

February 2, 2009

Comment submitted to the Library of Congress in support of the proposal for an exemption to prohibition of copyright systems for access control technologies, submitted by the Electronic Frontier Foundation, proposed class 11A

Submitted by:

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I am a Research Scientist at the Department of Informatics at the University of California, Irvine and specialize in the ethnographic study of digital media use. One of my areas of focus is remix video, and I have been studying amateur remix video communities for the past five years. I am the lead researcher on the Digital Youth Project, a \$3.3 million large-scale ethnographic study, funded by the MacArthur Foundation, which is the largest qualitative study to date of new media use by U.S. youth. The results of my study of video remix in the anime music video (AMV) community is included in this project's report, which was released in November 2008. AMVs are videos that involve the remixing of clips from Japanese animation (anime) with a soundtrack of the editors choosing, usually a popular song or the audio track from an advertisement or trailer.

Attached is a list of scholarly publications that report on the results of my research on anime fans, including a link to the Digital Youth Project Report. A summary of the report can be found in the *New York Times* reporting on this study:

http://www.nytimes.com/2008/11/20/us/20internet.html?_r=2&hp

We have also provided a or in a two page summary on our project web site:

<http://digitalyouth.ischool.berkeley.edu/files/report/digitalyouth-TwoPageSummary.pdf>

My study of the AMV community included a survey of 227 participants in animemusicvideos.org, and interviews with 20 AMV creators, conducted in 2006-2007. In addition, I co-chaired an event, "24/7: A DIY Video Summit," in February 2008, that involved extensive dialog with video remix artists and the curation of videos that were representative of a wide range of amateur video. As part of the curation of the event, I reviewed hundreds of remix video in a variety of genres.

Based on my research and my review of an extensive corpus of remix video, I would like to submit factual support and arguments in support of the proposed exemption.

1. Amateur and non-commercial remix will continue to grow as an everyday form of expression and communication.

As described in the EFF exemption proposal, the practices of video remix are becoming much more widespread due to the growing availability of low-cost video editing tools and Internet culture that uses video in everyday communication. The proposal mentions some broad indicators of the growth of remix activity among youth and the growth of remix videos on YouTube. In addition, a closer look at one remix community can provide some sense of the vector of growth in historical perspective. Although the history of AMVs does not date as far back as the live action vidding community, there have been remixes of Japanese animation created in the US as far back as the early eighties. AMV screenings and competitions started appearing at anime conventions in the early nineties, and by the late nineties became an established part of almost all major anime conventions. The advent of low-cost video editing tools and widespread Internet access in the late nineties catalyzed a growth in AMV creation and the development of online communities. AMV editors began connecting with one another in 1992 through Usenet, and then later through mailing lists. In 2000, animemusicvideos.org was founded for editors to share their videos, and this site continues to be one of the central sites for accessing AMVs. The growth in the number of videos cataloged on the site is one indication of the growth in the practice of AMVs:

2000: 1037
2001: 3860
2002: 7042
2003: 16443
2004: 29860
2005: 37990
2006: 30180
2007: 16164
2008: 9205

The numbers roughly double each year until 2005, when YouTube was founded. Since then, the AMV community has continued to grow, but the center of gravity has shifted from animemusicvideos.org to other video sharing sites. To say that the numbers have continued to double since 2005 would be a conservative estimate given how much visibility AMVs have had in Internet culture with the broader publicity afforded by sites like YouTube.

Today, AMVs are a well-established and thriving part of the everyday creative production of anime fans, and they are shared on the Internet as well as in screenings and competitions at every major anime convention around the country. They represent a form of creative expression that was created by fans in the amateur, non-commercial sector, and these works have never been framed as competitive with the commercial anime industry. The anime industry has tolerated these forms of fan remixes for decades, and has even gone so far as to commission commercial remixes by well-known AMV editors.

2. AMVs are entirely non-commercial and largely involve non-infringing uses of video.

Almost all AMVs are fundamentally transformative, and are entirely non-commercial, except in the handful of cases where the animation industries have commissioned AMVs. The process of creating an AMV involves culling through a large corpus of video footage for a small number of clips that are edited together into a short video compilation that makes a focused creative statement. As one editor described it, he sees his videos as “synthesis, 1+1=3. I’m not sure... but you get something new, something different. You take two different elements and together they become something greater.”

3. AMV editors rely overwhelmingly on DVD footage over other video sources for creative, practical, and ethical reasons.

In our survey of the AMV community, among 200 who reported that they were AMV creators, 75% indicated that commercial DVDs are their first choice for anime source material in making their videos.

One reason for this preference is the desire for high quality video. As one editor put it succinctly, “I buy the DVDs you know to get the best quality possible because I love the quality.” In this, AMV creators are similar to their live action vidding counterparts. In addition, however, there are additional reasons for AMV editors to turn to DVDs for their source material. Unlike media that has been created primarily for the U.S. market, only a small proportion of anime is released via broadcast in the U.S. For the vast majority of anime, editors must turn to online sources or to DVDs, and do not have the option of analog capture.

In addition, the AMV community has historically operated based on a set of social norms and ethical guidelines that seek to support the anime industry. AMVs are predominantly “fannish” celebrations of anime culture, and editors see themselves as evangelists for anime in the English-speaking world. In animemusicvideos.org, this ethic is embedded into one of the site rules: “Thou shalt not use downloaded video footage, music, or pirated software to make AMVs.” The organizers of the site, by banning the use of downloaded video, are advocating for the use of DVD footage in order to generate revenue for the anime industry.

4. AMV creators actively support the U.S. DVD market in spirit and practice.

Most AMV creators I interviewed stated that they have large collections of anime DVDs for their own viewing and in order to get source material for their AMVs. Fans who become interested in AMV creation represent “hardcore” fans who are more likely to purchase DVDs than casual anime viewers. Legal barriers to AMV creation are thus likely to disproportionately impact the enthusiasm of those anime consumers who are among the most likely to purchase DVDs.

AMV creators also see themselves as supporters of the anime industry. Describing AMVs as “free promotion” was a frequent refrain among the editors I interviewed. One editor explains, “I don’t understand how AMVs, which by and large come from personally bought items, hinder the [commercial] artists. If anything it magnifies them and spreads them far and wide on the web...That’s free and beneficial advertising in my book.” One editor describes the informal polling that he does at anime conventions about whether AMVs help to promote anime. “I’ve been on a few AMV panels. We often ask people if they’ve bought anime based on an AMV they’ve seen. Most hands go up.” These experiences reflect the reality that fan communication, including AMVs, act as form of advertising for DVDs. They also illustrate the stance among creators that they are working to support the DVD industry.

Conclusions

In summary, AMV editing is an entirely non-commercial practice representing largely non-infringing uses of video, and relying predominantly on the use of DVD source material. Further, AMV creation and viewing functions to support rather than detract from the U.S. DVD market. For these reasons, the case of AMV editing clearly supports the DMCA proposal exemption presented by EFF in proposed class 11A.

Although AMVs represent only one among many video remix genres that make use of DVD footage, the dynamics of amateur video editing span different video fan cultures. The anime community represents one of the more technically savvy communities that took to video remix early in its evolution, relying on DVD releases of foreign media. As media from other countries increasingly flows into the US via DVDs, we are likely to see the dynamics witnessed among AMV creators replicated among diverse media audiences.

References

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