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Intellectual Property and the Japanese Media Mix: Video games between Fan culture and business strategies

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Tetsuya Imamura
Professor, School of Information and Communication, Meiji University

Marc Mimler*
Senior Lecturer in Law, The City Law School, City St. George's, University of London.

* The City Law School, City, University of London, London, EC1V 0HB

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Tetsuya Imamura. Marc Mimler

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Intellectual Property and the Japanese Media Mix: Video games between Fan culture and business strategies

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Tetsuya Imamura, Professor, School of Information and Communication, Meiji University (Tokyo, Japan); ORCID identifier: 0009-0008-3534-0829; email:

Marc Mimler, Senior Lecturer in Law, City University London, City Law School (London, UK); ORCID identifier: 0000-0002-9457-2506; email: Marc.Mimler@city.ac.uk

Abstract

Japanese video games have become a significant segment of the global entertainment and media industry, while also serving as a defining element of Japanese popular culture enjoyed worldwide. Many of the industry's key technological advancements have been driven by Japanese companies, and numerous iconic video game franchises trace their origins to Japan. Notably, these games are often integrated into a broader media mix strategy, in which publishers expand a single narrative across various media formats—such as anime, manga, and video games—featuring shared characters and immersive fictional worlds, often accompanied by related merchandise.

A major part of the appeal lies in the passionate fan communities that engage deeply with these characters and universes. Like other forms of cultural production, video games foster vibrant fan activity, which plays a crucial role in enhancing the popularity and cultural impact of the media mix. However, some of these fan practices can raise legal concerns from the perspective of intellectual property (IP) rights. Certain forms of fan engagement may cross into infringement, placing publishers in the difficult position of deciding whether or not to enforce their IP rights. In practice, Japanese publishers have often been reluctant to take legal action against fans. This paper explores the Japanese video game media mix, its associated fan cultures, and the complex IP considerations that arise from this dynamic ecosystem.

Keywords: Video games, Japan, fan culture, Otaku, Intellectual Property, media mix

Introduction

Japanese video games are far more than a pastime diversion: In the times of the third wave of Japanophilia, Japanese cultural productions have become part and parcel of global pop culture bolstering Japan as a cultural superpower.[1] While anime and manga have long exemplified the global influence of Japanese cultural expression, video games have emerged as an equally significant medium within the broader content industry.[2] Japanese video games are particularly distinctive for their unique design aesthetics and narrative styles, which often draw on mythological themes, folklore, and philosophical motifs. Iconic franchises such as *Final Fantasy*, *Super Mario*, *Pokémon*, and *Resident Evil* have achieved worldwide acclaim, shaping the global gaming landscape and resonating across multiple generations of players. These games not only reflect Japan's cultural creativity but also demonstrate how interactive media can serve as powerful vehicles for cultural transmission and innovation.

Video games are often part of media mix strategies conducted by Japanese media franchises, which relates to a manner of conducting media business by organising media production, distribution[3] as well as merchandise products related to the franchise. An important feature of this strategy is IP which enables the protection and commercialisation of the media expressions of video game franchises. Another important feature of this success story are the fans who play the games and engage with the wider universes created by Japanese game designers. This fandom and associated fan practices are key to the spread and impact of a media mix[4] and ultimately formed Japan's vibrant video game culture.[5] Fandom can be hugely important for the commercial success of a media, but has repercussions when it curtails IP protection.

This paper will analyse the nexus of the Japanese video games media mix, intellectual property and fan culture in Japan. By doing this, the paper will introduce the media business, law and culture of video games in Japan and is divided into 3 parts. The first part will provide an introduction to Japanese video games, their impact on global gaming and the media mix strategy deployed by the Japanese video game industry. There, the nexus between the media mix and the relevant IP frameworks will be outlined. Part 2 will outline the particularities of Japanese video game culture by introducing its "players." Video games have given rise to a subculture shaped by the market dynamics established through local industrial structures.[6] It will highlight the particular social context in which the gaming culture in Japan exists and how

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[1] Douglas McGray, 'Japan's Gross National Cool' (*Foreign Policy*, 11 November 2009) <https://foreignpolicy.com/2009/11/11/japans-gross-national-cool/> accessed 05 June 2025.

[2] Yoshimasa Kijima, 'The Fighting Gamer Otaku Community: What Are They "Fighting" About?' in Mizuko Ito, Daisuke Okabe and Izumi Tsuji (eds), *Fandom Unbound- Otaku Culture in a Connected World* (Yale University Press 2012) 250.

[3] Akiko Sugawa-Shimada, 'A 2.5D Approach to the Media Mix - The Potentialities of Fans' Produsage' [2023] Mechademia 47-55, 47.

[4] Akiko Sugawa-Shimada, 'A 2.5D Approach to the Media Mix - The Potentialities of Fans' Produsage' [2023] Mechademia 47-55, 48.

[5] Martin Picard, The Foundation of Geemu: A Brief History of Early Japanese video games (2013).

[6] Martin Picard, Jérémie Pelletier-Gagnon,'Geemu, media mix and the state of Japanese video game studies' [2015] Kinephanos 1-19, 3.

fans are expressing their passion. The third part will cover the law to outline how Japanese law is applied in the context of players' activities. This is particularly interesting in the context of Japanese otaku culture, where the existence and creation of derivative works are so important.[7] This interrelation is interesting as it also transpires into the legal field as to how owners of game-related IP tend to enforce their IP rights against the fans, or rather not.

1. Video games in Japan: The Business

This section begins by tracing the historical development of the Japanese video game industry, examining how it achieved both domestic prominence and global success. It explores the key factors that contributed to the industry's creative output and international appeal. The paper then provides a brief overview of how Japanese publishers have leveraged their franchises to expand their operations, focusing on the ways in which video games generate value through the strategic use of intellectual property. In particular, it analyses how video game franchises employ the media mix strategy to extend their reach across multiple platforms and consumer markets.

1.1. The video game industry in Japan.

The Japanese video game industry has been a key player and trendsetter in the global market, with industry giants such as Nintendo and Sony having led the way. Aside from the hardware producers, game publishers such as Nintendo, Pokémon, Capcom, Konami, Namco Bandai Entertainment, Square Enix, Sega, and Koei Tecmo Games are Japanese. In addition, major developers, such as Monolith Soft, Game Freak and Bandai Namco Studio, call Japan their home. The rise of the Japanese video game industry dates back to the post-World War II era and was influenced by various endemic factors. For instance, entertainment machines (so-called elemecha), which were coin-operated and produced motion, have been around in Japan since the early 20th century.[8] One crucial factor was the industry's emergence from an already thriving consumer goods and computer sector.[9] This meant that entertainment corporations already established in post-war Japan could venture into video game creation. However, the Japanese video games and their industry that we see today were imports from the US; however, the Japanese industry was able to improve it, as Picard suggests.[10]

[7] Hiroki Azuma, 'Database Animals', in Mizuko Ito, Daisuke Okabe and Izumi Tsuji (eds), *Fandom Unbound- Otaku Culture in a Connected World* (Yale University Press 2012) 32.

[8] Yuhsuke Koyama, *History of the Japanese Video Game Industry* (Springer, 2023) 15 -17.

[9] Martin Picard, 'The Foundation of Geemu: A Brief History of Early Japanese video games' (2013).

[10] Martin Picard, 'The Foundation of Geemu: A Brief History of Early Japanese video games' (2013).

Japan's advanced cartoons and animation industries, compared to those in the United States and Europe,[11] also facilitated the transfer of skills to this burgeoning field. Manga has been a part of Japanese culture since the early 20th century. *Manga* is the word in Japanese for comics or printed cartoons, while anime relates to Japanese cartoons that often apply the artistic style of manga.[12] Both manga and anime served as templates for video game characters and helped devise role-playing games (RPGs), which are popular in Japan.[13] In addition, the higher wages available in the games industry led many illustrators and cartoonists to the industry.[14] The characters of RPGs feature characters that are often inspired by anime and manga, suggesting a direct transfer of drawing techniques and character design from the manga and anime industries and more story-driven video games.[15]

The industry's expansion was further enabled by existing relationships with the U.S. market, where arcade games gained popularity in the 1970s. During this period, Japanese companies such as Taito[16], Namco, and Sega began producing clones of Atari's Pong[17] as early as 1973. However, they did not merely replicate foreign games but quickly developed their own original titles. By 1978, Japanese companies had exported over a hundred arcade games. The introduction of Space Invaders by Taito that same year marked the first breakthrough of video games in Japan[18] and in 1980 Namco released Pac-Man, which would become a worldwide phenomenon.[19]

The home console market became the next battleground, with Nintendo emerging as the dominant player.[20] While toy manufacturers such as Bandai and Tomy had entered the

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[11] Hiro Izushi, Yuko Aoyama, 'Industry evolution and cross-sectoral skill transfers: a comparative analysis of the video game industry in Japan, the United States, and the United Kingdom' [2006] Environment and Planning 1843-1861,1847 -1848.

[12] Martin Picard, 'Video Games and Their Relationship with Other Media' in Mark J.P. Wolf (ed), *Video Game History: From Bouncing Blocks to a Global Industry* (Greenwood Press 2008) 293-300, 297.

[13] Hiro Izushi, Yuko Aoyama, 'Industry evolution and cross-sectoral skill transfers: a comparative analysis of the video game industry in Japan, the United States, and the United Kingdom' [2006] Environment and Planning A 1843, 1848.

[14] Hiro Izushi, Yuko Aoyama, 'Industry evolution and cross-sectoral skill transfers: a comparative analysis of the video game industry in Japan, the United States, and the United Kingdom' [2006] Environment and Planning A 1843, 1848.

[15] Hiro Izushi, Yuko Aoyama, 'Industry evolution and cross-sectoral skill transfers: a comparative analysis of the video game industry in Japan, the United States, and the United Kingdom' [2006] Environment and Planning A 1843, 1848; Takeaki Wada, 'History of Japanese Role-Playing Games' [2017] Annals of Business Administrative Science 137–147, 143.

[16] The game was released under the name "Elepon" – Yuhsuke Koyama, *History of the Japanese Video Game Industry* (Springer 2023) 18.

[17] Martin Picard, 'The Foundation of Geemu: A Brief History of Early Japanese video games' (2013).

[18] Yuhsuke Koyama, *History of the Japanese Video Game Industry* (Springer 2023) 21.

