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Fan Made Games: The Future of Game Development

If an enthusiastic game developer decides to take their time to create a game based on an official game's characters, story, art direction, or any of the above as a tribute, they risk their project being taken down by the publishers. Cease and desists from companies like Nintendo cite arguments including intellectual property rights and damage prevention, and though developers can move forward with the project if the official release's publisher takes interest, it requires the company's explicit permission. In spite of that, these fan-made games in question usually do more to promote the original than they do to harm it if at all. Since a free fan made game is not used for profit, and will likely help popularize the original if it is successful, they should become legally protected from lawsuits by game developer companies.

The recent advancements in commercial consumer technology have made it possible for the average developer to create quality work that rivals those made by companies, enabling fan-made tributes to become far more common. *LISA: The Painful*, a title published in 2014 and created using the popular and publicly available RPG Maker engine, has an overall rating of "overwhelmingly positive" on Steam. (Dingaling) One review mentioned that it was "an inspiration for an aspiring RPG developer", and that its "components drawn from Earthbound were artfully interwoven with traditional JRPG tropes." (Dingaling) Eventually, these advancements can culminate into a conflict of interests between consumers and companies, with

the former prioritizing creative progression for entertainment and the latter expanding on business interests. Hector Postigo focuses particularly on this conflict in his article for *The International Journal of Research into New Media Technologies*, noting how “corporate interests, enforced by click-through agreements and copyright law, can stand in the way of creativity and participation.” (Postigo 4) The products published by these companies are static, coupled with an extended period of time until a possible sequel. Fan-made works, in contrast, can expand largely on just a single official product, and have the potential to grow in multiple different directions since the concept is not restricted to a single studio.

Derivative works often directly reshape a specific subject, changing the images displayed and gameplay put forward to transform the experience in some way. In an article published by *Regent University Law Review*, Patrick McKay, a senior software developer and a Colorado licensed attorney, mentions two main ways fans create these works: the first of which is modding, which directly changes the existing product, and the second being creating themed environments that draw heavily on existing elements. An example of the latter is the *Pokemon*-themed game *Pokemon Uranium*, which was published online on August 6, 2016. The game took inspiration from canonical catch-and-fight gameplay elements, adding on new creatures to collect and a mutation concept for existing ones. Owen Good specifically puts emphasis on how it was downloaded “1.5 million times” in his article for *Polygon*, noting its brief popularity before any further improvements were halted by Nintendo. A strong similarity to past *Pokemon* games did not prevent *Pokemon Uranium* from being positively received by the community; if anything, it helped spread news of it and promote the franchise further since it felt familiar and had players engage with the game characters in a novel fashion.

A developer's primary concerns for their fan-made game project are the legal arguments used to shut them down. In a 2017 article for *Wired*, Mark Brown discusses these arguments and the reasoning behind them. A common one is copyright infringement regarding the characters or art style, or even the game's coding. In one case, Sega shut down *Streets of Rage Remake*, a redesign of their game *Streets of Rage*, for both using the original's name and heavily emulating its characters (Brown). The game had been in development for nearly a decade, and was public on forums as it was worked on to showcase its progress. Brown notes in another article for *Wired* that the game has "over 100 stages, 19 playable pugilists, 64 enemies and a full 76-song soundtrack", which contains the combined amount of content of the three official releases. Regardless of the time and effort put in, Sega told Bomber Link, the game's lead developer, to remove all download links and cease distribution. A spokesperson from Sega stated that while the company allows interested individuals to help in beta tests and in-house research, it has to protect their intellectual property rights. (Brown) Though the design team had previously sent multiple requests to Sega for the project to be officially approved, Bomber complied with the request and encouraged others to remove sources of the game's download. (Brown)

As noted above, this type of conflict will become more common in the future as resources become easier to access and development becomes more streamlined for an amateur game designer. Creative engines such as Game Maker Studio and RPG Maker already have the framework for creating games of quality rivalling professionally published ones, and are available online for anyone to purchase. *Hyper Light Drifter*, a hack-and-slash role-playing game developed using Game Maker Studio, received over ten thousand reviews on Steam and 94% of which were "very positive", a clear example of the engine's potential. (Heart Machine) In an

article for *Polygon*, Brian Crecente notes a remake of fan-favorite game *Super Mario 64* built using Unity's free engine, which refines the graphics to a modern standard. Video tutorials like the ones on Youtube are often posted and improved on, becoming a burgeoning source of quality education of which game design elements like character design and gameplay mechanic engineering are no exception to.

