

# *A Critical Analysis of the Legality of Fan-subbing in Copyright Law*

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**Abstract:** This study offers a critical analysis of “fan-subbing” from the perspective of copyright and translation right, which is conducted given that fan-subbing has greatly impacted my cross-cultural experience of entertainment. A fan-sub (short for fan-subtitled) is a new version of any foreign movie or TV series that has been translated from the original language by fans and subtitled into other languages. The reason fan-subbers do this is mostly that they want to support their favorite movies, TV series or animations, and to help them become popular worldwide. Putting subs on the top of or below a video itself is not illegal if one is doing this for his or her own entertainment, someone else has the exclusive right to sell and distribute that work, and the fan-subber is performing in a way not as a seller or a distributor. Thus, in many countries, writing subtitles for any movie, TV series, or other cultural products and spreading them to the public for free is considered a violation of copyright. Within Viki, there are benefits to becoming a fan-subber. These include not having to pay the ad removal fee, early access to some dramas, and more. Though some solutions have appeared in order to help handle the legal and ethical issues around fan-subbing, this has resulted in very few positive effects, against all expectations. The copyright law of many countries provides protections for normal works and specifies that copyright owners have the right to translate. Japanese companies have been continually protesting the indiscriminating translation of Japanese anime into Chinese, while the subtitle groups also bear the additional harm of being infringed by others while infringing on the copyright of others. In the copyright law of some countries, there is a right to translate.

**Keywords:** subtitle, fan-subbing, translation right, copyright

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## Introduction

### The Ways in Which Fan-subbing Came to Public Attention

Almost everyone has the experience of watching their favorite television programs or movies when lines of dialogues have been translated by fan-sub groups into English, Chinese or any other language. This translation is then presented below the original dialogues on the Internet, allowing viewers to enjoy various cultural forms from those dialogues at any time. As foreign cultural works (such as movies, television programs or anime) are increasingly being followed by fans all over the world, the amount of foreign TV programs introduced with formal subtitles is always less than the amount desired by the public. In addition, the usage of P2P, the advent of cheap computer software and the availability of free subbing equipment online have made it much simpler to access foreign television programs. Therefore, this led to the emergence and development of the fan-sub group (Orrego & Lee, 2017, p. 3).

### Origins of Fan-subbing

Fan-sub groups are organizations that began with the conception of the first anime club, in the United States in the 1980s, at a time when anime was extremely popular. There were, however, no formal channels through which to bring Japanese anime to the U.S. legally. Moreover, at that time, the market could not get access to genuine Japanese anime works with English subtitles (Mehra, 2002, pp. 15-22). Therefore, some students in the United States, who could understand both English and Japanese, downloaded and translated some Japanese anime they favored, and then uploaded it to the Internet. This allowed Japanese-anime fans and other enthusiasts who were not Japanese to watch and comprehend the dialogues and the whole stories easily (Leonard & Sean, 2005, p. 24).

In China, it came to public attention via famous American television programs such as “Prison Break” and “C.S.I.”, which have been downloaded, translated and then uploaded personally by Chinese fans merely due to their own passion and favour with their “shoulder to collar” (Wang, 2012, p. 36).

It is seen that the copyright law does not consider much the demand of the customers when it comes to preserving authors’ rights. Copyright is a law that includes provisions and articles which specify the protection of every natural person’s rights regardless of any subjective or objective factors such as their nationalities. It provides protection for their intellectual property just like their physical property. It has nothing to do with people’s understanding or with any political party and does not vary from state to state. Consumers or Internet users are interested in viewing films and television shows produced via fan-based activities and would like to have access to other countries’ films and TV series, as well. But the existing laws do not permit that in many countries (Dwyer, 2017).

For instance, in November of 2014, certain well-known websites in China, like the Shooter and the YYeTs, which have already provided a large number of foreign television programs with foreign subtitles added by many Internet users, were shut down because of the strict law (Bao, 2014).

### **The Importance of This Topic**

Although some solutions have been suggested in order to handle the legal and ethical issues of fan-subbing, these have not produced much positive effects, which was slightly unexpected.

First, due to the existence of “Fair Use” in some jurisdictions, some fan-subbers have added disclaimers such as: “This subtitled work created based on fan activities are uploaded for the purpose of private learning and communication only. It is strictly prohibited from being used commercially.” Similarly, people have written: “Please delete it within 24 hours after downloading”, or “if you like it, please purchase the authorized edition of this work”. These are generally added at the beginning of the film or television series when they have been translated and spread across the Internet. However, neither the fan-sub groups nor the viewers could guarantee that the works downloaded by unknown users on the Internet would only be used for private learning or communication, excluding all other possibilities.

Furthermore, the application of “Safe Harbour” principle provides an excellent protection for those infringing behaviors of fan-sub groups. According to this principle, websites which offer downloads of films and television works subtitled by fan-sub groups could be closed at specific times while they were facing inspection from related authorities, or investigations from the copyright owners. This would allow them not to be held to account (Bold, 2011, pp. 1-19).

In addition, fan-subbing could give people a cross-cultural experience of entertainment (Howard, 2006). However, accompanied with vital support from the public Internet users, and growing pressure from the copyright law, certain questions such as how fan-subbing could survive in a grey area of legislation and how both works of copyright owners and behaviors of fan-sub groups could be protected at the same time are being raised. These problems demand prompt solutions for the sake of the improvement and perfection of the copyright system.

## **The Definition, Features, Types, Processes of Fan-subbing**

### **Definition**

In British legal parlance, “copyright” is the term used to describe the area of intellectual property law that regulates the creation and use made of a range of cultural goods such as books, songs, films, and computer programs. British law describes the various objects that are protected by copyright law as “works”. The intangible property protected by copyright law is distinctive in that it arises automatically and usually for the benefit of the author. Various rights are conferred on the owner of copyright, including the right to copy the work, the right to translate the work and the right to

communicate the work to the public.

Fan-subbing, or fan-subtitled works, constitutes a form of such works. It is defined primarily as: “an unauthorized translation...in the form of subtitles.” This is one of the media where the Fan culture expresses itself (Tushnet, 2007, p. 135). However, the definition that appears on many fan-sub websites is: “a video...subtitled by fans.” Moreover, it could also be defined as “a translated and subtitled version of a foreign anime program produced by fans”. (Diaz-Cintas & Muñoz, 2006, pp. 37-39).

## **The Fan-subbing Process**

### **Human resources**

Generally speaking, each fan-sub group member only completes one assigned task. However, different tasks or even the whole process are sometimes performed by the same person. This can help to reduce the risk of errors cropping up in the target text on account of the inaccurate communication of information between several participants.

Fan-subbers use raw and final scripts, both of which are provided to them. These have been formatted by the typesetter and revised by the editors to produce a subtitled version of a given television episode produced through an encoding program. The final product is an anime with the soundtrack in the source language and subtitles in the target language superimposed onto the original images (Schules, 2014).

Provided that the typesetters and encoders have prior technical experience, timing and translation are thought to be the most time-consuming tasks. However, if an episode has many signs (that is, written inserts in the original photography) then the typesetter's work may be more time-consuming. Translators with a good knowledge of the languages involved are crucial in fan-subbing. Meanwhile, the technical aspects are reasonably catered for by computer-literate fans with little knowledge of foreign languages (Condry, 2010, pp. 194-196).

### **Raw providers**

Raw providers are the people who provide the original, untranslated video capture of the anime, usually by ripping it off a DVD, VHS or TV source. TV-rips are most common for anime that are still on air in Japan. DVD-rips are used whenever possible, though, as they offer the best image and audio quality.

### **Translators**

Translators are the people in charge of the linguistic transfer. Most of them are not trained in the use of fan-sub technology and limit their contribution to translation only. Most of the translators translating from Japanese to English are not native English speakers. As will be discussed later, this is a factor that has a crucial impact on the quality of the final translation. Knowledge of Japanese is generally not required in the case of translating into languages other than English, because translators usually work from the fan-sub translations that have been distributed in English (Koulikov, 2010).

### **Timers**

“Timing”, which is often also referred to as “cueing” and “spotting” in the professional subtitling

industry, is the process of defining the in and out times of each subtitle. To do this, timers must try and strike the best possible balance between “the rhythm, the phrases and the logical divisions of the dialogue and appropriate time units and line lengths for the subtitles they are planning to write”. The most popular program used for timing is Sub Station Alpha, although Aegisub, Sabbu and JacoSub are gaining popularity (Dwyer, 2016, pp. 146-160).