[19] Martin Picard, 'The Foundation of Geemu: A Brief History of Early Japanese video games' (2013)

[20] The VISICOM sold by TOSHIBA in 1978 was the first video game console released by a Japanese company. It, however, was commercially not successful due to its high price - Yuhsuke Koyama, *History of the Japanese Video Game Industry* (Springer 2023) 44. Epoch a Japanese toy company released its "Cassette Vision" before in 1981 which included the main constituents of home gaming:

domestic market earlier, Nintendo, which originally started as a playing card and toy manufacturer, shifted its focus to electronic gaming in the 1960s.[21] Although Atari pioneered home consoles, the global home gaming market was revolutionized by Nintendo's release of the Nintendo Entertainment System (NES), known as the "Famicom" in Japan.[22] The Famicom achieved remarkable success, outpacing competitors like Tomy and Bandai within two years.[23] Its affordability and the massive popularity of Super Mario Bros. and Donkey Kong contributed significantly to its dominance. However, Nintendo established its peak position by launching the Super Famicon with 16 MPU and an array of successful games, such as Super Mario Kart in 1990.[24]

The entry of Sony into the industry with its PlayStation console marked a new era in gaming. The transition to CD-ROM technology was a crucial turning point. Initially, Sony collaborated with Nintendo on a gaming platform, but when Nintendo withdrew from the partnership, Sony established Sony Computer Entertainment—a joint venture with Sony Music Entertainment—and launched the PlayStation. The PlayStation's success stemmed from its use of CD-ROMs, which were cheaper than the ROM cartridges used by Nintendo and offered significantly more storage capacity, allowing developers to create more complex and immersive games.[25] CD ROM as a carrier would also allow games to reach the market faster.[26] Finally, unlike, for instance, Sega, which primarily relied on its own first-party titles, PlayStation became known for its extensive library of third-party games.[27] This, among other issues, led

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the console, the cartridge and the control stick- Takeo Iida, 'How SCE established the global success in the video game industry －The value chain strategy and integrated-based production system' [2005] 79-101, 79-80.

[21] Yuko Aoyama, Hiro Izushi, 'Hardware gimmick or cultural innovation? Technological, cultural, and social foundations of the Japanese video game industry' [2003] Research Policy, 423–444, 427; Hiro Izushi, Yuko Aoyama, 'Industry evolution and cross-sectoral skill transfers: a comparative analysis of the video game industry in Japan, the United States, and the United Kingdom' [2006] Environment and Planning 1843, 1847.

[22] Nintendo entered this market during the so-called "Atari shock" of 1983-1984, which saw a market crash for console gaming. This crash is attributed to over-supply, sub-par software and the rise of personal computers– Yuko Aoyama, Hiro Izushi, 'Hardware gimmick or cultural innovation? Technological, cultural, and social foundations of the Japanese video game industry' [2003] Research Policy, 423–444, 427.

[23] Takeo Iida, 'How SCE established the global success in the video game industry－The value chain strategy and integrated-based production system' [2005] Tama University Journal of Management and Information Sciences 79-101, 80.

[24] Takeo Iida, 'How SCE established the global success in the video game industry－The value chain strategy and integrated-based production system' [2005] Tama University Journal of Management and Information Sciences 79-101, 82; Yuhsuke Koyama, *History of the Japanese Video Game Industry* (Springer 2023) 103.

[25] Takeo Iida, 'How SCE established the global success in the video game industry－The value chain strategy and integrated-based production system' [2005] Tama University Journal of Management and Information Sciences 79-101, 83; Yuhsuke Koyama, *History of the Japanese Video Game Industry* (Springer 2023) 117-118.

[26] Yuko Aoyama, Hiro Izushi, 'Hardware gimmick or cultural innovation? Technological, cultural, and social foundations of the Japanese video game industry' [2003] Research Policy, 423–444, 428.

[27] Indeed, Nintendo's products are dominating the top ranking of Nintendo' current console Switch video games while third-party video games consistently dominate the top rankings in the PlayStation

to Sony winning the console battle in 1998.[28] Sony's position was cemented by the introduction of the PlayStation 2 which is the most sold game console ever.[29] While Sega left the hardware market,[30] Nintendo was able to with innovative gaming with hybrid gaming with the Nintendo Switch,[31] its successful video game franchises, and its focus on family-friendly gaming.[32]

In parallel, PC gaming emerged as another avenue for video games, providing an alternative to console-based systems. This led to the rise of software companies that developed video games, such as Enix in 1975 and Square in 1983 (which later merged into Square Enix).[33] Additionally, Japanese video game companies are instrumental in the handheld market. Nintendo's release of the Game Boy introduced a new dimension to gaming—portable entertainment which was enhanced due to the immense success of Pokémon.[34] The rise of mobile phones and, later, smartphones in the 2010s further expanded the gaming industry, opening opportunities for smaller developers to enter the market and transforming mobile gaming into a major sector.[35] Indeed, online gaming has become the main battleground of the gaming industry.[36]

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market - Kazuhiro Ando, *Entertainment Business - Industrial Structure and Contract Practice* (Rittor Music 2004) 328.

[28] Takeo Iida, 'How SCE established the global success in the video game industry －The value chain strategy and integrated-based production system' [2005] Tama University Journal of Management and Information Sciences 79-101, 91.

[29] Lauren Jack, 'Here are the best-selling video game consoles of all time - including the Nintendo Switch' (*The Scotsman*, 17th February 2025) - <https://www.scotsman.com/arts-and-culture/top-best-selling-games-consoles-ps2-nintendo-switch-4995062?utm_source=chatgpt.com> accessed 05 June 2025.

[30] Yuko Aoyama, Hiro Izushi, 'Hardware gimmick or cultural innovation? Technological, cultural, and social foundations of the Japanese video game industry' [2003] Research Policy, 423–444, 429.

[31] Kazuhiro Ando, *Entertainment Business - Industrial Structure and Contract Practice* (Rittor Music 2024) 322.

[32] Stephen Kline, Nick Dyer-Witheford and Greig de Peuter, *Digital Play : The Interaction of Technology, Culture, and Marketing* (McGill-Queen's University Press 2003) 119.

[33] Yuhsuke Koyama, *History of the Japanese Video Game Industry* (Springer 2023) 30-31.

[34] Yuhsuke Koyama, *History of the Japanese Video Game Industry* (Springer 2023) 204.

[35] James Batchelor, 'Mobile gaming made 50% of global games value in 2024' (*GamesIndustry.biz,* 20.December 2024) <https://www.gamesindustry.biz/gamesindustrybiz-presents-the-year-in-numbers-2024> accessed 05 June 2025.

[36] PlayStation Plus subscribers reached 47.4 million in 2022- Kazuhiro Ando, *Entertainment Business - Industrial Structure and Contract Practice* (Rittor Music 2024) 328. Nintendo's Switch online memberships are at more than 34 million worldwide as of September 2024 - Jessica Clement, 'Number of subscribers of Nintendo Switch Online worldwide as of September 2024' (*Statistica*, 06 November 2024) <https://www.statista.com/statistics/1276229/nintendo-switch-online-subscriber-count-global/#:~:text=Number%20of%20Nintendo%20Switch%20Online%20subscribers%20worldwide%202018%2D2024&text=As%20of%20September%202024%2C%20there,paid%20Nintendo%20Switch%20Online%20memberships> accessed 05 June 2025.

Japanese video games stand out due to their unique aesthetic, deep storytelling, and innovative gameplay mechanics. Influenced by anime, manga, and traditional Japanese art, these games often feature stylized visuals and strong character-driven narratives, prioritizing imaginative experiences over realism.[37] Japanese RPGs (JRPGs) are renowned for their intricate world-building,[38] while even action and fighting games incorporate rich lore. Many titles draw from Shinto, Buddhist, and other philosophical traditions, adding symbolic meaning to their narratives.[39] Beyond storytelling, Japan's game design philosophy emphasizes accessible yet complex mechanics, often shaped by its strong arcade legacy.[40] Companies like Nintendo, Capcom, and Square Enix have cultivated long-running franchises with consistent quality, maintaining a distinct approach to game development. While Japanese companies have had global competition and other video game franchises, such as Halo or Grand Theft Auto do not originate in Japan,[41] the commitment to innovation, combined with a rich cultural foundation, has cemented Japan's position as a global leader in gaming.[42] Positioned at the intersection of the media, electronics, computer, and toy industries, it has evolved through synchronous and sequential hardware and software advancements. These developments, increasingly shaped by transnational dynamics, have contributed to a distinctive media ecology.[43]

2.1. The Japanese video game Media Mix and its markets

One of the most frequently cited points about the growth and significance of video games as a medium is that the industry's revenue now surpasses that of other media sectors.[44] Importantly, this income is generated through multiple streams. First and foremost, the industry revolves around software and hardware as its core products. However, this section rather aims

[37] Hiloko Kato and René Bauer, 'Mukokuseki and the Narrative Mechanics in Japanese Games' in Beat Suter, René Bauer, Mela Kocher (eds), *Narrative Mechanics Strategies and Meanings in Games and Real Life* (2021) Transcript Verlag 113 -150, 136.

[38] Takeaki Wada, 'History of Japanese Role-Playing Games' [2017] Annals of Business Administrative Science 137–147, 143-144.

[39] Regarding Shinto - Dong-Il Oh, 'A Research on the Characteristics of Japan's Video Games Focused on the Connection of Japan's Traditional Play Culture' [2011] International Journal of Contents 29-37, 33.

[40] Mia Consalvo, 'Convergence and Globalization in the Japanese Videogame Industry' [2009] Cinema Journal 135-141, 140.

[41] Victor Navarro-Remesal & Antonio Loriguillo-López, 'What Makes Gêmu Different? A Look at the Distinctive Design Traits of Japanese Video Games and Their Place in the Japanese Media Mix' [2015] Journal of Games Criticism 1-17, 4.

[42] Victor Navarro-Remesal & Antonio Loriguillo-López, 'What Makes Gêmu Different? A Look at the Distinctive Design Traits of Japanese Video Games and Their Place in the Japanese Media Mix' [2015] Journal of Games Criticism 1-17, 2.

[43] Martin Picard, Jérémie Pelletier-Gagnon, 'Geemu, media mix and the state of Japanese video game studies' [2015] Kinephanos 1-19, 3.

[44] Krishan Arora, 'The Gaming Industry: A Behemoth With Unprecedented Global Reach' (*Forbes*, 17th November 2023) <https://www.forbes.com/councils/forbesagencycouncil/2023/11/17/the-gaming-industry-a-behemoth-with-unprecedented-global-reach/> accessed 05 June 2025.

to examine the value creation of Japanese video game franchises through the media mix strategies, which is a Japanese model of media convergence.[45]

At this point, the concept of the media mix (or media mikkusu) must be introduced. This term refers to a dual strategy: first, the creation of a single character or narrative, and second, its distribution across multiple media platforms, including video games, cartoons, and animated films.[46] This interconnected marketing approach is designed to maximize sales across all platforms.[47] For instance, animated films and TV shows have frequently been adapted into video games, often incorporating clips from the original productions and featuring the same voice actors.[48] In Japan, transmedia examples date back to the 1920s and the postwar era [49] but really took off with the anime Astro Boy (Tetsuwan Atomu) in the 1960ies and was expanded in the following decades with *Ultraman*, *Space Battleship Yamato*, and video games, such as *Pokémon* in the 1990ies.[50]

Japanese video game franchises exemplify media mix strategies effectively. The strong relationship between video games and other Japanese media, particularly anime and manga, has long been established, as seen in the mobility of manga artists into the video game industry. This process also works in reverse: many films and TV series[51] have been adapted from Japanese video games, creating an additional revenue stream for publishers. Live-action films based on video games have been a part of this trend since the 1990s, though with varying degrees of commercial and critical success.[52] For example, the first Super Mario Bros. movie had a mixed reception, as did adaptations of Street Fighter, Mortal Kombat, and Dungeons & Dragons. However, some franchises, such as Tomb Raider and Resident Evil, have successfully expanded into film series. Notably, the 2023 Super Mario movie was a massive global success, generating $1.15 billion in revenue.[53]

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[45] R. Han, ‘The "characterization" of Japan: from merchandising to identity’ (PhD Thesis, University Leiden 2017) 70.

