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Nintendo and the Law: The Relationship Between Corporation and Fandom

The Japanese corporation Nintendo Co. Ltd. (shortened to “Nintendo”) has remained a dominating force within the video game market since its inception. Many of Nintendo’s flagship titles receive new releases to this day, with a large fanbase continuing to celebrate the legacies of these franchises that have their roots in the 80’s and 90’s. Projects such as artwork, music, custom controllers, and even games are created by fans using Nintendo’s intellectual property as a means of sharing their passion for the gaming giant. With the proliferation of the Internet, these fan projects are spread around more easily to thousands, if not millions of users, along with the news of Nintendo taking legal action against them. This has sparked bitter tension that remains to this day between Nintendo fans who wish to creatively express themselves, and Nintendo who is legally protecting their works. With that in mind, the following question is planned to be answered within this essay: are digitally published fan projects damaging to Nintendo’s brand image and financial status or a harmless way of promoting fan culture?

To begin, it is important to accurately define “fan project.” A fan project in this context constitutes unofficial derivative works developed by Nintendo fans. Many are free to engage with, but some are monetized. These projects can be simple, such as a drawing of a Nintendo character uploaded to social media. However, most fan projects that draw public attention are more complex. These can be unofficial games built from the ground up that utilize Nintendo’s properties, Nintendo controllers designed and manufactured by private sellers, or modifications

to an official game's code. To provide an example to that last point, a modification could be a fan providing a way to play a game from the 80's online with others, when that was not possible at the time. To accurately assess the issue and possible limitations, the range of fan projects must be kept in mind as opposed to placing them all within the same category.

It is correct to say, of course, that Nintendo is within their legal rights to take down derivative works that infringe upon copyrighted material, patents, and intellectual properties without permission. To answer the aforementioned question, however, it is important to understand the law when applied to gaming, the scope of the Internet as a medium of communication, and the motivations behind fan projects. This works to understand both sides of the conflict, what the appropriate limits are to publishing fan projects, and whether or not changes to the status quo are necessary to gaming-specific law. By using this information as a foundation, Nintendo and their fans' actions can then be accurately and fairly analyzed.

Gaming as a medium of communication has grown to an unprecedented size in recent decades. Presently, gaming is gargantuan in the field of communication as it continues to find new ways to evolve. Gaming is also considered unique, as it involves multiple forms of communication as working parts. With this in mind, it is important to understand how the law is applied to gaming related cases. The article "YouTube, Video Games, and Fair Use: Nintendo's Copyright Infringement Battle with YouTube's 'Let's Plays' and its Potential Chilling Effects," by Nicholas Ribaud, describes the gaming industry's unorthodox position within the law. According to Ribaud, the World Intellectual Property Organization stated "video games are complex works of authorship - containing multiple art forms, such as music, scripts, plots, video, paintings, and characters - that involve human interaction while executing the game with a

computer program or specific hardware” (Ribaudó 10). With a massive industry so complex, the law surrounding gaming must be carefully considered and reviewed.

What becomes troubling, however, is a lack of accurate gaming-specific law, an issue that has remained prevalent in recent years. Gaming, and the unique position it holds, is only vaguely defined. “When Congress enacted the Copyright Act of 1976, the video game industry was not influential enough to be incorporated into the Act. Thus, there is no mention of video games as art, literature, or otherwise in the statute” (Ribaudó 10). Instead, gaming was later deemed copyrightable as an “audiovisual work.” “Audiovisual works under federal copyright law are defined as ‘works that consist of a series of related images which are intrinsically intended to be shown by the use of machines, or devices such as projectors, viewers, or electronic equipment, together with accompanying sounds’” (Ribaudó 10). Although gaming could be considered audiovisual works, the definition is unable to capture the intricacies of gaming, and what sets it apart from, say, a film, which could also fit under the audiovisual umbrella.

Finally, legal precedents are vital to understanding contemporary issues related to gaming law. As previously mentioned, the gaming industry has evolved to an enormous degree since its inception decades ago. What started out as arcade cabinets and simple home consoles has transformed into a network of online communities, with millions upon millions of gamers communicating with one another daily. For that reason, it feels inaccurate to utilize certain legal precedents, which could be argued as outdated, in contemporary scenarios. As an example, one of the major legal precedents regarding the modification of gaming is *Midway Manufacturing Co. v. Artic International, Inc.* Carl Lindstrom discusses this case in his article “Mod Money, Mod Problems: A Critique of Copyright Restrictions on Video Game Modifications And An Evaluation of Associated Monetization Regimes.” He states “an arcade manufacturer sued a

company that sold circuit boards of the plaintiff's arcade games when installed in a compatible arcade cabinet" (Lindstrom 6). Although this is an example of gaming modification brought to a courtroom, it is a primitive example that does not accurately reflect the issues surrounding the topic today.