### *Typesetters*

Typesetters are responsible for defining the font styles of the subtitles, for ensuring that conventions are followed, and for formatting the final scripts. In addition, typesetters have traditionally been in charge of synchronising the so-called scene-timing (that is, the written signs that appear on screen in the original program) and the opening and ending songs of an anime. This usually involves creating a karaoke effect, but, given the growing importance and complexity of karaoke in fan-subbs nowadays, a new form has developed: the so-called karaoke-man.

### *Editors and proof-readers*

Their tasks are to revise the translation in order to make it coherent and to ensure that it sounds natural in the target language. They must also correct any possible typos. Unlike the professional world, editors are not supposed to condense the text. Their work becomes essential when the translator is not a native speaker of the target language, such as a Japanese speaker translating Japanese dialogues into English. Knowledge of the source language is preferable albeit not essential among editors (Dwyer, 2012, pp. 218-223).

### *Encoders*

Encoders take the raw and the final SSA scripts, which have been formatted by the typesetters and revised by the editors and produce the subtitled version of a given episode by using an encoding program. As mentioned, the final product is an anime with the soundtrack in the source language and the subtitles in the target language superimposed onto the original images (Schules, 2014).

### *Technical requirements*

Regarding hardware equipment, it is widely agreed that a computer with an 800 MHz processor and 128 MB RAM should be enough to carry out every task involved in the fan-subbing process. Nevertheless, the encoder should work with a fast computer in order to encode at an adequate speed as this process utilises the maximum capacity of the processor. It is therefore recommended to have at least a 1.5 GHz processor to facilitate the encoding of an episode within an acceptable time frame. A high-speed Internet connection is also highly recommended (Gray, Sandvoss & Harrington, 2017).

In terms of software requirements, each phase of the fan-subbing process requires the use of specific programs such as source acquisition, translation, timing, typesetting, edition and encoding. As for source acquisition, a P2P program like Winny or BitTorrent is used to acquire TV-rips in video format. Ripping softwares such as AutoGordianKnot or DVD Shrink is necessary for producing DVD-rips. For translation, a text editor such as Notepad and a video player need to watch the anime at first. The Sub Station Alpha (SSA), Aegisub, Sabbu or JacoSub are needed for the timing step. SSA and/or a text editor to add special effects to the subtitles are used for the typesetting process in order

to carry out the scene-timing. In the next phase, a text editor and a video player are needed while editing so that the translation can be revised while watching the episode. Finally, in the encoding and distributing phases, Virtual Dub plus with the Text-sub filter is used for this process, as well as a video codec, i.e. a device or software module that enables the use of compression for digital video. The Text-sub filter allows for adding subtitles in SSA format to a video file. There are also filters that help improve the quality of the image, although their use is optional (Koulikov, 2010). After all is done, a P2P program, normally BitTorrent, will be required for distributing the subtitled works to the Internet.

### **The Process**

The following description of the fan-subbing process is based on detailed accounts put forward by the Infusion Fan-subbing Team (2003). The steps illustrate the way fan-subs are done, though the process can vary in many ways. The editing phase, for instance, can take place before the typesetting phase. As with standard subtitling, teamwork is essential in order to produce a high-quality fan-subbed program.

The raw episode is obtained and sent to the encoder who will decide whether the sound and image of the source material are of a high-enough quality. The encoder is also in charge of extracting the audio file of the raw by using Virtual Dub, converting it into an 8-bit mono wave file if required (as in SSA), and sending it to the timer (Sauro, 2017).

Once the sound and image quality have been assessed by the encoder, a copy is sent to the translator. If need be, the raw file can be reduced in quality (and therefore in size) so that it can travel more easily over the Internet. Fan-subbers who do not translate directly from Japanese need to obtain an English fan-subbed version for their translation. The translator is in charge of transferring the dialogues as well as the signs and inserts what appear on screen into the target language. If they are subbing a series of which some of the episodes have already been translated and put online, the translator should ideally watch several episodes before attempting their own translation. This will help them understand more about the context and to obtain more of a feel for the subject matter. Similarly, if the anime has an official website, the translator should visit that website to become familiar with the names of the characters, the places in which the action takes place and any other relevant information. The translator should indicate in the translation whether the subtitles are voices off-screen or on-screen conversations to make the typesetter's task easier when deciding on the type of font to be used. Once the translated dialogue is finished, it is then sent in the form of a text file to the next person in the process, the timer.

Next, the translated script is timed with the audio. To do this, the timer listens to the audio and decides where the subtitles should begin and end. When the timing or spotting of the script is completed, it is saved in SSA format and then sent to the typesetter.

Typesetters will decide whether italics or different colors should be used to differentiate the information being conveyed, thereby making it easier for the viewer to know who says what. Due care must be taken when deciding on the type of font and the conventions to be used, as they are



likely to have a direct impact on the legibility of the subtitles. As for the scene-timing, the typesetter is in charge of devising what target language signs will be used in order to explain written Japanese characters and inserts what appear on screen (these might include credits, school signs, newspaper headlines, street names and the like). By using some Textsub filter commands, these signs can be made to move around the screen, following the animation. Since this is done by hand with a text editor, it can be quite time-consuming. When the process is completed, the new SSA script is then passed to the editor (Helens, 2014).

The karaoke dialogue for the opening and closing songs are usually done when the first episode of an anime series is translated, and then used every time the same songs are included at the start and the end of subsequent episodes. Obviously, if the opening and/or ending songs change in later episodes, new translations are called for. Thus, karaoke transcripts are always included in the final script of every episode. This process of including karaoke text for the songs involves either the timer or the typesetter (or, more recently, the karaoke-man). The task involves timing each syllable independently and letting it be filled up with a different color as the word is being sung. This can be done relatively easily by using the special karaoke mode in Sub Station Alpha or Aegisub, both of which adjust the timing properly in a way that is similar to what the typesetter does when editing the scene-timing. Karaoke usually include the translation of the Japanese song together with a transcription of the original lyrics in both romaji (the transliteration of Japanese into the Latin alphabet) and kanji (Japanese characters). All of this can be overwhelming for the viewer (Wurm, 2014).

Editors are in charge of revising the target text. In order to do this well, they should ideally watch the original raw version (if they know the Japanese language) or the English fan-subbed version (if the subtitles are not being translated directly from Japanese). Apart from correcting typos, editors should also check that the translated text matches the content of the original or the pivot language, and that it does not clash with the images. As mentioned above, since translators are not always experts in the English language, editing becomes a very important step in the fan-subbing process. At this stage, the question should be posed as to whether any changes or modifications are necessary, the translator ought to be contacted and asked before the final translated version is released. After all the necessary changes have been made and agreed upon by the translator, the SSA script is considered to be finalised, and is then sent to the encoder (Wang & Zhang, 2017, pp. 301–318).

Encoders typically work with an open-source program known as Virtual Dub. They load a script containing both the raw and the final SSA scripts. The standard size for an episode is between 174 and 230 MB. If required, special filters may be used to clean and boost the quality of the image, though these tend to slow the encoding process (Kustritz, 2015).

A quality check by the translator or the editor is usually carried out before a fan-subbed episode is released. Any problems like typos, image glitches, or subtitles that are not properly synchronised with the audio are noted and corrected. The resulting final video is then released to the public.

In order to distribute the fan-subbed episode to fans, the most preferred channels are BitTorrent and XDCC (a transfer protocol of the Internet Relay Chat, which itself is known as IRC). Distributors start

hosting the file for viewers to download, and someone in the group notifies various fan-sub websites of the release in order to let more people know that it is available. Popular websites for downloading fan-subs are Animesuki for English fan-subs and Frozen-Layer Network for Spanish fan-subs.

### **Different Types of Operation Patterns**

In general, there are three types of fan-sub groups existing on the network that can be divided according to their relationship to profits.

The first kind of fan-sub groups is entirely for profit-making. They not only provide downloading of the subtitle files, but also provide downloads of video resources. Normally, such subtitle groups are organized in order to make profits, which are, strictly speaking, not part of those network groups. The formation of such subtitle groups must be approved by the relevant authorities. They also have fixed translation teams, such as YYeTs. In this case, the fan-sub group may earn income by translating foreign films and television works and then selling them. This business model may also contain other forms of profit-earning behaviors, such as advertising, which includes soliciting sponsors and cooperating with pirated publishers. They can simply download the translated films or TV programs by merely tapping their mouse or keyboard, and then burning pirated CDs to profit from the sale at almost zero cost.