[46] Marc Steinberg, *Anime’s Media Mix: Franchising Toys and Characters in Japan* (University of Minnesota Press 2012) 142; Marc Steinberg, ‘Introducing the Media Mix’ [2023] Mechademia 1-11, 1; Akiko Sugawa-Shimada, ‘A 2.5D Approach to the Media Mix - The Potentialities of Fans’ Produsage’ [2023] Mechademia 47-55, 47.

[47] Martin Picard, Jérémie Pelletier-Gagnon, ‘Geemu, media mix and the state of Japanese video game studies’ [2015] Kinephanos 1-19, 4.

[48] Yuko Aoyama, Hiro Izushi, ‘Hardware gimmick or cultural innovation? Technological, cultural, and social foundations of the Japanese video game industry’ [2003] Research Policy, 423–444, 442.

[49] R. Han, ‘The "characterization" of Japan: from merchandising to identity’ (PhD Thesis, University Leiden 2017) 70-71.

[50] R. Han, ‘The "characterization" of Japan: from merchandising to identity’ (PhD Thesis, University Leiden 2017) 70-71.

[51] Martin Picard, ‘Video Games and Their Relationship with Other Media’ in Mark J.P. Wolf (ed), *Video Game History: From Bouncing Blocks to a Global Industry* (Greenwood Press 2008) 293-300, 298.

[52] Martin Picard, ‘Video Games and Their Relationship with Other Media’ in Mark J.P. Wolf (ed), *Video Game History: From Bouncing Blocks to a Global Industry* (Greenwood Press 2008) 293-300, 295.

[53] Luke Winkie, ‘Is This the Golden Age of Videogame IP?’ (*The Wall Street Journal*, 26 May 2023) <https://www.wsj.com/articles/mario-movie-sonic-sequel-5f46dd6d> accessed 05 June 2025.

One of the most successful examples of media mix implementation, of course, is Pokémon.[54] Originally developed as a video game for Nintendo's Game Boy, Pokémon had a modest debut in 1996. However, it rapidly expanded into a multimedia franchise, beginning with monthly manga publications that fuelled its popularity among children. This success paved the way for a TV anime series in 1997, followed by a series of blockbuster films. By leveraging its presence across multiple media platforms, Pokémon became a dominant brand, significantly contributing to the growth of the video game industry.[55] While video games were initially part of the media mix after manga and anime, some studies suggest that games can serve as the starting point for a successful media mix strategy.[56]

Merchandising is another crucial component of the media mix, taking various forms. From a publisher's perspective, expanding into merchandise as a form of brand extension is a commercially viable strategy, and many video game franchises have followed this path.[57] This practice has long been established in other Japanese media industries. In the manga and anime sectors, for example, character merchandising played a significant role in the formation of the early character industry chain: manga characters first gained popularity, were then adapted into television series, and eventually became physical and digital commodities.[58] Television, in particular, has played a pivotal role in character merchandising. The success of the Atomu (i.e. Astro Boy) TV series led businesses—especially in the food and toy industries—to incorporate Atomu into their products.[59] Inspired by Disney's character merchandising model, this widespread commercialization extended the character's influence across numerous platforms. Given that merchandising became a crucial supplementary source of funding for many anime series.[60]

Character merchandising is particularly significant in the Japanese context and warrants further discussion. Anyone who has visited Japan would recognize the ubiquity and

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[54]Asuka Gomi, Hiroyuki Nakagawa, Junichiro Tsuchita, 'Characters and Merchandising Rights' (Japan Patent Office 2010) 23. <https://www.jpo.go.jp/e/news/kokusai/developing/training/textbook/document/index/Characters_and_Merchandising_Rights.pdf> accessed 05 June 2025.

[55] Yuko Aoyama, Hiro Izushi, 'Hardware gimmick or cultural innovation? Technological, cultural, and social foundations of the Japanese video game industry' [2003] Research Policy, 423–444, 442.

[56] R. Han, 'The "characterization" of Japan: from merchandising to identity' (PhD Thesis, University Leiden 2017) 72, 74.

[57] Joshua Young, Chris Marchegiani, 'The Role of Consumer Fanaticism in the Acceptance of Brand Extensions: Merchandising in the Video Games Market' [2010] School of Marketing Working Paper Series: no. 2010025, Curtin University of Technology, School of Marketing 1.

[58] R. Han, 'The "characterization" of Japan: from merchandising to identity' (PhD Thesis, University Leiden 2017) 71.

[59] Marc Steinberg, *Anime's Media Mix: Franchising Toys and Characters in Japan* (University of Minnesota Press 2012) 107.

[60] Asuka Gomi, Hiroyuki Nakagawa, Junichiro Tsuchita, 'Characters and Merchandising Rights' (Japan Patent Office 2010) 20. <https://www.jpo.go.jp/e/news/kokusai/developing/training/textbook/document/index/Characters_and_Merchandising_Rights.pdf> .

popularity of mascots and characters, such as Hello Kitty and Pikachu.[61] These characters permeate everyday life in Japan, appearing in advertisements, on lunch boxes, and even adorning public transportation. Anthropomorphized characters are more than just decorative as they hold symbolic and emotional significance. They are typically designed to be endearing and are closely linked to kawaii (cute) culture, fostering positive emotional connections with consumers.[62] Such characters are aimed to soothe and comfort in triggering nostalgia of childhood experiences.[63] The trend from more hard-working and ambitious characters like Atom Boy, which were popular in the 1950ies and 1960ies to softer, escapist characters may be due to the improving economic situation in Japan in the 1970ies.[64]

Often, these mascots are anthropomorphized objects or animals with deep cultural roots.[65] Japanese folklore has long featured animated creatures and spirits with distinct personalities. Modern mascots, such as Pokémon and regional yuru-chara, i.e. mascots representing cities, landmarks, and businesses, continue this tradition.[66] This cultural background explains why character-driven branding is so prevalent in Japanese video games.[67] Many video game characters, such as Meowth from Pokémon (inspired by the maneki-neko or "beckoning cat") and Tanooki Mario from Super Mario Bros. 3 (inspired by the tanuki, a Japanese raccoon dog), draw directly from this tradition.[68] Thus, as Sugawa-Shimada finds, characters would play a greater role within Japanese Media Mixes as they would be "acting as a flexible stylistic device that functions differently in the realms of production, consumption, and adaptation."[69]

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[61] Steinberg suggests that Media mixes as a whole are more ubiquitous in Japan than North America – Dean Bowman, James McLean, 'Between Media Mix and Franchising Theory: A Workshop on the Theoretical Worlds of Transmedia Production' [2023] Mechademia 260-277, 267.

[62] Hiroshi Nittono, 'The two-layer model of 'kawaii': A behavioural science framework for understanding kawaii and

cuteness' [2016] East Asian Journal of Popular Culture 79-95, 91.

[63] Anne Allison, 'Cuteness as Japan's Millennial Product' in Joseph Tobin (ed), *The Rise and Fall of Pokémon* (Duke University Press 2004) 34 – 49, 40.

[64] Anne Allison, 'Cuteness as Japan's Millennial Product' in Joseph Tobin (ed), *The Rise and Fall of Pokémon* (Duke University Press 2004) 34 – 49, 44.

[65] Debra J. Occhi, 'Wobbly Aesthetics, Performance, and Message Comparing Japanese Kyara with their Anthropomorphic Forebears' [2012] Asian Ethnology 109–132, 110.

[66] Debra J. Occhi, 'Wobbly Aesthetics, Performance, and Message Comparing Japanese Kyara with their Anthropomorphic Forebears' [2012] Asian Ethnology 109–132, 111.

[67] Victor Navarro-Remesal, Antonio Loriguillo-López, 'What Makes Gêmu Different? A Look at the Distinctive Design Traits of Japanese Video Games and Their Place in the Japanese Media Mix' [2015] Journal of Games Criticism 1-17, 8.

[68] The Super Mario franchise tends to draw inspiration from traditional folklore tales, such as Yokai and other Japanese mythological creatures - Tomás Grau de Pablos, 'Games Design and Cultural Dynamics: An Approach to the Cultural Role of Japanese Video Games through procedural Rhetoric' [2016] Inter Asia Papers 1- 25, 17.

[69] Dean Bowman, James McLean. 'Between Media Mix and Franchising Theory: A Workshop on the Theoretical Worlds of Transmedia Production' [2023] Mechademia 260-277, 263.

Intellectual Property has played a crucial role in the expansion and sustainability of video game franchises. Characters are typically protected under copyright and trade mark law,[70] necessitating licensing agreements for their use.[71] The adaptation of these characters into other media formats also requires authorization from the IP holder.[72] Leveraging their proprietary rights over characters, right holders have diversified into various sectors since the 1980s, expanding their business models beyond video games. For Nintendo, the strategic utilization of character-based IP has become a significant pillar of growth, as acknowledged in 2014 by then-President Satoru Iwata.[73]

Beyond their core gaming market, companies have capitalized on merchandising opportunities ranging from apparel and plush toys to high-profile collaborations with luxury fashion brands, such as Ralph Lauren with *Fortnite*, Pokémon with Balmain, and Gucci with *Roblox*. For fans, purchasing merchandise related to a favourite game is a way for fans to express their loyalty to gaming subcultures.[74] A recent study by Young and Marchegiani found that high-level fans are significantly more likely to buy merchandise from their favourite video game franchise than lower-level fans. This purchasing behaviour extends to incongruent products[75], demonstrating how fandom can facilitate brand extensions into various markets.[76] Another lucrative avenue for video game franchises is themed entertainment, including amusement park attractions. This strategy is exemplified by the launch of Super Nintendo World within Universal Studios in Osaka and Hollywood, further enhancing the brand's cultural and commercial footprint.

In summary, the Japanese video game industry has been at the forefront of global business. Japanese game developers, publishers and console manufacturers have been a dominating output in the past and are still keeping a central role in the industry's development,

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[70] Asuka Gomi, Hiroyuki Nakagawa, Junichiro Tsuchita, 'Characters and Merchandising Rights' (Japan Patent Office 2010) 7-19. <https://www.jpo.go.jp/e/news/kokusai/developing/training/textbook/document/index/Characters_and_Merchandising_Rights.pdf>

[71] E.g. Pikachu, Super Mario.