From their perspective, fans consider themselves to have the game's best developmental interests in mind since they are the ones experiencing the intended product. As a result, there is likely a largely untapped pool of creative ideas to enhance the existing game without hurting its business. Postigo touches upon how companies can utilize this rather than suppress it, mentioning the term "playbour" in reference to how gamers work to further cultivate the game's progression without needing direct input from the publisher. They possess the freedom to explore, share, and build upon each other's ideas, multiplying the overall pool of potentially ingenious additions independent of the original studio. In an article for *Polygon*, Allegra Frank references a fan-made remake of *Metroid 2: The Return of Samus*, *AM2R: Another Metroid 2 Remake*, which elevated the game's quality by "giving fans a new way to experience the classic game." It added improved graphics, new missions and areas, as well as gameplay from *Metroid: Zero Mission*, but was taken down a day later. David Burton, an avid video gamer and music composer since 1993, said regarding the aforementioned *Streets of Rage Remake* that he created "remixes... from *Streets of Rage* for people to listen to... Bomber Link emailed me asking if I wanted to contribute a few tracks and of course I couldn't resist." (Adrian) If studios were to decide to work together with fans in a similar manner, or at least allow them to create nonprofit derivative works, the result would likely benefit both sides. Hardcore fans would get to see their

beloved product as a finished tribute, and the publisher's economic interests are satisfied from the free marketing. But since this is not the case, fans feel as if the law does not fairly serve customer interests. One fan notes his reaction to a fan-made sequel to the video game *Quake* being taken down: "I can't see what's wrong with remaking the maps... People who download them are either Duke3D fans that already got that game, or people that find out about the game because they like the maps." (Postigo 5) This indicates that from a consumer point of view, there is no lost audience as a result of the work, and instead actually helps spread awareness of the franchise.

The main reason publishers protect their copyrights so diligently is their fear of damages such as in the form of said lost audiences, as well as to maintain as much control as possible over their creative works. However, since the "primary purpose of copyright is to promote cultural growth," their usage by publishers to prohibit others from using their works is counterproductive in that respect (McKay 22). Furthermore, since the parameters surrounding the creative legality of the fan-made games in question are dubious, and companies have absolute control over their copyrights, it can be argued that companies abuse their powers to inhibit cultural growth.

Another project that was terminated on these grounds is *Galaxy In Turmoil*, created based on the canceled *Star Wars: Battlefront 3*. (Good) After discussing with Electronic Arts representatives, the developer of the fan-made game, Frontwire Studios, had to remove all references to *Star Wars* content to allow for its planned release on Steam. Frontwire's Tony Romanelli specifically cited that "[EA's] main concern was ... *Galaxy in Turmoil* taking attention away from the Battlefront franchise'," indicating that EA's priority was its franchise's financial security first, and cultural innovation second. (Good) Fan made derivative works are thus discouraged since

they are almost certain to fail when released, even if they are recognized by the gaming community.

In order to account for future disputes over the legality of fan-made games, certain changes to copyright policies are appropriate. Currently, policies in place to deal with what qualifies as under fair use are outdated, as they are from a time when technology was not advanced enough to enable the public to create professional level products and therefore warrant reevaluation. Though a lack of any sort of limitation on alleged nonprofit derivative works would be too ambiguous, the terms “non-commercial” and “transformative” are thoroughly defined in the law already. (McKay 24) Officially, “non-commercial” is described as when the user does not stand to profit from exploiting material without paying a price, and “transformative” refers to when the new material adds purpose or further meaning to the original. (McKay 24). Altering or adding policies to protect derivative works accurately defined as such is then possible, and requires minimal further action as the changes to fair use will not affect its in-court application. These additions also hold potential for other forms of entertainment that have similar disputes, such as Youtube videos that receive copy strike notices. In order to follow through with these changes, penalties for attempting to abuse DMCA laws and outright exempting non-commercial transformative works from being subject to it should be implemented to hold violators accountable for damages they cause. In the case of a direct copy of a publisher’s work, they would still have no problem justifying suing for an injunction in open court, but would simply be unable to restrict genuine transformative work.

Applying the suggested changes would allow for more people to freely express their enthusiasm for a game as a nonprofit tribute. The vast array of game elements that are quickly

becoming easier to replicate by the common gamer can then be remixed together to create new ideas, helping to support cultural growth instead of inhibiting it. While this may result in an emergence of low-quality knockoffs or simple counterfeit versions of official releases, high-caliber remakes and expansions on canonical art directions such as the ones mentioned above will surpass those. They will be the ones representing innovation, elevating their respective originals and contributing towards the video game industry.

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