The second kind of fan-sub groups are made up completely based on fans' enthusiasm for their favoured films and television shows, and they receive no income in this case. Such subtitle groups belong to a loose union of natural people. According to a reporter from Beijing Xinhua News Agency, "The subtitle groups that translate foreign language audio and video works are composed of non-amateurs (Yuanwen, 2014)." The translated works are free for users to download (Gamal, 2008, pp. 1-15). Because the activities are not for profit, they can be viewed basically as "hobbies". Selection is based on hobbies, and participation is also based on hobbies. Therefore, no matter how many fans one series of shows have, no matter what their career is, people can become members of the fan-subbing community. The fan-subbing community is comprised mostly of high school students and young men who are keen on Japanese manga, and others. One international student in Japan stays in front of the TV all day, waiting for episodes to be broadcast, as these will be "film source". There was once a Japanese person who took the initiative to ask for the work of subtitle dictation and correction. Most of these online subtitle groups do not have independent publishing websites, and members are gathered to rely only on their identical dreams (Schwabach, 2016).

The third type of subtitling groups are not for commercial interests. They only publish subtitle files in various formats for free and they do not provide downloads of video resources. These groups do not have fixed members and the subtitle files are uploaded by members. Such subtitles are also legal organizations because the unincorporated organization is not for profit. It is a resource sharing forum based on network P2P software, such as The Shooter. To maintain the normal operation of the website, one is required to purchase and maintain hardware facilities such as servers. There are two main sources of funding: either advertisements can be added to the start of works or they must rely on



funding from the fan-sub group members or sponsorships from enthusiastic users.

The similarity between the second and third type lies in their non-profit nature. However, the differences are as follows: First, the second form of fan-sub groups usually have fixed components, while the third type of groups do not. Generally, the majority of network users upload on sharing platforms. Second, the second form of network subtitle groups are generally not equipped with an independent subtitle publishing website, while the third type has an independent resource sharing forum as well as other network platforms. Finally, the second type does not have any funds, whereas the third type collects funding from advertising fees, self-funding, and sponsorships (Anthony, 2003).

Judging from the current situation in the market, most fan-sub groups seem to belong to the second type formed by “network volunteers”, but the other two kinds also account for a significant proportion of the market. Most of the three types of subtitle groups are unauthorized to translate or spread contents online. Nonetheless in the first and second forms there are situations in which subtitle groups and video websites have reached agreements stipulating that the video website should take the responsibility to obtain the authorization to provide the source legally and the subtitles groups will be paid for translating them, or just request only for the release of subtitle files in their own name and no remuneration. Similar situations exist in other countries, not only in Japan and China (Schules, 2014). For example, the Phoenix Angel TSKS subtitle group recognized by Korean TV station SBS is one such example.

### **Ethical Issue of Fan-subbing**

Putting subtitles above or below a video itself is not immoral for self-entertainment simply because someone else has the exclusive right to sell and distribute that film or TV program. If it is not licensed in a country, then it is more of an ambiguous grey area. If someone makes a show, then they own it. They can sell the right to distribute that show to companies like FUNimation, Crunchyroll, or Netflix. This gives FUNimation, Crunchyroll, or Netflix the (temporary) right to sell and distribute the show. Other people, including fan-subbers, do not have such rights. Due to the way that Intellectual Property Law works, sometimes and/or eventually no one “owns” or “has the licenses” to a show. And at that point, it would be immoral. Whether fan-subbers are of better quality than the official, legal, moral releases is irrelevant (Northrop, 2015).

### **Actions Against Fan-subtitling.**

There is a major backlash from movie studios and anime studios against fan-subbing. Some studios and publishers have taken their own steps with the advent of simulcasts. While the anime industry may not have actually created a big conglomerate to stomp down on illegal fan-subbers (like manga publishers once did), they have already taken steps by working with American companies to get their products out to a consumer base that increasingly wants them faster and cheaper (Sauro, 2017).

With sites such as FUNimation, Crunchyroll and others taking up simulcasting, illegal fan-subbers are slowly losing their popularity. While a series will always be fan-subbed, the number of people

relying on them has started to drop. This is, at the very least, a sign of improvement. Anime that is broadcast on TV in Japan, for example, is made almost entirely for the purpose of selling merchandise and making the material attractive to licensors. That is why anime is made so cheaply. Budgets for anime, even full-length movies, are shockingly low compared to animated films or television series in America (Tian, 2017).

The people who suffer most from fan-subbing are the foreign licensors. From the end of the 90s until the mid-2000s when anime was very popular with American viewers, Japanese licensees demanded large minimum cash guarantees (known as MGs) up front from licensors, and they bore little-to-no risk. However, even in those so-called “good old days” of foreign licensing, it still didn't really make Japanese companies a lot of money relative to the overall revenues for the anime property, as these came primarily from the domestic market (Yomba, 2006, pp. 187-196).

It is the same for anime. Some anime have a huge amount of hype and anticipation for their release. It has hundreds of thousands, perhaps even millions of potential viewers ready to watch it and discuss it. Some, however, are created by small companies and are unknown to most of the world. They are released on the back of a few light novels that have only gathered enough followers to justify anime. This small anime, regardless of popularity, may still be a great work, and can be unfortunate that those who cannot speak Japanese will not be able to understand them (Jason, 2004). Moreover, this will affect the company's viewership. Accordingly, for the good of the small community of fans who like these independent anime productions, fan-subbing can be very important for both the anime and the fans alike. Finally, let it not be forgotten that fan-subbers with a passion for the work of art are likely to do a better job translating it than anyone else.

The reason why fan-subbers do it is that they want to support their favorite movie, series, or anime, and to help it become popular worldwide. They may also produce a fan-sub because there is already a version for a particular TV series, movie, or anime, and they don't like that version (perhaps because it is of low quality) (Govind, 2017, pp. 51-53). They may also have started making it before other versions came out and then, once the other versions are out, they just wanted to finish what they started.

### **The Law in Different Jurisdictions of Fan-subbing and the Ethical Cases**

The present laws dealing with fan-subbing consider it as “illegal & illicit access to art without properly compensating artists” since most of the users use the fan-sub version without purchasing the original work of the author. Therefore, in this chapter, regulations and cases in the UK, China, Japan and the US are compared in the field of law enforcement as well as structural, legal and constitutional differences. The copyright and translation law of the US is governed by the US Copyright Act 1976 and is meant to encourage the creation of art and culture by protecting artists and authors. The artists and authors are protected by being granted exclusive rights over their creations including rights to make and sell copies of their work and to create derivative works. A majority of the China data

protection standards cannot be found similarly in the US law. Even though China, Japan, US and UK are working towards enhancing data privacy for citizens, the countries differ in how pre-people screenings are managed, according to the *Crow v. Wainwright* case.

Nowadays, many countries including China have opted for life-plus-70 years. America led the way when they passed the Sonny Bono Copyright Terms Extension Act in the late 1990s. But pretty much all of Europe, including the UK, now extend the terms to life-plus-70 years. But the Berne Union does not oblige any member state to go that far. Basically, before the advent of the WTO, if you wanted your works to be protected in multiple jurisdictions from the moment of creation, your country of origin must be a signatory to the Berne Union. Many countries refused to join the Berne until the late 80s or 90s, given that many countries became independent states only after European colonization ended in the 50s and 60s. The most notable example is the rogue copyright state of the US, which did not join the Berne until 1989. American Copyright law relied on a registration system until that period — an author would register with the Copyright Office for an initial period of 28 years and could renew the registration for another 28 years. A lot of works from UK, China and Japan had fallen into the public domain due to failure to comply with formalities. But the US government revived those dead European copyrights in 1994. So, this example showed what happens when your country is not a party to the Berne (Wills & Gilreath, 1987).

### **American Copyright Law**

The Copyright Law and Translation Act of the US has had a long and complicated history. It was established in the form of the copyright Act in the year 1790 and has been updated numerous times. Also, the Act had underwent major revision in 1976. During the 1787 Constitutional Convention, Pinckney of South Carolina, as well as Madison of Virginia, submitted proposals with the aim of allowing the Congress the power of granting copyright for a particular time. These proposals stood as the origin of the clause of copyright in the Constitution of the United States. Thomas Jefferson had strongly advocated on the ability of the public to share as well as build on other people's work and had suggested that the copyright duration should be limited under the Bill of Rights. The copyright Act has been amended several times since 1790, followed by a major amendment in 1976. The Berne Convention had also established Copyright Acts in the year 1988 (Cassandra, 2009).