[72] Asuka Gomi, Hiroyuki Nakagawa, Junichiro Tsuchita, 'Characters and Merchandising Rights' (Japan Patent Office 2010) 39-41. <https://www.jpo.go.jp/e/news/kokusai/developing/training/textbook/document/index/Characters_and_Merchandising_Rights.pdf>

[73] Kazuhiro Ando, *Entertainment Business - Industrial Structure and Contract Practice* (Rittor Music 2004) 324.

[74] Tsung-Sheng Chang and Wei-Chieh Liu, 'Decoding the gamer's code: a dive into game merchandise consumption through the lens of consumer culture theory' [2024] Asia Pacific Journal of Marketing and Logistics 132-149, 132.

[75] Joshua Young, Chris Marchegiani, 'The Role of Consumer Fanaticism in the Acceptance of Brand Extensions: Merchandising in the Video Games Market' [2010] School of Marketing Working Paper Series: no. 2010025, Curtin University of Technology, School of Marketing 32.

[76] Joshua Young, Chris Marchegiani, 'The Role of Consumer Fanaticism in the Acceptance of Brand Extensions: Merchandising in the Video Games Market' [2010] School of Marketing Working Paper Series: no. 2010025, Curtin University of Technology, School of Marketing 33.

as Consalvo notes. [77] Overall, the convergence of media mix strategies, character merchandising,[78] and cultural influences have solidified Japan's video game industry as a global leader in transmedia storytelling and brand expansion in the form of narrative consumption.[79] By seamlessly integrating video games, anime, manga, and merchandise into a cohesive consumer experience, the industry has not only reinforced its economic impact but also significantly influenced the broader landscape of global entertainment.

2. Video game culture in Japan: The Players

Fan practices towards a certain type of media are a global phenomenon. Consumer fanaticism of video games has been prevalent for almost as long as video games have existed. 'Nerds' or 'Geeks' are arguably some of the most fanatical consumers and could be said to identify with video games on a deeper level than most other consumers. The Japanese fan culture concerning video games (or other media) is, however, quite distinctive and needs some unpacking. Video games, which have such major importance in Japanese popular culture, appeal to a whole generation, named the "visual generation" (*shikaku sedai*) in Japan.[80] The engagement of Japanese fans can reach extreme patterns and obsessive fans of these hobbies are called by the Japanese pejorative term *otaku*. [81] Thus, this part will introduce Japanese otaku culture in relation to video games. It will highlight the practices of video game otaku and will highlight the cultural significance of their practices, while alluding to the legal ramifications.

2.1 Video Game Otaku Culture in Japan

This paper has already hinted at the cultural significance of video games in Japan as the third column of pop culture.[82] Some of this relevance can be seen in the wide engagement with gaming in Japan. A recent study by Japan's Computer Entertainment Supplier's Association (CESA) indicates that Japan hosts 55.5 million players between the ages of 5 and

[77] Mia Consalvo, 'Convergence and Globalization in the Japanese Videogame Industry' [2009] Cinema Journal 135-141, 141.

[78] Hiro Izushi, Yuko Aoyama, 'Industry evolution and cross-sectoral skill transfers: a comparative analysis of the video game industry in Japan, the United States, and the United Kingdom' [2006] Environment and Planning A 1843, 1848.

[79] Douglas Schules, 'Kawaii Japan: Defining JRPGs through the Cultural Media Mix' [2015] Kinephanos 53-76, 57.

[80] Martin Picard, 'Video Games and Their Relationship with Other Media' in Mark J.P. Wolf (ed), *Video Game History: From Bouncing Blocks to a Global Industry* (Greenwood Press 2008) 293-300, 297

[81] Martin Picard, 'Video Games and Their Relationship with Other Media' in Mark J.P. Wolf (ed), *Video Game History: From Bouncing Blocks to a Global Industry* (Greenwood Press 2008) 293-300, 297.

[82] Carolyn S. Stevens, 'You Are What You Buy: Postmodern Consumption and Fandom of Japanese Popular Culture' [2010] Japanese Studies 199, 200.

55 in Japan.[83] This number marks the highest number of players within 5 years and also shows an 18% increase in multi-platform players.[84] However, the cultural significance of Japanese video games cannot be solely related to the number of active players since many Japanese are merely normal gamers that play video games for recreational purposes without much further engagement.

What makes Japanese gaming culture distinctive is the deep and passionate engagement with video games and the universes built around franchises. Such passionate affection for media franchises does not exist merely around video games but also in relation to other Japanese pop-culture phenomena, such as anime or manga. A vital and distinctive part of the fandom relates to the otaku culture in Japan. Otaku ("nerd" or "geek")[85] derives from the word for "home" but is used as an honorific second-person pronoun: "you" as "your residence."[86] Otaku culture is not limited to video games but revolves around the members of a fandom or a popular sub-culture.[87] The term otaku is said to have been coined by Nakamori Akio in 1983 who related this to participants in Comic Market[88], a convention where *dojinshi* (i.e. "fan publications", literally translated as "like-minded publication") were traded.[89] Initially, the term otaku has had negative connotations in the past due to the Miyzaki incident,[90] but has since then gained positive connotations, with the former Japanese Prime minister Aso Taro labelling himself an otaku, in context of Japan's promotion of manga, anime and video games as Japan's new source of soft power.[91]

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[83] Verity Townsend, 'Japan sees big annual increase in multiplatform gamers' (*Automaton*, 24 December 2024) <https://automaton-media.com/en/news/japan-gamer-statistics-japan-sees-big-annual-increase-in-multiplatform-gamers> accessed 05 June 2025.

[84] Verity Townsend, 'Japan sees big annual increase in multiplatform gamers' (*Automaton*, 24 December 2024) <https://automaton-media.com/en/news/japan-gamer-statistics-japan-sees-big-annual-increase-in-multiplatform-gamers> accessed 05 June 2025.

[85] Kaichirō Morikawa, 'おたく / Otaku / Geek' [2012] UC Berkeley: Center for Japanese Studies 1 – 17, 1.

[86] Thomas Lamarre, 'Otaku Movement' [2004] EnterText 4.1 151-187, 163.

[87] Thiam Huat Kam, 'The Anxieties that Make the 'Otaku': Capital and the Common Sense of Consumption in Contemporary Japan' [2013] Japanese Studies, 39-61, 40.

[88] Comiket started in 1975 as a response to the country's burgeoning manga industry and has served as the largest venue of dōjin work dissemination - Fan-Yi Lam, 'Comic Market: How the World's Biggest Amateur Comic Fair Shaped Japanese Dōjinshi Culture' [2010] Mechademia 234-235.

[89] Thiam Huat Kam, 'The Anxieties that Make the 'Otaku': Capital and the Common Sense of Consumption in Contemporary Japan' [2013] Japanese Studies 39, 39.

[90] Miyazaki Tsutomu was arrested in 1989 for the murders of four young girls with the police finding quantities of manga in his possession - Carolyn S. Stevens, 'You Are What You Buy: Postmodern Consumption and Fandom of Japanese Popular Culture' [2010] Japanese Studies 199, 207. This led otaku to be labelled as dangerous criminals - R. Han, 'The "characterization" of Japan: from merchandising to identity' (PhD Thesis, University Leiden 2017) 69.

[91] Thiam Huat Kam, 'The common sense that makes the 'otaku': rules for consuming popular culture in contemporary Japan' [2013] Japan Forum 151-173, 151.

Normal gamers, so-called “ippanjin” (i.e. regular people), are casual players who do not engage extensively with the games they are playing.[92] Otaku, on the other hand, are defined by their deep, almost obsessive engagement with the subject of their passion for video games and their franchises.[93] It is the level of intensity and duration, as to degree of engagement or level of interest that showcases the traits of an otaku.[94] This engagement manifests itself in various behaviours in relation to gaming. Otaku, for instance, show a high level of commitment often engaging in game-speed runs (i.e. yarikomi), aiming for 100% completion and high scores.[95] These are then streamed on Twitch or posted on YouTube. Some engage in professional gaming, competing in esports tournaments for games like Street Fighter, Super Smash Bros., or League of Legends.

But their passion extends beyond gaming itself. Otaku also live their passion by collecting items, such as rare games, figures, posters and soundtracks.[96] Many collect figures, posters, and other merchandise, such as limited-edition consoles, art books, and soundtracks, from favourite franchises are prized items. Thus, specialised video game merchandise shops exist in Tokyo’s Akihabara (i.e. the mecca of otaku culture)[97] and Nakano Broadway or Osaka’s Denden town. Furthermore, they live their passion by creating fan games, mods, artwork, guides, or theory videos. One of the largest websites displaying fanart is PIXIV which is based in Tokyo. The website currently has more than 100 million members worldwide.[98]

Many often research and actively engage with others in fan communities on discord servers, over social media discussions dedicated to their favourite franchises[99] or by attending game-related conventions, such as the bi-annually held Doujin event Comiket.[100] Finally, Otaku tourism represents a form of content tourism where fans travel to “sacred places” from

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[92] These would arguably fall within the dilettante criterion that Thorne and Brunner outline - Scott Thorne, Gordon C Bruner, ‘An exploratory investigation of the characteristics of consumer fanaticism’ [2006] Qualitative Market Research pp. 51-72, 58.

[93] Maya Keliyan, ‘Kogyaru and Otaku: Youth Subcultures Lifestyles in Postmodern Japan’ (2011) Asian and African Studies pp. 95–110, 103.

[94] Thomas Lamarre, ‘Otaku Movement’ [2004] EnterText 4.1 151-187, 167.

[95] Yoshimasa Kijima, ‘The Fighting Gamer Otaku Community: What Are They “Fighting” About?’ in Mizuko Ito, Daisuke Okabe and Izumi Tsuji (eds), *Fandom Unbound- Otaku Culture in a Connected World* (Yale University Press 2012) 250.

[96] Maya Keliyan, ‘Kogyaru and Otaku: Youth Subcultures Lifestyles in Postmodern Japan’ (2011) Asian and African Studies pp. 95–110, 104.

[97] Fan Jichen, ‘Construction and Production of Urban Otaku Cultural Spaces—The Case of Akihabara Japan’ [2024] Journal of Sociology and Ethnology 82- 89, 86.

[98] Newswire, ‘pixiv Has Topped 100 Million Total Registered Users; to Commemorate, Will Hold a Special Campaign!’ (*Newswire*, 19 May 2022) <https://www.newswire.com/news/pixiv-has-topped-100-million-total-registered-users-to-commemorate-22222326> accessed 05 June 2025.