What has been understood, here, is that the law does not fully comprehend the scope of gaming. Laws in place are often not accurate enough to isolate gaming, and separate it from other forms of communication. Legal precedents regarding hot gaming issues today are often decades old, and should be reviewed to see if they hold up today. Therefore, certain aspects of gaming law presently can be viewed as unreliable. This is not to say that lawmakers are inept, or that gaming law needs a complete overhaul, but it simply needs thorough reviewing as the industry continues to evolve, and more legal issues require accurate definitions.

Another key component to this issue aside from gaming law is the proliferation of the Internet. In contemporary times, anyone can broadcast their content instantaneously to millions of users. In this case, the content would be fan projects. The scope of the Internet as a medium of communication must be considered during the analysis of this issue. Within the Nintendo community, and even outside gaming as a whole, the Internet has provided a hub for communities to come together and celebrate fandom under circumstances that would not normally be possible. However, having the ability to share certain types of fan projects could undoubtedly pose problems for Nintendo.

A central example of this took place in 2020. A group of Nintendo fans disassembled the source code for the 1996 game *Super Mario 64* in order to study its parts for a better understanding of the game. The group then reverse engineered the code and released it to the website GitHub so that other users could study it for themselves. The re-released source code had

purposeful gaps left in it so that other users couldn't download and play the game illegally; pirates would have to source the missing pieces of code for themselves. As stated in the article "Super Mario Decompiled" by Joseph Godfrey, this project was not illegal. "*Sega Enterprises Ltd. v. Accolade Inc.* held that the disassembly of object code is a fair use when used to understand elements 'that are not visible to the user when operating—and then only when no alternative means of gaining an understanding of those ideas and functional concepts exists'" (Godfrey 4). The issue here, however, is that a third party filled in the gaps to the source code, and began uploading an unofficial *Super Mario 64* PC version for users to freely download and play. Nintendo began taking down websites hosting pirated copies of the game. *Super Mario 64*, although twenty six years old, is still a highly coveted game in the eyes of Nintendo fans, prompting the company to continuously re-release it, including on the Nintendo Switch, their current console. Having a pirated fan copy of the game floating around on the Internet certainly has the potential to undermine sales Nintendo could be receiving on their official platform.

Another example takes the form of custom controllers. In 2019, the popular Nintendo YouTuber Desmond "Etika" Amofah suddenly took his own life. To honor Etika's legacy, one of his friends created a crowdfunding campaign on the website "Indiegogo." Proceeds would go to manufacturing Etika-themed Joycons (Nintendo Switch controllers), containing his logo and associated colors, as well as Jed Foundation. The gaming publication Polygon issued an article by Owen S. Good titled "Nintendo Shuts Down 'Etikon' Controller Memorial, Sparking Backlash" when Nintendo sent the campaign a cease and desist, causing resentment towards the company among grieving fans. "According to a report from The Daily Dot, Cptn_Alex said Nintendo's problem was with his use of a trademark, not the modification of their hardware. The Etikons bore a logo saying 'JOYCON BOYZ.' Apparently he could remake the controllers

without the JOYCON BOYZ logo, but that would require another factory run and a fundraiser to support it.” Backlash at this time was understandable, as Nintendo acted quickly during a depressing period for fans. However, they still chose to protect their trademark that could be misrepresented to thousands of users.

Not every instance of a fan project being uploaded to the Internet is necessarily harmful, such as paintings of Kirby uploaded to Twitter. However, there are certain types of fan projects that have the potential to host unintended consequences. Nintendo, through their actions, appear to cover all their bases, ensuring fan projects are unable to potentially damage them.

Understanding how the Internet plays a role in Nintendo’s legal actions becomes important when assessing the issue at large, as millions of users having access to a derivative work could potentially undermine sales, or sway public opinion.