The Copyright Law provides protection of derivative works and specifies that copyright owners have the right to translate. The definition of derivative works is clearly stated in the US Copyright law to include translation works. The production of fan-sub groups belong to the scope of derivative works, and the translated fan-subbers are also in line with the conditions of derivative works. Thus, subtitle files produced by the fan-sub group could enjoy the same rights as all other derivative works only if they are permitted to translate by the corresponding copyright owners. A similar opinion is also stated according to the *White-Smith Music Publishing Co. v. Apollo Co.* case.

In addition, the US copyright Law also provides restrictions for the exclusive right, that is, the scope of fair use. The “fair use” principle set out in Section 106 of the US Copyright Act allows for

the fair use of copyrighted works of film and television, but only for the legal use of copyrighted works, through the provisions of Sections 106 and 106A, including the use of copying, recording or other means of academic research, classroom teaching or critical discussion does not constitute an infringement of the right to translate and other related copyright rights (Rembert, 2010, p. 21). The basis for establishing its rational use generally needs to consider the following points:

- (1) the nature and specific characteristics of the copyrighted works being used;
- (2) the amount and substance of the use, i.e. the proportion of the used part of the total number of works and the substantial proportion of the content;
- (3) the user's purpose and use, whether the use behavior is commercial or non-profit;
- (4) the impact of the use behavior on the potential market and the value of the protected work.

In late 2006, Fox TV station received a letter from a Chinese person, protesting the arrangement of the American drama *Prison Break*, which drew the Internet video fan-sub groups to the attention of the public (Wang, 2012). In July 2014, 21st Century Fox and Warner Bros. filed a lawsuit against 15 Korean people who illegally produced US drama subtitles and spread them to the Internet without permission. This lawsuit opened the first step in the US crackdown on illegal subtitle productions. These people were faced with five years of imprisonment or a fine of 50 million won. The protection of the fan-sub translation works has already begun.

At the beginning, American companies chose to ignore their existence, but as their scale grew, they became a threat as they began to suppress the continued illegal development of such network derivatives. At the same time, they also relatively clearly established an attitude towards the translation rights and other legitimate rights and interests of copyright holders.

Further, an important parameter in deciding such cases is the “proof of harm” test – whether exercising the freedom of speech and, inevitably, copyright infringement, leads to harm to the copyright holder's business prospects etc.

### Copyright Law in the UK

Copyright, Designs and Patents Act 1988 is essential in cyberspace and the reason for the implementation of these laws is that nobody can copy the content and there shall be no copying, fan-subbing, distributing and displaying without a copyright owner's consent. These laws are developed and implemented by the copyright governing authority of the UK.

On 1 October 2014, the UK government introduced a law relating to copyrights wherein a private copying exception allowed people to generate copies in different media formats for their personal use. But this was followed by a judicial decision by the High Court, made on 17 July 2015 whereby the court dismissed the law of exception proposed by the government. And due to the decision, the private copying exception is no longer a part of UK copyright law.

The CDPA 1988 is an excellent example of content protection against piracy around the globe, as is in the case of *Ladbroke v William Hill* and it is the inspiration for many countries in order to stop piracy and infringing.

In the UK moral rights under copyright law include all types of protected works. Additionally, moral rights are perpetual and inalienable, as it will still be in effect 70 years after the death of the author. The Data Protection Act in the UK protects the property of an individual by fair but accurate processing and collection of a larger and more relevant data set.

It is necessary for an entrepreneur to be familiar with the CDPA 1988 in order to register the copyright with the UK copyright office in order to protect ideas, concepts, original language, and many other business-related issues.

Regarding the process of translation, the CDPA 1988 states that if any sort of work is carried out without the permission of the original creator, including translation work, it shall be considered a violation of the creator's rights. Also, one should bear in mind that a copyright is considered to be an intangible asset existing in a certain qualifying subject matter. The Copyright Act is statutory law first introduced in 1709, later passed as the Copyright Act of 1911, and is presently amended and governed by the Copyright, Designs and Patents Act 1988, which came into force on 1 August 1989.

In cyberspace, copyright laws are strictly adhered to. The sanctions for violations are severe and one would be liable for prosecution in a court of law. Cyber cell deals with such violations. Issues such as domain name, framing, fan-subbing, deep linking, hyperlinks, and copying are present in the cyberspace realm where there is difficulty in addressing such issues. Unfair competition, fan-subbing, deceptive practices, and false advertising are the main reasons for the violation of copyright laws.

### **Japanese Copyright Law**

Japanese industry reactions were remarkably different from their American counterparts, with good reason. In Japan, unlike the U.S., fan works, including commercial fan works, make up an enormous and visible industry that has matured alongside the industry of original content production (Kathryn et al., 2013, p. 182).

Japan has been continually protesting decriminalising the translation of Chinese subtitles and providing subtitles for Japanese anime. In the Japanese Copyright Law, Articles 3, 2, 4, 2, and 26 bis, 27, etc, stipulates that the translation of copyrighted film and television works are subject to legal control and protection. Japanese copyright holders have the right to translate their works including subtitles in film and television. The translation by the subtitle group constitutes a violation of the rights of Japanese copyright holders.

Article 27 of the Japanese Copyright Law stipulates that copyright owners have the exclusive right to interpret, and Article 30, paragraph 1, provides restrictions on the fair use of copyright-protected works,

“to a limited extent, for personal use, family”.

The use of other similarly used, and reproduced works of copyright is not considered infringement.

Therefore, unless it is reproduced for private, personal, and/or family use, or other similar limited use, the following three acts still infringe upon the copyright owner's right to translate:



- (1) using an automatic copying machine set up for public use;
- (2) circumventing the technical protection measures, and knowing that avoiding the technical protection measures may invalidate the purpose of copying;
- (3) knowing that the form of communication violates the rights of the copyright owner and this mode of propagation is used for digital recording or audio-visual reproduction.

Simultaneously, Article 43 of the Japanese Copyright Law stipulates that copyrighted works that are allowed to be reproduced for private purposes, including being translated, while Article 30 of the Japanese Copyright Law expressly restricts personal use, family use, or other similar purposes which can be used to reproduce a copyrighted work. In light of this, translation is also a way of producing a work, done by means of reproducing the subtitle file of the work.

Japanese law has extended the scope of “reproduction” to behaviors such as translation and adaptation, extending the scope of “private” to the limits of family and other similar restrictions. The 2009 Japan Copyright Law Amendment extends the scope of permission for the use, reproduction, and translation of copyrighted works by people with hearing impairments, allowing the translation of auditory works (including film works) into text for reproduction and automatic public communication. This may provide a surviving path for the fan-sub groups, but in the current situation, neither China nor Japan's subtitle group organisation, have used this article to achieve its goal.

Therefore, in accordance with the provisions of Japanese Copyright Law, it is legal for a group of people to copy and translate copyrighted works because of their common interests. However, the network subtitle group has added a copy of the translated subtitle file on the Internet for a free download by the public, which contravenes the restrictions on the “private scope”. It can be viewed that the subtitle group's subtitle translation of Japanese anime is also prohibited by law, infringing the copyright owner's translation rights and other legitimate rights and interests.

### **Copyright Law of the People's Republic of China**

In the digital environment, copyright owners hope to protect their exclusive rights to works through legal means. The foreign language subtitles designed by the fan-sub group are protected by the Copyright Law of the People's Republic of China in which Article 10, paragraph 1 (15) specifies that copyright owners have the right to translate their work. This right is then enjoyed by copyright owners of foreign film and television. The latter have the right to translate subtitles. Members of the subtitle group can translate any foreign films into Chinese subtitles and upload them to the Internet for free download by the general public without the consent of the copyright owner of the film and television works, in order to exclude the legal license and fair use of the Copyright Law of the People's Republic of China. After limiting the situation, it is determined that the following behaviors infringe the copyright owner's translation rights.

**The subtitle group uploading its translated subtitle file to the network does not constitute “fair use”**

“Fair use” is one of the main defences of the subtitle group (Lin, 2011, p. 53). They believe that



their work is subject to the Copyright Law of the PRC, specifically Article 22, paragraph 1 (1), which stipulates that for the purpose of private study, research or entertainment, to use a published work of another, a work may be used without the license of, and compensation to, the copyright owner, however, the author's name and the work's title shall be indicated and the other rights enjoyed by the copyright owner according to this law may not be infringed. The subtitle group uploads the subtitle file produced by it to the network, and has placed it in a state where anyone can download it, instead of being limited to the scope of the person, family and friends, therefore Article 22 of the Copyright Law of the PRC stipulates that "Learning, researching or appreciating for an individual, using a work already published by another person" does not constitute a reasonable and legitimate defence (Priest, 2006, p. 795). Of course, if the subtitle group downloads and translates itself, but it is not uploaded to the network, it should be discussed separately. If it is used for commercial purposes to obtain illegal profits, it is suspected of infringement, otherwise it is a reasonable use.