[99] Ken Kitabayashi, ‘The Otaku Group from a Business Perspective: Revaluation of Enthusiastic Consumers’ (Nomura Research Institute Ltd., Tokyo 2004, Paper No 84) 5. <https://dl.ndl.go.jp/view/download/digidepo_10207884_po_np200484.pdf?contentNo=1&alternativeNo>

[100] Fan-Yi Lam, ‘Comic Market: How the World's Biggest Amateur Comic Fair Shaped Japanese Dōjinshi Culture’ [2010] Mechademia 238-248.

an anime[101] or other form of popular culture[102] which represents a form of pilgrimage (聖地巡礼 (Seichi Junrei)). Some of this otaku tourism has even helped to re-energize local communities in an otherwise ageing populace and the rural exodus in Japan.[103] In summary, the hallmarks of otaku culture revolve around collection, creativity, and community.[104]

2.2. Selected Japanese fan activities

A particular feature of video game otaku culture is the creation of doujin games. The term *dōjin* translates to "like-minded people" or people who share the same interest.[105] The roots of *dōjin* can be traced back at least to the late Meiji era (early 20th century), originating in *dōjin* literary circles and their small-circulation magazines (*dōjin zasshi*, later shortened to *dōjinshi)*[106] These magazines which derive from pre-existing works and are often created by amateurs and serve as platforms for expressing the groups' shared literary tastes.[107] Computer games entered the *dōjin* universe in the 1980s, with Teikoku Soft, pioneering the scene. They were the first circle to showcase a game at Comiket and to label their creation as *dōjin soft*. In the following years, more games emerged, eventually establishing dōjin games alongside manga and anime as a cornerstone of Comiket.[108] This includes original creations, as well as *niji sōsaku* (i.e. fan works), which came to be associated with the *dōjin* movement.[109] Many *dōjin* games often apply manga aesthetics and sometimes combine these with retro-graphics reinforcing the strong ties between *dōjin*games with manga and anime.[110]

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[101] Takeshi Okamoto, 'Otaku tourism and the anime pilgrimage phenomenon in Japan' [2015] Japan Forum 12-36.

[102] Philip Seaton, Takayoshi Yamamura, 'Japanese Popular Culture and Contents Tourism – Introduction' [2014] Japan Forum 1-11.

[103] Dean Bowman, James McLean, 'Between Media Mix and Franchising Theory: A Workshop on the Theoretical Worlds of Transmedia Production' [2023] Mechademia 260-277, 268.

[104] Ken Kitabayashi, 'The Otaku Group from a Business Perspective: Revaluation of Enthusiastic Consumers' (Nomura Research Institute Ltd., Tokyo 2004, Paper No 84) 5. <https://dl.ndl.go.jp/view/download/digidepo_10207884_po_np200484.pdf?contentNo=1&alternativeNo>

[105] Qingqing Xu, Kije Kwon, 'Research of the Influences of Doujin Culture in Game Operation' [2022] International Journal of Advanced Smart Convergence 85-92, 85.

[106] Fan-Yi Lam, 'Comic Market: How the World's Biggest Amateur Comic Fair Shaped Japanese Dōjinshi Culture' [2010] Mechademia 238-248, 233.

[107] Mikhail Fiadotau, 'Indie and dōjin games: a multilayered crosscultural comparison' [2019] gamevironments 39-84, 49-50.

[108] Mikhail Fiadotau, 'Indie and dōjin games: a multilayered crosscultural comparison' [2019] gamevironments 39-84, 50

[109] Mikhail Fiadotau, 'Indie and dōjin games: a multilayered crosscultural comparison' [2019] gamevironments 39-84, 49-50.

[110] Mikhail Fiadotau, 'Indie and dōjin games: a multilayered crosscultural comparison' [2019] gamevironments 39-84, 64.

Dōjin developers often create games driven by their own desire to play, prioritizing creativity over commercial success and is founded on community participation. Hichibie and Tanaka outline the motivations of *dōjin* game creates in "the purpose of production, the diversity in genres, the autonomy of development activities, the flexibility of production process, the short production periods, the relationship between developers and players, and the unconcluded game software debugging."[111] While they may generate some revenue, *dōjin* creators are often hobbyists or crafters who generally create their games without economic incentives for other developers and users.[112] Creators who aim for economic reward are being criticised within the community.[113] However, they do have opportunities to distribute their works nationwide through various channels.[114]

These games are often distributed at conventions such as Comiket, are sold in specialized *dōjin* shops or on online platforms like Booth, Steam, DLsite, Getchu, and Digiket.[115] Notable examples of *dōjin* games include the above-mentioned Touhou Project, the visual novel Higurashi no Naku Koro Ni, and Tsukihime.[116] The study by Hichibe and Tanaka showcases that many dojin producers incorporate trends of the wider Japanese Media Mix and are often inspired by previous works and techniques.[117] Indeed, many *dōjin* works are based on mainstream anime, manga, and video games, making their production and sale technically a violation of copyright or other IP rights.[118]

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[111] Nobushige Hichibe, Ema Tanaka, 'Content Production Fields and Doujin Game Developers in Japan: Non-economic Rewards as Drivers of Variety in Games' in Alexis Pulos and Seungcheol Austin Lee (eds), *Transnational Contexts of Culture, Gender, Class, and Colonialism in Play* (Palgrave 2016) 43-80, 44.

[112] Nobushige Hichibe, Ema Tanaka, 'Content Production Fields and Doujin Game Developers in Japan: Non-economic Rewards as Drivers of Variety in Games' in Alexis Pulos and Seungcheol Austin Lee (eds), *Transnational Contexts of Culture, Gender, Class, and Colonialism in Play* (Palgrave 2016) 43-80, 45.

[113] Nobushige Hichibe, Ema Tanaka, 'Content Production Fields and Doujin Game Developers in Japan: Non-economic Rewards as Drivers of Variety in Games' in Alexis Pulos and Seungcheol Austin Lee (eds), *Transnational Contexts of Culture, Gender, Class, and Colonialism in Play* (Palgrave 2016) 43-80, 71.

[114] In contrast to indie gaming, doujin creators are often crafters or hobbyists They generally create their games simply, for non-economic other developers and users- Nobushige Hichibe, Ema Tanaka, 'Content Production Fields and Doujin Game Developers in Japan: Non-economic Rewards as Drivers of Variety in Games' in Alexis Pulos and Seungcheol Austin Lee (eds), *Transnational Contexts of Culture, Gender, Class, and Colonialism in Play* (Palgrave 2016) 43-80, 45.

[115] Mikhail Fiadotau, 'Indie and dōjin games: a multilayered crosscultural comparison' [2019] gamevironments 39-84, 54.

[116] Nobushige Hichibe, Ema Tanaka, 'Content Production Fields and Doujin Game Developers in Japan: Non-economic Rewards as Drivers of Variety in Games' in: Alexis Pulos and Seungcheol Austin Lee (eds), *Transnational Contexts of Culture, Gender, Class, and Colonialism in Play* (Palgrave 2016) 43-80, 44.

[117] Nobushige Hichibe, Ema Tanaka, 'Content Production Fields and Doujin Game Developers in Japan: Non-economic Rewards as Drivers of Variety in Games' in Alexis Pulos and Seungcheol Austin Lee (eds), *Transnational Contexts of Culture, Gender, Class, and Colonialism in Play* (Palgrave 2016) 43-80, 61-62.

[118] Mikhail Fiadotau, 'Indie and dōjin games: a multilayered crosscultural comparison' [2019] gamevironments 39-84, 56.

Another distinctive form of expression of otaku culture is cosplay[119], which is an abbreviation of "costume play."[120] Cosplayers express their passion for games or game characters by dressing up as their favourite characters at conventions and online. The practice emerged in the 1970s and is primarily embraced by women in Japan.[121] Cosplayers often form organized communities that meet in cosplay clubs and participate in large fan events, such as Comiket, as well as smaller, specialized gatherings related to their cosplay characters. Photos of cosplayers are frequently uploaded online on platforms such as “Cure”[122] and “Cosplayers.”[123] Additionally, “Cosmode” is a magazine that specializes in cosplay, and there are TV shows featuring cosplaying personalities. Cosplayers also have job opportunities in maid cafés where waitresses dress up as fantasy maids), cosplay costume specialty stores, and second-hand manga shops.[124]

While ready-made costumes are available in specialized stores[125] or through online auctions, many cosplayers prefer to create their own costumes. Some cosplayers wear exact replicas of what is worn by the character, and much time and money is spent in creating the cosplaying dress.[126] Often, costumes are not commercially produced, and the cost of bespoke costumes can be prohibitively high. [127] Purchasing a costume, however, is often seen as a rejection of community values, and cosplayers may feel the need to apologize for buying ready-made costumes.[128]

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[119] David Sandua, *The Influence of Otaku Culture* (Independently Published 2023) 14.

[120] Theresa Winge, ‘Costuming the Imagination: Origins of Anime and Manga Cosplay’ [2006] Mechademia 65-76, 65.

[121] Rie Matsuura, Daisuke Okabe, ‘Collective Achievement of Making Cosplay Culture’ [2015] Proceedings of the 5th International Conference on Collaborative Innovation Networks COINs15, Tokyo, Japan March 12-14, 2015, p. 1.

[122] <https://cot.curecos.com/>

[123] <www.cosp.jp>

[124] Kam notes that the people who cosplay for work would not be considered as otaku – Thiam Huat Kam, ‘The Anxieties that Make the ‘Otaku’: Capital and the Common Sense of Consumption in Contemporary Japan’ [2013] Japanese Studies 39, 46.

[125] Theresa Winge, ‘Costuming the Imagination: Origins of Anime and Manga Cosplay’ [2006] Mechademia 65-76, 74.

[126] Theresa Winge, ‘Costuming the Imagination: Origins of Anime and Manga Cosplay’ [2006] Mechademia 65-76, 72.

[127] Daisuke Okabe, ‘Cosplay, Learning, and Cultural Practice’ in Mizuko Ito, Daisuke Okabe and Izumi Tsuji (eds), *Fandom Unbound - Otaku Culture in a Connected World* (Yale University Press 2012) 227.

[128] Daisuke Okabe, ‘Cosplay, Learning, and Cultural Practice’ in Mizuko Ito, Daisuke Okabe and Izumi Tsuji (eds), *Fandom Unbound - Otaku Culture in a Connected World* (Yale University Press 2012) 235.

