not set out to deliberately flaunt the law; they only want to create art. Still, with time and abuse—and with real money at stake—this mindset could change. When an IP holder or UGC host takes down fan content (for example, an estimated 8,000 stories were recently purged from fanfiction.net by the site's owners), the forbidden content will often pop up again on a locked, secret website accessible only to trusted members. If this trend were combined with the rise of illegal online marketplaces such as Silk Road and its darknet clones, the result could be a black marketplace for remix art. Remix artists whose work is denied a license or who are otherwise locked out of the legal economy may learn to use anonymizing tools to monetize their work on sites that are not receptive to DMCA claims. Bitcoins are already the currency of choice for such sites.

If remix laws and licensing aren't simple enough for everyone to use, then both will be ignored by the online masses. A casual UGC creator isn't going to say to themselves, "Hm, I want to post my sketch

of Garfield online. But first I'd better go read up on what the law says about remix works, obtain a license, verify my true identity, and submit my work to Jim Davis' database of authorized remix works." No, the user just posts the picture. Even educated remix artists who actually know what the law says will rationalize to themselves, "I just want to post one picture of Garfield. I don't want to have to get a whole license just for one picture. It's no big deal anyway; I'm only gonna make a few dollars." Then their work will go viral and they'll get slammed with a lawsuit.

In the face of mass infringement, license enforcement will probably occur on a reactive basis: when stories, videos, and other fan projects become too popular, corporate lawyers will turn up to enforce copyright law. There will be a double standard when it comes to enforcement. Most average users will be allowed to infringe all they want (as they do now), unaware that the law makes them criminals. Meanwhile, a select handful of users will be legally licensed and held to account for their actions. I suspect that only an elite 1% will ever go to the hassle of getting a license, unless said license is a one click sign up, a check box for a legal document that no one will read, and an e-mail confirmation. Meanwhile, Bitcoin is simple enough for anyone who understands e-mail to use and makes monetization as easy as "copy, paste, post." I think history has already proven that laziness trumps obedience to copyright law every time.

Despite sporadic enforcement efforts, there will be no real way to stop the tide of unlicensed monetization. One of the main problems IP holders will face is that there will be no easy way to tell that user Bob_28942 has a license while user FanGirl22 doesn't. (I assume that the two users are not publishing on an IP holder controlled website.) True, the IP holder could create a database of officially licensed remix works and compare these to users' published works. This sounds nice on paper, but in reality it is a very ambiguous situation, especially considering the unique properties of bitcoin. For instance, is it infringement if:

- A user displays three remix pictures on a webpage, but only one of them is authorized, and there are revenue-generating advertisements on the side of page.
- The first chapter of a story is authorized, but the next ten chapters are unauthorized.
- A user posts a bitcoin address on their site profile, Facebook page, or personal website. All of the user's unauthorized work includes a prominent link to their profile, and the user incentivizes viewers to visit said profile.
- A user gets authorization for their story, then writes a second draft which no longer matches the entry in the authorized database.
- A user has posted a bitcoin address on an unauthorized story. However, this same bitcoin address is also posted all over the internet on forums, blog comments, newsletters etc. The user claims that the bitcoins in her account came from these other sources, rather than from readers who enjoyed the unauthorized story. It is difficult to verify who the owner of a bitcoin address is or where the money it contains originated from, so how can the rights holder prove that the user was actually paid specifically for the story, rather than for other services?
- A user posts an unauthorized artwork, and comments are enabled. The first comment is by an anonymous poster who says, "If you like this picture, donate to the author's bitcoin address here! _____" Is this comment written by a.) an enthusiastic fan who wants to support the author by posting the author's real bitcoin address, or b.) A scammer trying to take advantage of the author's popularity by posting their own bitcoin address, or c.) the author themselves, acting anonymously in their own interest?

If rights enforcement seems tricky now, it will be even more tricky in the future. Bitcoin is difficult to trace, difficult to seize, and difficult to control. Furthermore, the current architecture of fan sites is not built around the idea of enabling clear licensing. It is hard to imagine how fan sites could be changed to enable clear licensing without removing many of their most enjoyable features.

Are average people capable of navigating the rights landscape?

Average people (particularly children and teens) will not find it easy to determine which rights holders they need to obtain licenses from. When people look at a seemingly monolithic fandom like "Transformers," they assume that it is owned by Hasbro because they produce Transformers toys, or Paramount Pictures because they made the Transformers films. But the closer one looks at the IP situation, the more difficult it becomes to say which rights holders must be petitioned for which rights.