#### **The translation of the subtitle group cannot be recognized as a statutory license**

The "statutory license" is mainly for the needs of the public interest, market fair inspection, etc., mainly for the licensing of textbooks, the reprinting of statutory licenses for newspapers and periodicals, the legal license for making sound recordings, and the statutory permission to play published works (Guangwen, 2011, p. 192). The main purpose of subtitle group translation of foreign language subtitles is to publish to the network to share with netizens, not for reasons of public interest or market fairness, etc., nor for the four statutory licenses stipulated in the Copyright Law of the PRC. Group translation behavior cannot be considered as a statutory license.

#### **"Not for profit" cannot be a defence**

Whether the commercial subtitle group infringement is compared with the general infringement of intellectual property rights is the most obvious difference for profit. Article 47(6) of the Copyright Law of the PRC stipulates that without the license of the copyright owner, using his work by exhibition, film production or analogous method of film production or by adaption, translation or annotation, unless this law provided otherwise, shall be demanded for civil responsibility such as cease of the infringement, elimination of effects, public apology and compensation for loss. If the work is used in other ways, except as otherwise provided in this law, this paragraph does not stipulate that 'for profit' is required. As long as it is 'without permission from the copyright owner', the subtitle group's use of the copyright owner's works in translation subjects them to the responsibility of civil infringement (Yomba, 2005, pp. 463-476).

To sum up, according to Article 12 of the copyright Law, the copyright of a work resulting from the adaptation, translation, annotation, or collation of an existing work shall be enjoyed by the person who has adapted, translated, annotated, or organized, but may not infringe upon the exercise of copyright. The copyright of the original work and Article 36 of the Tort Liability Law stipulates that "Where network users or Internet service providers utilize network to commit a tort to other's civil rights and interests, they shall be subject to tort liability", that is, the translation behavior of the subtitle group constitutes an infringement of rights to the copyright owner (Bold, 2011, pp. 1-19).

## International Treaties

In addition to countries' own copyright laws, several countries have established a worldwide copyright protection system by signing international treaties in addition to various national copyright laws. This primarily refers to the relevant agreements under the Berne Convention and TRIPS.

### The agreement of trade-related aspects of international property rights

The WTO stipulates that all member states must agree to the Agreement of Trade-related Aspects of International Property Rights (hereinafter referred to as the 'TRIPS' agreement). The signatories are required to include in their domestic laws the content of other countries and agree to manage the domestic violation of the copyright of other countries. China subsequently joined the Berne Convention for the Protection of Literary and Artistic Works and the International Copyright Convention in 1992, and formally joined the WTO and the TRIPS Agreement in 2001 (Chris & Jonathan, 2006).

According to the TRIPS Agreement, as long as the country is a member of the WTO, the copyright owner can enjoy the protection of his copyright throughout the world. Furthermore, article 2, paragraph 3 in the Berne Convention states that "translations, adaptations, arrangements of music and other alterations of a literary or artistic work shall be protected as original works without prejudice to the copyright in the original work". Therefore, even if the foreign subtitles of the original ones are translated abroad, the original subtitles shall still be protected by copyright law as long as they come from a member state. In this framework, if the pirated subtitled videos are transmitted to the member states, as long as they affect the normal exercise of the original copyright, the legitimate rights and interests of copyright owners shall be guaranteed. The rights include but are not limited to carrying out the relevant principles and requirements of the Berne Convention, cracking down on illegally translating the subtitles of other countries' film and television works.

Article 44 of the TRIPS Agreement states that "the judicial authorities shall have the authority to order a party to desist from an infringement, inter alia to prevent the entry into the channels of commerce in their jurisdiction of imported goods that involve the infringement of an intellectual property right, immediately after customs clearance of such goods. Members are not obliged to accord such authority in respect of protected subject matter acquired or ordered by a person prior to knowing or having reasonable grounds to know that dealing in such subject matter would entail the infringement of an intellectual property right." At the same time, this provision also provides for remedies in the event of infringement damage, and if these remedies do not comply with the laws of the member state, a declaratory judgment and appropriate compensation shall apply.

### Berne convention

The Berne Convention was the first multi-lateral copyright agreement that was negotiated between countries that adopted "Droits d'Auteur" (Author's rights) tradition, i.e. French, Japan, Belgium and the Anglo-American "Copyright Tradition". The Berne Convention had set many important principles that copyright law of most countries recently inherited. Works of authorship today are protected from the moment of creations (i.e. no registration required) and that was the legacy of Berne's Berlin

Revision in 1908. The standard life-plus-50 year's protection term is also the invention of Berne.

The protection of artist's right to translations was highlighted in the Berne Convention, in which the author has all the right to translate his work, to regularize the quality and appurtenance, to adjust the timings of such change etc. Countries and regions that have not signed the Berne Convention have different protections for copyright. In addition to providing a reasonable reference, the Berne Convention allows countries to stipulate their own fair use system.

The Berne Convention was an international treaty first signed in 1886, which has been signed by almost every country in the world. Without it, companies could raid other countries' creation works with impunity, as they did before it, but they will be blacklisted at present (Harry, 2008). It established three rules for all signatories. The first one is that Copyright automatically exists for a work as soon as the work is fixed in a tangible medium (meaning it is on paper, on film, or on disk). No registration is required. Secondly, it stipulates that a work created in one country must be protected worldwide to the same extent it would be protected in that country. If France only has a 50-year term, while the United States has a 100-year term, French citizens cannot copy an American work after 50 years have passed, even though they could copy a French work. And the third one is that all copyrights must last for at least 50 years.

North Korea has copyright laws. If someone (a person) that has had their Copyright infringed in North Korea want to use the North Korea justice system to prevent that infringement and/or obtain damages, they may. This is what being a party to the Berne Convention means. It does not mean that the government does this work for people, nor that people can use courts in one country against a copyright infringement in another country (Fishman, 2011).

In the US, copyrights are an automatic protection on people's creative works, immediately upon completion. There are extra protections people will obtain by registration. And registration will be required immediately before suing, if people have not registered yet. Given that one of the extra protections is "statutory damages", which are often significantly higher than the actual damages caused by infringement, there is a strong incentive to register at or near the time of publication (Cook, 2002, p. 63). However registration is not necessary and in fact, a copyright notice is not needed either.

## **Current Solutions to Fan-subbing**

### **The Fan-sub Group as the "infringed person"**

The subtitle group bears the harm of being infringed while infringing the copyright of others. When the 'informant' abroad has sent back the raw episode, it needs to undergo a series of cumbersome processes, which have already been discussed in detail above. It is estimated that a drama with a duration of about 20 minutes requires at least 5 to 6 hours for the completion of subtitles, and a documentary that lasts one and a half hours requires 8 hours, and more than ten films can be produced quarterly.

Due to the problem that such translation behavior does not obtain legal status, it is impossible to protect their intellectual achievements. Pirates take advantage of this situation, stealing high-quality subtitle resources and reselling at low prices after being made to discs. At last, the fan-sub group has devoted hard work but can only be, “a silent lamb”, which means that the person who shall take the illegal responsibilities of this behaviors are left free to be killed without saying a word.

### **Regulatory Difficulties Under the Combination of Justice and Practice**

From the perspectives of theory and practice, clear contradictions exist between the illegal behavior of the subtitle group and the prevalent situation. The Internet is a platform for advocating free sharing of resources, in a sense inconsistent with the spirit of intellectual property.

First, regulatory authorities cannot determine the ownership of the copyright of the responsible party, and it is impossible to effectively implement countermeasures to safeguard their rights. The composition of subtitle groups often exists in the virtual network platform by means of a network name or anonymously (He, 2014, p. 1009–1042). The supervisory department cannot know who the first communicator of the film and television works is, and who the potential follow-up communicator is in the future. The issue of the attribution of the responsible subject has brought about great difficulty.

Furthermore, the Internet always plays an important part because of its public characteristics. There are several means available to download copyrighted film and television works, such as using http, ftp, and BitTorrent. Regulation faces its own problems: Blocking the illegal video file download results in other links appearing in its stead, and if one server is blocked, other server access ports will open.