2.2 Background to Otaku culture[129]:

In his study on Otaku culture, Azuma identifies three generations of otaku: The first generation of otaku was born in the 1960ies and became fans of the anime Battleship Yamato and Gundam (Gandamu)[130] in their teens, while the second generation, born around the 1970ies enjoyed the diversified and matured otaku culture from the generation before.[131] The school club system in Japan played an important role in creating the otaku culture with manga, SciFi, or computers, as well as art and literature clubs, which served as dens for otaku.[132] From the 2000s, the rise of the Internet and digital platforms transformed otaku culture, allowing for participatory consumption. Thus, the third generation of otaku emerged, adept at using new media to share information, reinforcing their role as collectors, creators, and communicators.[133] All generations do share a great passion in manga, anime and games, but for Azuma, it is the third generation which displays a particular passion for computer games.[134]

As with other fan groups, intense consumption of their fandom is a distinctive feature of otaku.[135] One aspect of media consumption is collecting physical objects of the franchise or character, often regardless of cost.[136] This otaku behaviour can be linked to Japanese rituals of collection/getting (ゲットする, "getto suru").[137] This form of consumption of media thus expands the media mix in relation to non-narrative media in the form of toys or other merchandise: While video games set the background and overall narrative, the merchandise

[129] Bruno notes that the term otaku is, "a descriptor for superfans – presumed to be male – in the context of consumption of Japanese media, [which] possesses its own problematic intellectual history, intersecting discriminating labelling, self-orientalization and pathologizing views" – Luca Paolo Bruno, 'Game Studies Meets Japanese Studies Ten Years of Research' [2021-2023] GAME 92. However, Morikawa notes that the majority of people attending Comiket are women - Kaichirō Morikawa, 'おたく / Otaku / Geek' [2012] UC Berkeley: Center for Japanese Studies 1 – 17, 15.

[130] According to Morikawa, the hero of Gundam as an introvert tinkering with machines might have had a great impact - Kaichirō Morikawa, 'おたく / Otaku / Geek' [2012] UC Berkeley: Center for Japanese Studies 1 – 17, 6.

[131] Hiroki Azuma, *Otaku: Japan's Database Animals* (2009 University of Minnesota Press) 6-7.

[132] Kaichirō Morikawa, 'おたく / Otaku / Geek' [2012] UC Berkeley: Center for Japanese Studies 1 – 17, 5.

[133] Hugh Davies, 'Japanese Seasonal Play - A Prehistory of Pokémon GO' [2016] American Journal of Play, 305-337, 308.

[134] Hiroki Azuma, *Otaku: Japan's Database Animals* (University of Minnesota Press 2009) 7.

[135] Lemarre finds that "Otaku" is a term commonly deployed to construct and to patrol a boundary between normal or ordinary consumption on the one hand, and excessive or abnormal consumption on the other hand - Patrick W. Galbraith, Thomas Lamarre, 'Otakuology: A Dialogue' [2010] Mechademia 360-374, 368.

[136] Maya Keliyan, 'Kogyaru and Otaku: Youth Subcultures Lifestyles in Postmodern Japan' [2011] Asian and African Studies pp. 95–110, 105.

[137] Thiam Huat Kam, 'The common sense that makes the 'otaku': rules for consuming popular culture in contemporary Japan' [2013] Japan Forum 151-173, 158.

makes the experience tangible and provides a material embodiment.[138] This seemingly irrational obsession with purchasing the goods rendered them into symbolic commodities. Thomas Lamarre connects the otaku phenomenon to shifts in capitalism, changing interactions with commodities, and advancements in communication and information technologies. He argues that otaku consumption is highly active and productive, differing from traditional consumption, which involves acquiring and discarding objects. Instead, otaku engagement treats commodities as ongoing events that extend worlds and social relationships.[139]

Based on Lamarre's argument, these activities could be regarded as expanding the media mix with their own creations. Han explains this phenomenon in reference to custom *Gandamu* model kits made by fans.[140] Sugawa-Shimada adds that the human body could become part of the media as it adapts to and interfaces with culture and technology which is expressed by elements such as tattoos or apparel, or through the cultural practice of cosplay.[141] Thus, the manifestations of otaku behaviour led to media convergence by joining "media producers and consumers in the production and negotiation of that content."[142] Thus, fan activities could be perceived as a form of transmedia storytelling within the media mix.[143] Sugawa-Shimada defines these as "cultural practices that reproduce the fictional space of contemporary popular media (such as manga, anime, and video games) while facilitating fans' interaction between real and fictional spaces."[144] She highlights how various fan activities—ranging from toys and cosplay to consumables—are closely tied to the media mix and help bridge the fictional world of transmedia narratives with the real-world experiences of fandom.[145] Thus, she suggests: "[T]he media mix does not exist without its fans, and the specificity of fan interactions— including the specificity of media used in these interactions—make the media mix what it is."[146]

Various accounts have been given about the underlying nature and impact of otaku consumption. Ōtsuka Eiji, a media theorist, believes that a structured metanarrative

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[138] Marc Steinberg, *Anime's Media Mix: Franchising Toys and Characters in Japan* (University of Minnesota Press 2012) 122.

[139] Patrick W. Galbraith, Thomas Lamarre, 'Otakuology: A Dialogue' [2010] Mechademia 360-374, 364-365.

[140] R. Han, 'The "characterization" of Japan: from merchandising to identity' (PhD Thesis, University Leiden 2017) 73-74.

[141] Dean Bowman, James McLean, 'Between Media Mix and Franchising Theory: A Workshop on the Theoretical Worlds of Transmedia Production' [2023] Mechademia 260-277, 265.

[142] Mia Consalvo, 'Convergence and Globalization in the Japanese Videogame Industry' [2009] Cinema Journal 135-141, 135.

[143] Marc Steinberg, 'Introducing the Media Mix' [2023] Mechademia 1-11, 1.

[144] Dean Bowman, James McLean, 'Between Media Mix and Franchising Theory: A Workshop on the Theoretical Worlds of Transmedia Production' [2023] Mechademia 260-277, 265.

[145] Dean Bowman, James McLean, 'Between Media Mix and Franchising Theory: A Workshop on the Theoretical Worlds of Transmedia Production' [2023] Mechademia 260-277, 265.

[146] Akiko Sugawa-Shimada, 'A 2.5D Approach to the Media Mix - The Potentialities of Fans' Produsage' [2023] Mechademia 47-55, 48.

underpinned individual media works.[147] He argued that since it was impractical to sell an entire grand narrative as a single product, it had to be distributed in fragmented forms, i.e. in episodes of an anime or a product, which are sold as surrogate products. By piecing together fragments of content, by consuming parts of the narrative, consumers would be able to access the overarching meta-narrative.[148] Otsuka labelled this situation *narrative consumption.*[149]

However, after the accumulative consumption of small narratives, by getting their hands on the entire narrative, fans would create their own small narratives, such as fan fiction. This is known in Japan as *secondary production (niji sōsaku).*[150] Otsuka provides Comiket as an example where fans would produce and sell fan works of manga and anime.[151] Hereby, these serial fragments would become as valid or legitimate as the original works and would ultimately shifts power from official producers to consumers, who become creators themselves: “At this phase of “narrative consumption” cases arise in which there is no distinction between the “real” (genuine, *honmono*) and the “fake” (knockoffs, *nisemono*) in these kinds of individual goods.”[152]

Another account on otaku consumption is given by Hiroki Azuma, a postmodern theorist. Basing his analysis on Otsuka’s narrative consumption, Azuma perceives fan engagement in the media mix as a fragmented, surface-level activity—what he termed "grazing"—where consumers interact with endless signifiers without a deeper, coherent meaning.[153] In Azuma’s argument, the consumption of ‘otaku’ is a response to the collapse of ideologies, religions and common values – the grand narratives – which characterized modernity.[154] ‘Otaku’ are the quintessential postmodern beings, who seek affective gratification in a society where grand narratives are dysfunctional.[155]

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[147] Borrowing from Kabuki theatre, Otsuka refers to this as *Sekai* (“worldview”) - Alexander Zahlten, ‘Media Mix and the Metaphoric Economy of World’ in Daisuke Minao (ed), *The Oxford Handbook of Japanese Cinema* (Oxford University Press 2014) 436 – 456, 441.

[148] Otsuka Eiji, Marc Steinberg, ‘World and Variation: The Reproduction and Consumption of Narrative’ (2010) Mechademia 99-116, 107.

[149] Hiroki Azuma, ‘Database Animals in Fandom Unbound Book Subtitle: Otaku Culture in a Connected World’ in Mizuko Ito, Daisuke Okabe and Izumi Tsuji (eds), *Fandom Unbound - Otaku Culture in a Connected World* (Yale University Press 2012) 30- 67, 37.

[150] Marc Steinberg, *Anime’s Media Mix: Franchising Toys and Characters in Japan* (University of Minnesota Press 2012) 179.

[151] Marc Steinberg, *Anime’s Media Mix: Franchising Toys and Characters in Japan* (University of Minnesota Press 2012) 179.

[152] Hiroki Azuma, ‘Database Animals in Fandom Unbound Book Subtitle: Otaku Culture in a Connected World’ in Mizuko Ito, Daisuke Okabe and Izumi Tsuji (eds), *Fandom Unbound - Otaku Culture in a Connected World* (2012) Yale University Press 30- 67, 36.

[153] Dean Bowman, James McLean, ‘Between Media Mix and Franchising Theory: A Workshop on the Theoretical Worlds of Transmedia Production’ [2023] Mechademia 260-277, 265.

[154] Hiroki Azuma, *Otaku: Japan’s Database Animals* (University of Minnesota Press 2009) 36.

[155] Thiam Huat Kam, ‘The Anxieties that Make the ‘Otaku’: Capital and the Common Sense of Consumption in Contemporary Japan’ [2013] Japanese Studies 39-61, 42.

Linked to this, Azuma also argues that in otaku culture, the traditional distinction between "original" and "copy" is fading, replaced by a relationship between works and a shared "database" of characters, settings, and aesthetic elements.[156] The emphasis moved to identifying recurring tropes and "moe-elements"[157] rather than specific authors.[158] This transition reflects how the market regulates itself: successful works must align with established databases, ensuring continuity within the cultural framework.[159] While derivative works and originals may seem equally valued, their legitimacy is actually determined by their adherence to this database rather than their proximity to an "original."[160] The decline of the "myth of authorship" further supports this shift.[161]

From a legal perspective, otaku creations may result in “unofficial” material production, such as those of the dōjin scene. Otsuka fears the loss of total control by the right holder and refers to this as having an “extremely dangerous side.”[162] Azuma, however, posits that otaku would relate to particular though generic “moe” elements that are available rather than original expression if some copyright terminology can be applied in this context.[163] Another relevant point for the legal discussion is the motivation of otaku. Within the community, only activities that are for pure self-satisfaction can be labelled otaku, while activities aiming for a monetary award would not.[164] While a mens rea is generally not necessary for a positive finding of IP infringement, all these points raise the question on how right holders react to such activities

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[156] Hiroki Azuma, ‘Database Animals in Fandom Unbound Book Subtitle: Otaku Culture in a Connected World’ in Mizuko Ito, Daisuke Okabe and Izumi Tsuji (eds), *Fandom Unbound - Otaku Culture in a Connected World* (Yale University Press 2012) 30- 67, 64.

[157] Moe generally refers contemporary cute girl characters often characterized by their youthful appearance, large eyes, and small mouth which are shown especially in animation, computer games and manga and are targeted at young male otaku audiences, but also indicating a cute sexual animation aesthetic – Sharon Kinsell, ‘Cuteness, josō, and the need to appeal: otoko no ko in male subculture in 2010s Japan’ [2020] Japan Forum 432-458, FN. 2.

