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Copyright and Fan Productivity in China

A Cross-jurisdictional Perspective

 Springer

Copyright and Fan Productivity in China 中国粉丝创作与版权

The History of Chinese Fan Cultural Works

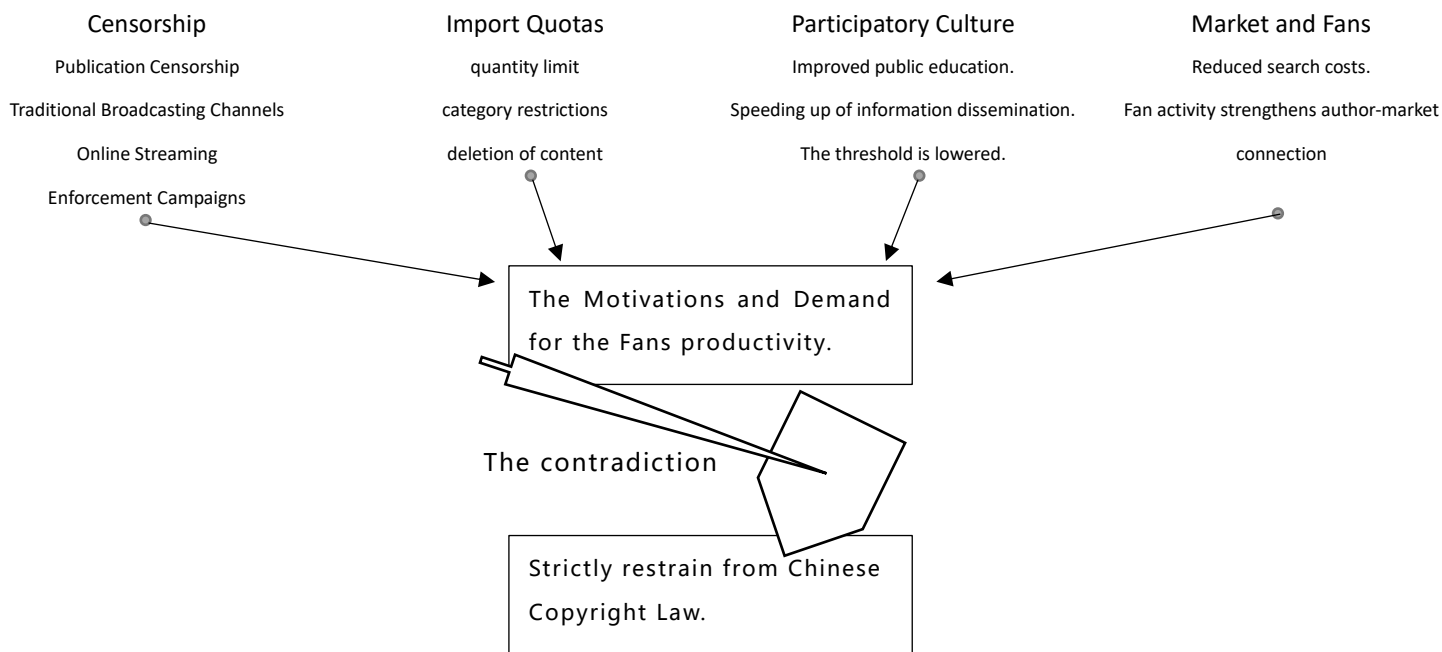
Imperial China Period (Before 1912)

Modern War period (1912-1949)

Revolutionary Period (1950-1979)

Transitional Period (1980-1990)

Open up Period (1991-Present)



The legal status of fan creation in the United States, China, and Japan. 美中日粉丝创作的法律现状

	The U.S.	China	Japan
Fansubs 字幕制作	Considered as the derivative works that are copyrighted works, but are difficult to be considered as fair use (difficult to pass the four-factor test)	it is palpable that, unlike the general "fair use" principle that the U.S. has adopted, the CCL contains a clear enumeration of copyright exceptions . Admittedly, online distribution of the original work with added-in fan-translated subtitles definitely constitutes copyright infringement and does not qualify as one of those highly restricted exceptions. As a result, fansubbing is ostensibly illegal, although their non-commercial claims seem fair.	it is clear that fan-translated subtitles, if without permission from the original copyright owner, are copyright infringements, not to mention if their online distribution involves the copyrighted movie files.
Doujinshis and Fanfics 同人志和同人小说	Although the fair use doctrine in U.S. copyright law is comparatively flexible , the commercial nature of doujinshi and the fact that the fair use claim relies heavily on parody in the U.S.	According to Article 47 of the CCL: Doujinshi works will clearly be found to be copyright infringements as long as they use the original characters without the permission of the copyright owner . Generally speaking, the more a fanfic is considered original and departs from the pre-existing works , the less likely it is that it would be found to be a derivative work. Moreover, Chinese courts apply an "access plus substantial similarity" standard to determine whether a fanfic constitutes copyright infringement. Furthermore, if scan-copy and online distribution is involved, they might also infringe the author's right of reproduction and right of information network dissemination .	Supreme Court's attitude shift indicates that, creating Doujinshi will probably infringe the copyright of pre-existing works . Judgments of past cases in Japan have made clear that pictorial characters are copyright protected.

<p>Fanvids, AMVs, and Video Parodies 二创视频 AMV 和 视频模仿</p>	<p>As for the U.S., it is believed that the average fanvid is infringing if a fair use defense cannot be established. However, it is also a fact that sometimes the industry is lenient towards these non-commercial fan activities, as they consider many of these fan videos fair uses and believe they could serve a promotional purpose as well.</p>	<p>Article 22 of the CCL enumerates many copyright exceptions, but, apparently, despite the potential critical nature of fanvids, none of those exceptions could justify fanvids when a whole track of copyrighted musical work is lifted. It is also noted that the CCL does not officially recognize parody as a fair use. Therefore, in any other cases, a video parody is not likely to survive under the copyright exceptions of CCL.</p>	<p>Based on the percentages of the appropriation, the court will have to determine whether the work is a new one or a derivative. Fanvid makers today are trying to avoid that danger through heavy editing by taking only small parts from multiple pre-existing works, which makes it more ambiguous whether a fanvid is copyright infringement in Japan.</p>
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A key process: **Permission** of the copyright owner

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The advances in technology; the complexity of fan creation; the vagueness of the concept of "license,"; the rapidity of the spread.

The conclusion of the problem:

With the information technology breakthroughs, it has convincingly argued that the problem of fan creations could not be properly addressed in the current legal setting of China, and the cooperation between users and copyright owners is the best solution at the moment.

The search for solutions

With the help of a properly designed **No Action Policy (NAP)**, a flexible cooperative mechanism can be established between the fan creators and copyright owners in China, so that the latter could have a degree of control over the former and their works, and the activities of the former could be legally justified.