In addition, the major difficulties are experienced in the statistics and evidence collection of infringement damages. The Internet enables the copying and sharing of unauthorized copyright works, which are free to download at almost zero cost, and there is no distortion or error in the reproduction of the duplicates, and it is difficult to count how many times the unauthorized works have been downloaded from the Internet, which has caused great obstacles to the statistics of infringement damage (Wurm, 2014). However, regulatory authorities often face the problem of insufficient evidence available upon investigation. Regardless of whether the regulatory authorities are strictly supervising, perpetrators can instantly close the website anytime and anywhere, which hinders the evidence collection work of the regulatory authorities.

### **The Legislative System is Still Insufficient, and the Punishment is Not Strong Enough**

#### **The criteria for dividing the extent of violations are not clear**

In the Copyright Law, it permits the right to translate, but does not clarify its meaning and extension, for there are vast differences between the German-speaking, the Chinese-speaking, and the French-speaking systems. Even if the original intention remains unchanged, obvious differences would occur. Moreover, personal understanding and ideas to the consequences, and even personal favorite expressions and elements are usually contained in fan-subbing. At this time, the translated

works belong to the “translation”, which must have a certain deduced color (Massidda, 2015). But in the case of subtitle translations, how should the law determine whether they are infringing, and the severity of the infringement remains unsolved. And it is also needed to consider whether their legal protection is equal.

### **Insufficient sanctions**

In China, rectification is usually ordered by competent authorities, for example, shutting down the forum to rectify, instead of bringing it to the court. The impact thereof is not larger than when pursued with legal support. Acknowledge of legal deterrence cannot be quickly brought to the attention of the public. In contrast, foreign practice has shown a good political effect on the severe punishment of a series of illegal infringements including privately downloading film and television works and translating and uploading them to networks. For example, it was reported that since early 2016, Japan began to strengthen its crackdown on cybercrime. The Kyoto Prefecture Cybercrime Countermeasure Section and the Fushimi Department arrested several members (in Japan) from the Chinese subtitles group, including one 30-year-old Chinese male staff, one 20-year-old Chinese male student, and one 29-year-old magazine salesman. The Department also arrested a 63-year-old Japanese man who uploaded the movie “*Superman: The Body of Iron and Steel*” with Japanese subtitles, and Japanese men aged 52 and 35 who uploaded the comics and music of “Attacking on Titans”. The Japanese government and the police used administrative means to warn the public against such violations of Copyright Law, while in other countries, for instance, China, it would not produce the same results (Schules, 2014).

Sanctions are likely to cause members of the loose fan-sub groups to face charges including, but not limited to, economic bankruptcy or deportation of cancelled visas. Since most of the members are warm-hearted “network volunteers”, most people cannot accept such severe punishments. And as countries are increasingly demanding different cultural exchanges, it can be seen that we can learn from external rectification cases and strengthen the punishment of online subtitle groups for infringement of translation rights (for example, the amount of damages), thereby effectively reducing the emergence of such infringements in this grey area of law (He, 2014, p. 1009–1042).

### **Existing Solutions**

Fan reactions often appeal to rights holders. Rights holders have reacted to infringing fan activities in America and Japan. Professor Rebecca Tushnet, commenting on major studio reactions in the US, points out that fans are reasonably confused by rights holders’ mixed reactions, and she generally argues that illegal fan uses (particularly the writing of fan fiction) should be protected by a fair use defence (Rebecca, 1997, p. 654).

### **The Exception Clause**

The exception clause contained in the United States Constitution allows Congress to improve

powers to exclude the appellate authority of the Supreme Court. Actually, the exception clause grants something that is not granted anywhere else. The exceptions clause is a form of intellectual property law, which is particularly framed to protect original works of authorship. These works include literary, drama, music, art, innovation, architecture, and so on. The ideas and methods of copyright and intellectual property are freely released to the general public. It protects original works of authorship from free transmission. The original work of authors could be communicated or transferred with official consent and approval of an individual or a system (Van, 2003, p. 225). Again, it is for the benefits of the public and protects the rights of work completed by anyone. This rule poses more benefits as it prevents people from using works without permission (Massidda, 2015).

The doctrine of fair use is contained in the Exception Clause which is a legal doctrine in the US. It permits only limited use of copyrighted material without acquiring permission from the legal holders. In general terms fair use means that the copyrighted material is not being used for any monetary benefit. Therefore, the Exception Clause promotes an ethical environment in the economy amongst people of varying arts (Fardy, 2003, p. 443).

### **The Digital Economy Act 2010**

The Digital Economy Act 2010 (The DEA 2010) protects all creations of a person or organization which should either be in virtual form or in physical form. Every work must be original. It may share similarities with other works, but it must be created, written, and invented by another author in a different way. It is observed that the DEA 2010 has extended the online copyright violation penalties. The DEA 2010 provides a 10-year prison sentence for committing any copyright violation, including fan-subbing, although its use is limited (Scott, 2017).

The DEA 2010, which serves the public domain, all works, upon expiration of the respective copyright, are released into the public domain of that year. Any country that is a signatory to the Berne Convention has a minimum copyright term of 75 years, or alternatively, the author's life plus 50 years. In the US, the term is increased to 95 years or the author's life plus 70 years. If not released, the author is under no obligation to provide it. Since most countries also have trade secret protections, their source code is protected as strongly as if it were under copyright, until its dissemination.

The DEA 2010 has introduced several developments along with domestic copyright laws that may influence those who unlawfully share any content or commit fan-subbing of such activities in the eyes of the DEA 2010. It also encompasses the application test. Under sections 107(2A) and 198(1A) of the Copyright Act, it is given a maximum 2-year sentence for anyone who oversteps copyright in a work by distributing the work to the public, or who infringes a performer's "making available" right. This two years' sentence is practiced extensively compared to previous law (Scott, 2017).

### **Viki**

Viki is a solution to copyright violation by fan-subbers. Viki is a streaming video website comprising licensed subtitled dramas from around the world. Licensing varies from country to



country. Subtitles are produced by varying teams of viewers who can translate specified languages, and volunteer to do so freely, as part of a community. There are benefits to becoming a fan-subber, including not having to pay the ad removal fee, early viewing of some dramas, and so on. The quality of subbing is good, as well. The problem is that Viki would take longer time for episodes to come out with subtitles, and if people do not have a Viki Pass, that could be disenchanting, but people still prefer it over any other drama site just as it is safer.

There are many Korean dramas, as well as those dramas from China, Japan, Thailand and Indonesia. The list goes on and includes European countries, though to a lesser extent. Anyone can watch for free if they do not mind the frequently appearing ads. The quality of the video is excellent. The subtitles can be altered to the language people are learning are more comfortable with. It is of great entertainment, and in addition to dramas, there are also variety shows, music videos and newsreels available.

### **Solutions Concluded Against Illegal Issues**

Copyright is a form of protection given to the authors or creators of "original works of authorship," including literary, dramatic, musical, artistic and other intellectual works. This provides protection for intellectual property in the same way as it does for physical property. The existence of copyright law imposes a tax on viewers in the sense that the cost the viewers pay for the movie to the director includes the publishing costs and the copyright costs. Hence, the cost paid by the reader increases. The damages for original authors are the same with the amount that fan-sub groups have earned by releasing their illegal-translated works (Lee, 2011, pp. 1131–1147).

### **Obtaining Permission for Translation Through Video Companies with Legal Authorization**

At present, several video websites have bought copyright through legal channels and introduced overseas variety shows and TV series. For example, Tudou.com signed an agreement with TV TOKYO of Japan, legally obtaining the right to use its work, and began to play the animation programs broadcast on TV TOKYO from December 1, 2011. In addition, on May 8, 2014, Internet giant Baidu and South Korea "Sculpture Dream Factory" SM Entertainment officially signed a strategic cooperation memo in Baidu mansion. Through this strategic cooperation, Baidu Music and iQiyi (an online video platform based in Beijing, China) will receive genuine digital music from SM artists, MV, performance videos, and other full authorizations in the Chinese mainland. They will jointly operate the official post of SM artists (Lakarnchua, 2017, pp. 32–44). It is reported that after the opening of the Busan Film Festival in October 2014, iQiyi also cooperated with Korea Lotte and FineCut to purchase the exclusive copyright of nearly 100 Korean films.