[158] “Moe characters exist without context or depth, or as disengaged images that can be re-articulated endlessly without consequence or consistent generation of 'meaning.' “- Patrick W. Galbraith, ‘Moe: Exploring Virtual Potential in Post-Millennial Japan’ [2009] Electronic journal of contemporary Japanese studies 18.

[159] Hiroki Azuma, ‘Database Animals in Fandom Unbound Book Subtitle: Otaku Culture in a Connected World’ in Mizuko Ito, Daisuke Okabe and Izumi Tsuji (eds), *Fandom Unbound - Otaku Culture in a Connected World* (Yale University Press 2012) 30- 67, 64.

[160] Hiroki Azuma, ‘Database Animals in Fandom Unbound Book Subtitle: Otaku Culture in a Connected World’ Mizuko Ito, Daisuke Okabe and Izumi Tsuji (eds), *Fandom Unbound - Otaku Culture in a Connected World* (2012) Yale University Press 30- 67, 65.

[161] Hiroki Azuma, ‘Database Animals in Fandom Unbound Book Subtitle: Otaku Culture in a Connected World’ in Mizuko Ito, Daisuke Okabe and Izumi Tsuji (eds.), *Fandom Unbound - Otaku Culture in a Connected World* (2012) Yale University Press 30- 67, 65.

[162] Hiroki Azuma, *Otaku: Japan’s Database Animals* (University of Minnesota Press 2009) 30.

[163] Hiroki Azuma, *Otaku: Japan’s Database Animals* (University of Minnesota Press 2009) 64-65.

[164] Thiam Huat Kam, ‘The Anxieties that Make the ‘Otaku’: Capital and the Common Sense of Consumption in Contemporary Japan’ [2013] Japanese Studies, 39-61, 46.

that would otherwise be considered infringing. This will be assessed in the following part of this paper.

3. To enforce or not to enforce: The Law

A combination of legal, cultural, social and economic factors is thought to be behind Japanese copyright holders not strictly enforcing their rights over fan works (derivative works). This section analyses the relationship between fan creations and the enforcement of intellectual property rights in Japan from these three perspectives, citing specific examples such as dōjinshi and video game live-streaming on video platforms. The central question is: "Why do Japanese copyright holders not strictly enforce their IP rights against fan works?[165] In the following, we first overview the legal structure, then examine the practice of tacit permission in the cultural and social context, and finally consider the aspect of economic incentives.

3.1 Legal institutional perspective: copyright law in Japan and the position of derivative works

Under Japanese copyright law, "derivative works" created by others based on the original work are also protected, and the copyright holder has the exclusive right of adaptation (the right to authorise the creation of derivative works) (Article 27).[166] Therefore, fan works without authorisation (coterie magazines, fan fiction, game distribution, etc.) constitute copyright infringement in principle. However, Japanese law does not have comprehensive exceptions to the US law of fair use, and parody also lacks explicit legalisation provisions. For example, parody manga using existing characters or stories can be illegal under the law as an infringement of the right of adaptation. However, in practice, there are arguments that parody creations should be tolerated, and the need for explicit legal recognition of parody has been pointed out.[167] Under current law, parody creations remain in a grey zone, but in practice they are often tacitly acknowledged, as discussed below, and the uncertainty of their legal treatment is a source of controversy.[168] Another significant feature of copyright infringement in Japan is that it is considered a custodial offence (a crime that cannot be prosecuted without a complaint from the rights holder) in terms of criminal penalties. Article 123 of the Copyright Act stipulates that, in principle, copyright infringement is a crime of parental notification, meaning that the police and prosecutors cannot act unless the rights holder 'reports the damage' or files

[165] " …, Japan's flexibility for fanworks outside of the legal system provides for a very loose and permissive environment for transformative works, even for fanworks that earn money for their creators.." - Raizel Liebler, 'Copyright and Ownership of Fan Created Works: Fanfiction and Beyond' in Matthew David and Deobora Halbert (eds), *Sage Handbook on Intellectual Property* (Sage Publications 2015) 392-393.

[166] Copyright Act（Act No. 48 of 1970<https://www.japaneselawtranslation.go.jp/en/laws/view/3379>.

[167] Mariko A. Foster, 'Parody's Precarious Place: the Need to Legally Recognize Parody as Japan's Cultural Property' [2013] Journal of Sports and Entertainment Law 339.

[168] A. Takase, 'Permissibility of Parody under the Current Copyright Law', in Theory and Practice of Intellectual Property Law II (Yuhikaku, 2024), p. 432, in commemoration of the 70th birthday of Professor Yoshiyuki Tamura.

a complaint. This custodial sentence system leaves room for no criminal issues if the rights-holder condones the infringement, and provides flexibility in the operation of the law over fan works. As long as rights holders refrain from exercising their rights themselves, a situation arises where infringement can be legally established but not actually prosecuted or enjoined.

However, even though it is a criminal offence, if the rights-holder considers that the damage cannot be overlooked, criminal charges may be brought, and strict enforcement of rights may be carried out. In fact, there have been a very small number of cases in Japan where legal action against doujinshi has attracted attention. A well-known example of this is the 1999 'Pokemon Doujinshi Case'[169]. In this case, Nintendo, the copyright holder, and others decided to file a criminal complaint against the distribution by mail order of adult-oriented doujinshis with obscene content depicting the main characters (Pikachu, Satoshi, etc.) of Pokémon. Kyoto police arrested the doujinshi author on charges of breaching the Copyright Act (infringement of reproduction rights) and she was detained for approximately 22 days before being fined. The seizure and investigation led to the identification of approximately 100 copies of the doujinshi (five copies of a 600 yen doujinshi) in stock, and the contractor who undertook the printing was also exposed for aiding and abetting, shocking the industry as the first case of public authority intervention in doujin culture.

Hiroshi Imanishi, head of Nintendo's Public Relations Department at the time, explained the reasons for the complaint: 'In this case, the characters were sexually depicted and defiled, and we could not allow them to be sold. Based on our experience with fake character products, we filed the complaint because we thought it would take time to stop the sales with warnings and civil lawsuits. Mr. Imanishi commented that he only found out about the book by chance through a fan's report and that he had no intention of checking doujinshi in general.[170] It seems that Mr. Imanishi could not tolerate it due to its social impact and the seriousness of the brand damage. Yoshihiro Yonezawa, a representative and critic of Comic Market (a coterie magazine exhibition) at the time, commented on the incident, expressing his surprise: "I don't remember a time when a coterie magazine was sued for copyright infringement, either in civil or criminal cases"[171]. This shows a glimpse of the sense of crisis at the time, when criminal intervention was carried out without any standards being formulated as to what kind of parody manga was permissible.

[169] In Japan, judgments in criminal cases involving copyright infringement are rarely made publicly available. This case is known through reports by various newspapers. 'Doujinshi artist arrested, note on homepage', 'Can't use characters', fan activities and copyright clashes', 'Sued for tarnishing image', Asahi Shimbun 11 March 1999, morning edition, page 27; "Obscene Pikachu copyright infringement case: President of Aichi printing company referred to prosecutors — Kyoto", Yomiuri Shimbun, March 18, 1999, Osaka morning edition, p. 35:

[170] 'Doujinshi artist arrested, note on homepage', 'Can't use characters', fan activities and copyright clashes', 'Sued for tarnishing image', Asahi Shimbun 11 March 1999, morning edition, page 27.

[171] 'Doujinshi artist arrested, note on homepage', 'Can't use characters', fan activities and copyright clashes', 'Sued for tarnishing image', Asahi Shimbun 11 March 1999, morning edition, page 27.

Another relatively well-known case in this field is the 2007 'Doraemon Final Episode Doujinshi Incident'[172]. In this case, a dojinshi that devised and drew the 'final episode' of Doraemon, a famous manga by the late Fujiko F. Fujio, a well-known Japanese manga artist, which does not officially exist, was sold on a large scale, prompting the copyright holders, Shogakukan and Fujiko Productions, to take legal action. It all started when a doujinshi artist (Tajima T. Yasue) created his own 'Doraemon's Final Episode' manga based on a famous internet rumour and sold it as a booklet of about 20 pages. The coterie magazine was distributed for about 500 yen and is said to have sold a total of more than 13,000 copies. This was an exceptionally large number for a coterie magazine, and it became a kind of bestselling coterie magazine. In response, Shogakukan and Fujiko Productions deemed it a 'malicious infringement of copyright' and in spring 2007 sent a warning letter to the doujinshi author as the copyright holder, demanding that he cease sales.

In the end, the coterie magazine author issued an apology and submitted a written pledge not to do so again, and a settlement was reportedly reached in which Fujiko Production paid a portion of the sales proceeds (several million yen) to the author.[173] Although criminal charges were not brought in this case, the unusually high number of copies distributed and the fact that the content of the magazine could be mistaken for the final episode of the original work were emphasised. Mr Tetsuro Ohkame, Director of the Intellectual Property Management Section of Shogakukan, said: 'The binding is very similar to the original, and some people mistook it for the original. The number of 13,000 copies could not be overlooked." His comments indicate that, depending on the social value and scale of the work, rights holders may have to take firm action.[174]

Thus, in Japan, there are precedents, albeit very exceptional, where rights holders have taken strict measures against fan creations, such as warnings, lawsuits and complaints, and these were mainly cases where "damage to brand value", "excessive commercial scale" or "content contrary to public order and morals" were considered problematic.

However, on the other hand, numerous other secondary creations have been tacitly tolerated. Indeed, until the 1990s, non-commercial, small-scale fan creations generally remained unnoticed as part of fan culture. Before the notable Pokémon case in 1999, there appeared to be no instances of doujinshi explicitly targeted for copyright infringement. Even after the 2000s, aside from prominent exceptions like the Doraemon case, it has remained exceedingly rare for companies to pursue direct legal action against doujinshi and derivative fan works.[175] In other words, the current situation in Japan is that even acts that could be considered illegal under the legal system have been de facto tolerated because rights holders

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[172] ‘Unauthorized ‘Doraemon’ Final Episode — Apology from the Creator, Who Sold 13,000 Copies and Will Pay Partial Proceeds to Original Rights Holders’, Asahi Shimbun, 29 May 2007, evening edition, page.14; 'Doraemon' unauthorised final story: man apologises for selling doujinshi 'Some people misunderstood it as the real thing', Yomiuri Shimbun 5 June 2007, morning edition, page 19.

[173] 'Doraemon' unauthorised final story: man apologises for selling doujinshi 'Some people misunderstood it as the real thing', Yomiuri Shimbun 5 June 2007, morning edition, page 19.

[174] 'Doraemon' unauthorised final story: man apologises for selling doujinshi 'Some people misunderstood it as the real thing', Yomiuri Shimbun 5 June 2007, morning edition, page 19.