For example, in Hasbro's original Transformers series, there was a minor character, Skyfire, who was licensed temporarily from the company Harmony Gold. The rights to Skyfire reverted back to Harmony Gold years ago, but fanfic writers and fan artists remain unaware of the change to this day. In the short disclaimers that accompany their remix works, they write, "Transformers is owned by Hasbro, I own nothing. Please don't sue me, I have no money." Yet their fanfic actually revolves around Skyfire, a Harmony Gold property. Harmony Gold recently sued Hasbro for releasing a Transformers action figure that bore an unmistakable resemblance to Skyfire. If a corporation with a paid staff of lawyers cannot keep such details straight, then how can we expect the average person to sort out the licenses they need to legally remix various properties?

There is also the reality that remix works tend to incorporate other remix works. For example, I know of one character who is widely depicted as being claustrophobic. But this detail was never mentioned in the original show that the character starred in. What happened was that years ago, an unknown fan writer decided to depict that particular character as having claustrophobia in what was evidently a groundbreaking story. Other fans liked the idea and remixed it into their own work, and thus a "meme" was born.

In a remix licensing scheme, it would seem that the fans who built upon that original fan's work would need to seek a license from them as well as from the original IP holders. But can the fan even be identified after all the years that have passed? The original fanfic where the trait was created may no longer even be on the web. It would therefore appear that there is now an orphan works problem in addition to a licensing problem. Considering the amount of "borrowing" that goes in fandom, there are potentially dozens of copyright violations in each fan creation (aside from the obvious violation of the original IP owner's rights).

Amazon solved the problem of remix artists who remix each other's works by requiring fan writers to consent to share all content in their stories with other fan writers (as well as the original IP holders). However, this model only applied to specific properties. For example, Spider-Man writers could share ideas with other Spider-Man writers and with Marvel comics, but not with Batman writers and DC comics. Since remix art often crosses the boundaries of franchises (for example, a poster displaying dozens of famous ships from various science fiction shows), this licensing strategy would not work in a broader internet-wide context. A change to the law itself is necessary to overcome the patchwork of cross-franchise boundaries. To quote the Creative Commons group,

> However well-crafted a public licensing model may be, it can never fully achieve what a change in the law would do, which means that law reform remains a pressing topic. The public would benefit from more extensive rights to use the full body of human culture and knowledge for the public benefit. CC licenses are not a substitute for users' rights... [read the rest here]

Licenses may have made sense in an era where rights owners were adults who carried business cards. It is more difficult to imagine how a teenage creator who self-publishes four pictures on Tumblr per month would benefit from the burden of a license.

Licensing should not be allowed to restrict freedom of speech

I mentioned earlier that I am a member of a volunteer game design team, and that we received a license to create our game from the IP holders. One term of the license is that we are not allowed to include material that would somehow denigrate the franchise.

This stipulation may not seem problematic, but denigration is in the eye of the beholder. Consider the fact that James Madison, the Father of the Constitution, wrote a fanfic starring a popular character of the day named John Bull. Madison used John Bull, who was originally created by the author John Arbuthnot, as a means to discuss the controversial topic of slave ownership. Suppose a modern remix artist wanted to use Mickey Mouse to discuss a topic like abortion, evolutionism/creationism, or female circumcision? Who decides what constitutes "denigration" in this context?

Should license holders have the right to decide whether remix artists can create work that might offend nation states, political factions, religious sects, ethnicities, and concerned citizens associations? Or should rights holders have the right to say, "Look, nobody's saying we want to suppress your freedom of speech. All we want is the right to shut down everything that we personally disagree with. So we're pulling your license."

It should be noted that not all license holders will wield the power of censorship responsibly. One notable artist and author, Adolf Hitler, destroyed hundreds of art pieces that he deemed "degenerate." As a license holder dictating terms to remix artists, we might expect Hitler to forbid reuses of his work in ways that most of us would consider blatant discrimination.

Copyright law should not grant license holders the power to restrict remix artists' freedom of speech.

Conclusion

The best way to encourage remix art is to explicitly legalize it without requiring any form of permission or compensation. A modern copyright system will embrace the trend towards both freely available UGC and bitcoin, providing business opportunities for creators of all ages on whatever websites they choose to use.