Thus, one popular solution would be the cooperation between fan-sub groups and companies that have legal authorizations to obtain the permission of the copyright owner of the work they want. Although most of the members of the subtitle group cannot earn much from this, the brainchild of

the subtitle group can make a fortune for anyone who uploads it online. At present, almost all of the pirated foreign films and television works that can be bought through the market have subtitles created by certain major subtitle groups. Those pirates who receive these works could download the translated videos easily, and then burn them into pirated discs. They sell them and profit from this at almost zero cost (Kirkpatrick, 2002, p. 131). On the basis of eliminating the illegality of its translation behavior, it obtains legal copyright and avoids infringement disputes, and can use the law to effectively protect its intellectual achievements from illegal exploitation and infringement by others.

### **Establishing a Special Fan-sub Group Management Mechanism**

Currently, most films translated by the network subtitles group have not officially entered the Chinese market. Therefore, many overseas filmmakers ignore the relevant law to some extent, and even support the work of subtitle groups, which can help their works spread throughout China. The subtitle groups are loose organizations, which usually lack proper management. Thus, the burden of tort liability always falls upon the individual who uploads the translated files. However, such individuals are always anonymous. Then, it may largely decrease rights holders' motivation in protecting their own rights.

A special management mechanism should be established, like the Music Copyright Association and the Film and Television Works Copyright Association, in order to manage the network subtitles group and create a sound creative environment (He, 2014, p. 307).

Such a special management organization serves the following functions: 1. Uniformly obtain copyright licenses of foreign language film and television works, and paying fees associated with the copyright owner; 2. Reasonable escrow disputes caused by the infringement of translation rights or other copyrights by subtitle groups within its management scope, including the case where the subtitle file produced by the subtitle group is stolen; 3. Centrally manage payments, including the sponsorship fee, the fee paid by the network user to download the subtitle, the compensation amount of the pirated disc dealer for the infringement, and the subsidy for professional server hosting, machine maintenance, and parts replacement repairs.

Alongside this, the management regulations of a series of functional institutions are formulated: 1. The subtitle group must be registered with the regulatory agency before it can operate normally. Each subtitle group is registered as a member, and the subtitle file is published on the website. The subtitle file is managed by the website to ensure legality (Hatcher, 2005, p. 514); 2. The management organization can establish a special subtitle group website forum, and the subtitle group can appear on the website. Translation of the film and television works that are of legal interest can be applied for (González, 2007, pp. 260–277).

In this way, not only are the negative effects avoided, but the spread of excellent domestic and foreign film and television works is promoted, as well as the rapid development of the domestic film and television industry. This encourages creation in any form, and ensures that the organization uniformly protects the legitimate rights and interests of the majority of subtitle groups, and the

legitimate rights and interests of copyright owners. Both must conform to the two core ideas of “encouraging creation” and “protecting copyright laws”.

### **Improving the Legal Supervision System for Online Piracy at the Administrative Level**

The regulating authorities need to clarify the subject of responsibility, and the scope of duties and responsibilities of the specific regulatory authorities that combat cybercrime. This is the “Safe Harbour” principle adopted by most subtitle websites. It would be a long-term process for departments to facilitate a system for preserving evidence, which requires a hidden supervisor to observe the network continually for a period of time and a great ability in gathering and preserving evidence.

First, because the subtitle group often does not have a unified organization for registration, it does not share the characteristics of a legal person. At this point, the subject who bears the liability for torts should be the main body of the website of the Ministry of Industry and Information Technology. However, because the supervisor only criticizes or closes down the main body of the website, it is not conducive to the protection of the Internet (Denison, 2011, pp. 449–466). Therefore, it is necessary to establish a cybercrime department that specializes in supervising and managing subtitle groups, such as the Kyoto Prefecture Cybercrime Countermeasure Section and the Fushimi Department, as mentioned above (Kirkpatrick, 2002, p. 131).

Second, the administrative agency can use its fast and flexible reaction mechanism, such as restricting the circulation of infringing works, and canceling the administrative license of the infringing works circulation platform, to achieve the goal of reducing the loss of the copyright owner to a minimum in a short time.

Furthermore, it is possible to rationally introduce excellent foreign films and television works through administrative channels to form a commercial operation mode and make them legal. The subtitles group needs to avoid violating relevant laws while operates normally. This method not only promotes the cultural exchange between China and the West, but also manages the circulation of foreign films and television works to a certain extent, whilst restricting the flow of films containing bad content into the market and reduces the negative impact of many online subtitle groups.

### **Clarify the Standards and Scope of Tort Liability and the Corresponding Punishment Measures**

First, liability for infringement should be clarified. The legal provisions hold that the subtitle group needs to be responsible for the infringement of the harm caused by the pirates who use the subtitle documents. The intention thereof is to sanction collusion between commercial subtitle groups and pirates.

Second, the principle of imputation requires amendment. The use of the fault principle for the determination of tort liability is not conducive to the protection of rights holders. In contrast, such infringements should apply the principle of fault presumption. The principle of fault presumption denotes the existence of the fault and the legal presumption of the fault having harmful behavior. The law presumes that the perpetrator is at fault, and the perpetrator cannot prove the converse. Thus, it would bear tort liability (Leonard, 2005, pp. 281–305). The copyright owner only needs to prove

that the subtitle group will subtitle the unauthorized film and television production and upload the video and subtitles to the network for the unspecified public to download an unlimited number of times. Under the applicable framework, the burden of proof of the copyright owner can be effectively alleviated, and part of the burden of proof is transferred to the network subtitle group. Although this principle applies, there are many reasons why the infringing subtitle group can be used for defence, because the law stipulates that the subtitle group can object to the fault determination only if the actor cannot prove lack of fault, for example, a lack of intention.

Third, it should clarify the boundaries of bearing tort liability and increase sanctions. Such measures could be learned from foreign practice, such as the case of the Kyoto City Cybercrime Countermeasure Section and the Fushimi Department. Increasing penalties and raising illegal costs could form an effective deterrent to infringers or potential infringers. As for the tort liability boundary, it should include regulations on the specific measurement standard to determine whether there is infringement. Although the law does not specify it clearly at present, it can be deduced through precedents and the courts' guiding books to judge whether the online subtitle translation constitutes infringement and thus constitutes a crime (Hatcher, 2005, pp. 514-542).

The law should strengthen the intensity of supervision, increase sanctions, and prevent the possibility that online captioning groups risk illegal activities to spread illegal articles for bad advertisers.

## Conclusion

Placing subtitles on a video is not immoral. The bone of contention is what happens when distributed on the Internet, especially when profiting from the website that does so. If a show is licensed within a country which means that there is a company that owns the rights to distribute and sell that anime or video, then it would be immoral because someone else has the exclusive right to sell and distribute that show, but the fan-subber is doing it instead.

Ultimately, regardless of ethics, it can be said that fan-subbing is technically illegal. The network subtitle group has been self-sustaining. Fan-subbing promotes acceleration in communication between Chinese and Western film and TV culture. However, as countries began to crack down on the right to translate and other copyright rights contained in the subtitle group, the trend of the network subtitles group became seriously threatened. Countries including China must step up their efforts to crack down on illegal distribution and translation.

In the process of private control, translation, uploading and dissemination, the copyright owners' rights suffer infringement which normally entails direct or indirect economic losses. Such situations create difficulties in judging responsible subjects and the ensuing punishments. In this sense, different cases should be treated differently, depending on their individual circumstances.

Presently, China's strict regulatory mechanism, legal recognition and accountability need to be improved. From the perspectives of justice and legislation, it should supervise and manage

unauthorized translation rights violations, and, at the same time, seek legal development paths for improved international culture.