[175] See Satoshi Ikemura, 'Etcetera concerning "secondary works" and "copyright"', Copylight No. 659 (March 2016), p. 41.

have dared to refrain from exercising their rights. This kind of use, which formally constitutes copyright infringement, but which is carried out against the background that it has not been discovered by rights holders or has not been litigated in reality because of rights holders' omission, is referred to as tolerated use.[176]

However, one important problem that has been pointed out with regard to the situation of derivative works is that, from a formal point of view, the application of criminal penalties for copyright infringement under Japanese copyright law is too broad and may lead to a general atrophy of expressive activities.[177] In actual practice, copyright holders rarely file criminal complaints or accusations against secondary creations. Moreover, prosecutors have broad discretion regarding whether to pursue charges (Principle of opportunity), and thus criminal penalties are almost never applied to creators of derivative works. However, concerns have long been raised about the possibility that, depending on the response of rights holders and the approach of prosecutors and police, the threat of criminal sanctions might lead to chilling effects on freedom of expression.

3.2. Cultural and social perspectives: silent practices in Japanese fan culture

As mentioned earlier, Japan's otaku culture has fostered a strong tradition of fan-driven creativity, especially through doujinshi. Events such as Comic Market (Comiket) showcase vast numbers of unauthorised derivative works—manga, novels, and illustrations—based on popular media. Nevertheless, Japanese rights holders have for many years tacitly allowed this fan-led creative activity. This is due to the unique cultural ecosystem formed between the creative community and the official rights holders. Fans share the unwritten rule of "enjoyment within a range that does not cause trouble for the official rights holders", and there are voluntary rules, such as clearly stating that derivative works are "unofficial" and "derivative", distributing them only as a hobby and not for profit, and refraining from expressions that may damage the image of the work to an extreme degree. The rights holders, on the other hand, also have their own rules. On the other hand, rights holders also show a certain understanding of the enthusiasm of fans and often take the stance that they will let people do what they want as long as it is not too much. It can be said that the idea that "the fans are the work" and "it is better not to make enemies of the fan community" is widespread here.

Furthermore, in Japan, a basically similar permissive attitude can be seen with regard to other fan activities such as cosplay (dressing up as characters) and live game play on video-sharing websites for existing games. With regard to cosplay, it is noted that "acts that could formally constitute copyright infringement, such as photographing cosplayers wearing costumes similar to those of other people's characters and posting photos and videos on the internet, are widely practised in reality, but copyright holders rarely actually exercise their rights against cosplayers or other individuals". It is noted that "it is rare for rights to be exercised"

[176] Yoshiyuki Tamura, 'A reformulation theory of Japanese copyright law: towards overcoming "structural issues" in the age of digitalisation and the internet era' [2014] Journal of Intellectual Property Law and Policy 77.

[177] Toshiya Kaneko, 'Secondary Works and Copyright Law', Law School No. 449 (February 2018), p. 37.

and is positioned as a "permissive use".[178] Cosplay could theoretically include the use of copyrighted material such as costume designs, but in practice it is widely practised at events and on social networking sites, and is rarely seen as a problem by rights holders.

3.3. The economic perspective: market effects and interests surrounding fan works

The calculation of the economic benefits behind rights holders' openness to fan creations cannot be ignored. First, fan works often have a publicity and branding effect on the original content.[179] When dedicated fans voluntarily publish derivative works, the world of the work is extended, and the topicality is maintained. For example, in popular manga and anime genres, the large number of fanzines of derivative works can itself be an indicator of the popularity of the work and can lead to the acquisition of a new fan base.[180] For companies, it is as if the fans are promoting their works for free or at a low profit, and there is little reason to stop them from doing so.

Second, maintaining good relations with the fan community itself has economic value. In the modern content industry, the emphasis is not simply on selling works, but on two-way relationships with fans (interactive marketing). Methods are used to engage fans and foster a community through the holding of fan events, exchanges between officials and fans on SNS (Social Networking Service), user-participatory projects, etc. As part of these methods, allowances for fan creations are also strategically used. If a company were to claim rights and exclude even small-scale fan creations, this could lead to fan backlash and flames, which could damage the brand image. As a corporate image strategy, it is increasingly recognised that it is more beneficial to be tolerant and avoid conflicts with fans.

For example, Nintendo recently published guidelines on the use of Nintendo's copyrighted material in its network services.[181] In support of users' passion and creativity for its games and characters, the company allows individuals to post game play videos and screenshots on sharing sites under certain conditions. Specifically, the contributions must be non-commercial in nature, but monetisation is also permitted if a monetisation system specified by Nintendo is used. However, contributions must include the user's own creative comments and editing, and mere copying, reprinting and other non-creative material is prohibited. In addition, the use of unreleased game material is only permitted within the scope of official publication, and if material with rights held by a third party other than Nintendo is to be included in a post, permission must be obtained separately from that rights holder.

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[178] Takahiro Kojima, 'Fashion Law from Cosplay', Law Seminar No. 837 (October 2024), p. 26.

[179] Simone Schroff, ‘Where to Draw the Line: The Difference Between a Fan and a Pirate in Japan’ [2020] International Journal of Cultural Policy 512-526; Miura, Toshihiko (2022). "Cultural Marketing Strategies of Japanese Pop Culture (JPC): Strategic Characteristics and Innovations in Marketing Research," Journal of Business Administration (Chuo University), Vol. 63, No. 5/6, p. 74.

[180] Daniel Pink, “Japan Ink: Inside the Manga Industrial Complex” https://www.wired.com/2007/10/ff-manga/, an interview article with organizers of doujinshi conventions, the author finds that Japanese publishers largely tolerate doujinshi (fan-made manga) due to an implicit agreement since the doujinshi are creating a market base, and the market base is naturally drawn to the original work. Publishers thus refrain from strict copyright enforcement, while doujinshi creators limit their activities to avoid competing with original publications and to nurture future manga talent.

[181] Nintendo, 'Guidelines for the Use of Nintendo's Copyrighted Works in Network Services' (29 November 2018), https://www.nintendo.co.jp/networkservice_guideline/ja/index.html

Third, fan-created works are often a place for discovering and test-marketing new talent. Manga artist Ken Akamatsu has stated: 'Major manga magazines like Weekly Shonen Magazine (Kodansha) have few contributors from Comiket, but in otaku-oriented magazines from publishers like Kadokawa, a significant percentage of artists have Comiket backgrounds'[182]. In the Japanese manga and animation industry, there are many examples of creators from dōjinshi making their professional debut. CLAMP, a well-known group of manga artists, was active as a coterie before debuting in commercial magazines, and in some cases, such as with Touhou Project, a coterie game has established a large market. In view of the way the industry works, fan creators are not mere infringers but are positioned as "future collaborators" and "co-creators of the world of the work". The fact that rights holders are tolerant of fan creations can be expected to have an incubation effect in finding talented creators, which in turn will lead to the revitalisation of their own content industry. From an economic point of view, the complete exclusion of fan works may lead to a loss of profit opportunities in the long term. Therefore, the decision has been made that it is more reasonable in terms of profit to allow fans to create freely within certain limits.

3.4. The use of guidelines as soft law - using live video games as an example

Rather than simply relying on permissive use, guidelines may be used as a soft law for more positive permissiveness to reconcile conflicts between fan activities and copyright.

It is also important to note that game companies recognise it as a fan activity with a promotional effect, as is the case with live game streaming, which is often seen on video distribution websites. As live game broadcasts are regarded as an effective promotional method for companies to gain widespread recognition for their games, game companies tend to refrain from exercising their rights under copyright law. Jun Terahara of Sega Sammy Holdings says that live game videos have promotional value and that there are no major problems with monetising them on video-sharing websites.[183]

On the other hand, where game companies have established clear guidelines, there is a general legal assessment that uploading live game videos is permissible as long as it is within those guidelines. For example, in some cases, distribution of 'spoiler' videos in violation of the guidelines is strictly dealt with as copyright infringement, and there have actually been cases of arrests for breaching copyright laws.[184] Some gaming companies may also exercise

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[182] '[Special Feature] The Cultural Economics of Copyright: Extending Copyright Could Lead to Japan's Decline — Interview with Manga Artist Ken Akamatsu: "Tolerating Fan Works Has Advanced Japanese Manga"', December 10, 2013, The Economist, Vol. 91, No. 54, Issue No. 4319, p. 97.

[183] Tetsuya Imamura, Kazuhiro Ando, Tatsuhiro Ueno, Yoshiyuki Tamura, Christoph Rademacher, Enrico Bonadio, Marc Mimler and Jun Terahara, "International Workshop 'Video Games, Fan Culture and Intellectual Property'", Journal of Information and Communication Studies 23 (Mar 2024), pp. 36-37.

[184] Tetsuya Imamura, Kazuhiro Ando, Tatsuhiro Ueno, Yoshiyuki Tamura, Christoph Rademacher, Enrico Bonadio, Marc Mimler and Jun Terahara, "International Workshop 'Video Games, Fan Culture and Intellectual Property'", Journal of Information and Communication Studies 23 (Mar 2024), pp. 19-20.

their copyright and apply to the platform to remove the offending video in accordance with the guidelines.[185]

As such, live video games are generally permitted to the extent that they comply with the guidelines provided by the game companies. This is based on the recognition that live games are an effective marketing tool. On the other hand, in relation to copyright law, it is important that explicit guidelines are set and adhered to by the game companies, and in the event of non-compliance, copyright may be strictly enforced. Thus, the legal assessment of live gaming is in a situation of flexible adjustment between the business strategies of the gaming companies and the framework of copyright law.

Conclusion

This paper has explored Japanese video games from multiple angles: as a post–World War II success story, a thriving commercial industry, and—most importantly—a cultural phenomenon. The integration of media mix strategies into Japanese video game franchises has resulted in richly immersive worlds and dedicated fan communities across the globe. Japanese fandom, often driven by otaku culture, is characterised by intense passion and deep engagement with beloved media. While fan practices may sometimes seem extreme and even encroach upon the exclusive rights of intellectual property holders, Japanese rights holders are generally more tolerant of such behaviour compared to their Western counterparts.[186]

As discussed above, the response of copyright holders to fan works in Japan is based on a comprehensive judgment that looks not only at the management of legal risks, but also at cultural development and economic benefits. The combination of these conditions - the legal system provides a framework that allows for flexible operation, including the use of parental notification; culturally, a symbiotic relationship between fans and officials is established; and economically, it is more beneficial to incorporate fan activities - has resulted in a tendency for rights holders in Japan to be less strict with regard to secondary creations. This is thought to have resulted in a tendency for rights holders in Japan to refrain from strictly enforcing their rights over derivative works.

[185] Tetsuya Imamura, Kazuhiro Ando, Tatsuhiro Ueno, Yoshiyuki Tamura, Christoph Rademacher, Enrico Bonadio, Marc Mimler and Jun Terahara, "International Workshop 'Video Games, Fan Culture and Intellectual Property'", Journal of Information and Communication Studies 23 (Mar 2024), p. 28.

[186] Mikhail Fiadotau, ‘Indie and dōjin games: a multilayered crosscultural comparison’ [2019] gamevironments 39-84, 56.