## REFERENCES

- Anthony F. (2003). Japans Empire of Cool. *Washington Post*.
- Bao, W. (2014). YYeTs announced to be shut down after its suspension within a month. Available at: <http://www.chinanews.com/yl/2014/12-22/6898931.shtml> [Accessed 2 Sep. 2019].
- Bold, B. (2011). The power of Fan Communities: An overview of Fan-subbing in Brazil. *Tradução em Revista*, 11, pp.1-19.
- Cassandra, S. (2009). The Integrity Right of an MP3: How the Introduction of Moral Rights into US Law Can Help Combat Illegal Peer-to-Peer Music File Sharing. 39 *SHLR*, 1299.
- Chris, B. and Jonathan, L. China, U.S. trade barbs over WTO piracy case. *Reuters*. 20 March 2009.
- Cook, C. (2002). *Patents, Profits & Power: How Intellectual Property Rules the Global Economy*. p. 63
- Condry, I. (2010). Dark energy: What fan-subs reveal about the Copyright wars. *University of Minnesota Press*, 5, pp.193–208.
- Denison, R. (2015). Redistributing Japanese television dorama: the shadow economies and communities around online fan distribution of Japanese media. *The Velvet Light Trap*, pp.58–72.
- Denison, R. (2011). Anime fandom and the liminal spaces between fan creativity and piracy. *International Journal of Cultural Studies*, 14, pp.449–466.
- Diaz-Cintas, J. & Muñoz Sánchez, P. (2006). Fan-subs: Audiovisual Translation in an amateur environment. *The Journal of Specialized Translation*, 6, pp.37-39.
- Dwyer, T. (2017). *Speaking in subtitles: Revaluing Screen Translation*. Edinburg University Press.
- Dwyer, T. (2016). *Multilingual publics: Fan-subbing global TV*, in: *Contemporary Publics*. Springer, pp.145–162.
- Dwyer, T. (2012). Fan-sub dreaming on Viki: "Don't just watch but help when you Are free.". *The Translator*, 18, pp. 217–243.
- Fardy, P.S. (2003). Feet of clay: How the right publicity exception undermines Copyright Act preemption. *Intell. Prop. LJ*, 12, p.443.
- Fishman, Stephen. (2011). *The Copyright Handbook*.
- Gamal, M. (2008). Egypt's audiovisual translation scene. *Arab Media and Society*, 5, pp.1-15.
- González, L.P. (2007). Fan-subbing anime: Insights into the 'butterfly effect' of globalization on audiovisual translation. *Perspectives*, 14, pp.260–277.
- Govind, A. (2017). A Critical Analysis of the Subculture of Fansubbing and Scanlation of Japanese Media and Copyright Law. *HNLU Student Bar Journal*, 1(2), pp.51-53.
- Gray, J., Sandvoss, C., & Harrington, C. (2017). *Fandom: Identities and communities in a mediated world*. NYU Press.
- Guangwen, X. (2011). Research on Infringement of Foreign Language Film Subtitle Translation Group. *Internet Legal Review*, 1, p.192.
- Harry, Y. (2008). CHINT v. SCHNEIDER on Patent Infringement. *China Intellectual Property Magazine*, 22.
- Hatcher, J.S. (2005). *Of otakus and fan-subs: A critical look at anime online in light of current issues in Copyright law*. Scripted 2, p.514.
- He, T. (2014). *Fan-subs and market access of foreign audiovisual products in China: The Copyright predicament and the use of No Action Policy*. Or. Rev. Int'l L., 16, p.307.
- He, T. (2014). What can we learn from Japanese anime industries? The differences between domestic and overseas Copyright protection strategies towards fan activities. *The American Journal of Comparative Law*, 62, p.1009–1042.
- Howard W. French, Chinese Tech buffs slake thirst for U.S. TV Shows, *N.Y. Times*.
- Jason, M. (2004). Genre and Television: From Cop Shows to Cartoons in American Culture. *Routledge*, 64.
- Kathryn K. etal. (2013). Fan activities from P2P files sharing to fansubs and fan fiction. *Texas Review of Entertainment & Sports Law*, 14(2), p.182.
- Kirkpatrick, S. (2002). Like holding a bird: What the prevalence of fan-subbing can teach us about the use of strategic selective Copyright enforcement. *Temp. Envtl. L. & Tech. J.*, 21, p.131.
- Koulikov, M. (2010). Fighting the fan sub war: Conflicts between media rights holders and unauthorized creator/distributor networks. *Transformative Works and Cultures*, 5.



- Kustritz, A. (2015). Transnationalism, localization, and translation in European fandom. *Transformative Works and Culture*, 19.
- Lakamchua, O. (2017). Examining the potential of fan-subbing as a language learning activity. *Innovation in Language Learning and Teaching*, 11, pp.32–44.
- Lee, H.-K. (2011). Cultural consumer and Copyright: A case study of anime fan-subbing. *Creative Industries Journal*, 3, pp.237–252.
- Lee, H.-K. (2011). Participatory media fandom: A case study of anime fan-subbing. *Media, Culture & Society*, 33, pp.1131–1147.
- Lee, H.-K. (2009). Between fan culture and Copyright infringement: manga scanlation. *Media, Culture & Society*, 31, pp.1011–1022.
- Leonard, S. (2005). Progress against the law: Anime and fandom, with the key to the globalization of culture. *International journal of cultural studies*, 8, pp.281–305.
- Leonard & Sean. (2005). Celebrating Two Decades of Unlawful Progress: Fan Distribution, Proselytization Commons, and the Explosive Growth of Japanese Animation. *UCLA Entertainment Law Review*, 12, p.24.
- Leonard, S. (2004). *Progress against the law: Fan distribution, Copyright, and the explosive growth of Japanese animation*. MIT Japan Program, Center for International Studies, Massachusetts Institute.
- Lin, G. (2011). Analysis of the nature of fan-sub groups and the application of fair use system. *Journal of Sanming University*, (4), p.53.
- Mehra, S. (2002). Copyright and Comics in Japan: Does Law Explain Why All the Cartoons My Kid Watches are Japanese Imports?. *SSRN Electronic Journal*, 55, pp.15–22.
- Massidda, S. (2015). *Audiovisual translation in the digital age: The Italian fan-subbing phenomenon*. Springer.
- Northrop D. (2015). Manga and Anime Go to Hollywood. *Bloomsbury*.
- Orrego-Carmona, D. and Lee, Y. (2017). *Non-professional subtitling*. Cambridge Scholars Publishing, p.3.
- Priest, Eric (2006). The Future of Music and Film Piracy in China. *Berkeley Technology Law Journal*, 21, p.795
- Rebecca T. (1997). Legal Fiction: Copyright, fan fiction, and a new common law, 17 LOY. L.A. ENT. L. REV. 651, p.654.
- Rembert-Lang, L.D. (2010). *Reinforcing the tower of babel: The impact of Copyright law on fan-subbing*. Intell. Prop. Brief, 2, p.21.
- Rush, A. (2009). Otaku creations: The participatory culture of fan-subbing. *Kinephanos Journal*.
- Sauro, S. (2017). Online fan practices and CALL. *Calico Journal*, 34(2).
- Schules, D. (2014). How to do things with fan subs: Media engagement as subcultural capital in anime fan subbing. *Transformative Works and Cultures*, 17.
- Schwabach, A. (2016). *Fan fiction and Copyright: outsider works and intellectual property protection*. Routledge.
- Scott F. (2017). Digital Economy Act extends online Copyright infringement penalties. AS. Available at: <https://andersonstrathern.co.uk/news-insight/digital-economy-act-extends-online-Copyright-infringement-penalties/> [Accessed 3 Sep. 2019].
- Tianxiang H. (2017). *Copyright and Fan Productivity in China: A Cross-Jurisdiction Perspective*. Springer.
- Tushnet, R. (2007). Payment in credit: Copyright Law and subcultural creativity. *SPG Law & Contemp. Probs.*, 70(2), p.135.
- Van Alstyne, W.W. (2003). A Summary Explanation and Review. *Law & Contemp. Probs.*, 66, p.225.
- Wang, B. (2012). *Analysis on the Legal Problems of Films and TV Programs Fan-sub Groups*. Legal Expo, (6), p.36.
- Wang, D., 2017. Fan-subbing in China—with reference to the fan-subbing group YYeTs. *The Journal of Specialised Translation*, 28, pp.165–190.
- Wang, D., Zhang, X. (2017). Fan-subbing in China. Target. *International Journal of Translation Studies*, 29, pp.301–318.
- Wu, Y. (2014). The Shooter Announced to be Shut Down and the fan-sub groups as well. Available at: <http://society.people.com.cn/n/2014/1124/c136657-26082381.html> [Accessed 2 Sep. 2019].
- Wills, E. C., & Gilreath, J. (1987). Federal copyright records, 1790-1800. Washington, Library of Congress.
- Wurm, A. (2014). *Anime and the Internet, the Impact of Fan-subbing*. Reflexive Horizons.
- Yomba, E. (2006). The Modified Extended Fan Sub-Equation Method and Its Application to the (2 + 1)-Dimensional Broer-Kaup-Kupershmidt Equation. *Chaos. Solitons & Fractals*, 27(1), pp.187–196.
- Yuanwen, S. (2014). Subtitlers: Non-commercial fan-sub groups are supported with full love and enthusiasm. Available at: <http://culture.people.com.cn/n/2014/1126/c172318-26094670.html> [Accessed 3 Sep. 2019].
- Yunting, Y. How to treat with Copyright issues relating to fan-sub groups translating foreign TV shows. Available at: <https://www.zhihu.com/question/20001560> [Accessed 3 Sep. 2019].

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