Finally, a clear understanding of the motivations behind fan projects are crucial to get their perspective. Many fan projects often make their intentions to support Nintendo immediately known. For example, one team of fans worked together to create the game “Mother 4,” an unofficial sequel to the Nintendo game *Mother 3*. A trailer for their project immediately began with the following disclaimer: “MOTHER 4 is an UNOFFICIAL fan-made game. The MOTHER 4 team is NOT affiliated, associated, authorized, endorsed by or in any way connected to Nintendo of America Inc., Shigesato Itoi, HAL Laboratory Inc., Nintendo Co. Ltd., or any of their subsidiaries or affiliates. Please support Nintendo! Buy EarthBound on the Wii U! (Mother 4 Team).” This team, knowing their project would be viewed by thousands, brought their unofficial status to the forefront immediately, and requested their audience to find an official means of supporting Nintendo.

Another example of a fan project with clear intentions was titled “Zelda30Tribute” by a group of *Legend of Zelda* fans. This project saw the original *Legend of Zelda* game recreated with 3D visuals to commemorate the series reaching its 30th anniversary back in 2016. The project was taken down by Nintendo, but their website remains visible to this day with a message. “Sorry, folks. Nintendo asked us to remove this site for copyright infringement... We’re sad about that, but we get it. We started this project because we love Nintendo and the joy they have given us throughout the years. From the start of development, we knew this result could potentially happen. Nintendo has every right to protect their IP” (Zelda30Tribute Team). Both *Mother 4* and *Zelda30Tribute* were unofficial fan games created out of passion for Nintendo. Although these types of fan projects are made out of support for Nintendo, they are unauthorized derivative works, and do not stop the company from protecting their properties.

There are times where, from a fan’s point of view, their relationship to Nintendo feels unbalanced and unfair. This is best seen with the fan project titled “Slippi,” a modification of the 2001 game *Super Smash Bros. Melee*. The mod allows for remote online play, which was not something the gaming industry was capable of hosting at the time of the game’s release. Slippi was popularized in 2020 during the height of the COVID-19 pandemic, when traditional in-person tournaments were not possible. Instead, tournaments would be hosted online using copies of *Super Smash Bros. Melee* that had the Slippi mod installed. The Slippi mod was created out of an unrivaled passion for *Super Smash Bros. Melee*, as it wished to keep the game at the forefront of esports and relevant in modern times, when fighting games having online play is the standard. When The Big House tournament utilized the Slippi mod in November 2020, fans felt as though *Super Smash Bros. Melee* was entering a new evolutionary stage, one that would not only make the game more modern, but also more accessible to newer players.

However, as detailed in Polygon article “Smash Bros. Tournament The Big House 10 Canceled Over Netcode,” Nintendo was not willing to let this endeavor fly under their radar. Polygon received a statement from a Nintendo representative, detailing the company’s appreciation for their fans’ dedication. The company goes on to say “Unfortunately, the upcoming Big House tournament announced plans to host an online tournament for *Super Smash Bros. Melee* that requires use of illegally copied versions of the game in conjunction with a mod called ‘Slippi’ during their online event... Nintendo cannot condone or allow piracy of its intellectual property” (Polygon 1). This resulted in a major controversy, with Nintendo fans rallying on social media using the hashtags #FreeMelee and #SaveSmash, feeling as though Nintendo was disrupting the only way they could play *Super Smash Bros. Melee* during the pandemic. The backlash Nintendo faced even leaked into other Nintendo communities, where, during a tournament of *Splatoon 2*, many teams named themselves “Free Melee,” as written in the NintendoLife article “Nintendo Cancels *Splatoon 2* NA Open Livestream, ‘Free Melee’ Believed To Have Played A Part.”

Fan projects, as the name implies, are created by fans to demonstrate their passion, love, and dedication for something. This is no different with Nintendo, and is the reason why bitter tension remains between the company and their fans to this day, as described earlier in this paper. Some fan projects understand the risks they are taking in their creative processes and are therefore not surprised by the consequences they may face. Other projects are held to high standards by fans and result in controversy upon their cancellation. Regardless, there appears to be a common consensus among Nintendo fans that, though the company acts within their legal rights, they can be too protective of their properties, and therefore cause direct harm to their relationship.

The analysis on gaming law, the Internet as a medium of communication, and the motivations behind fan projects laid down the foundation to more closely analyze the question laid out at the beginning of this paper. To properly answer the question of whether or not Nintendo is harmed by digitally published fan projects, different types of fan projects must be analyzed with consideration to how they are affected by the law, and how the Internet's mass media nature can influence Nintendo's decision making. Along the way, it should be considered whether or not present laws remain relevant or outdated, and what limitations on fan projects are appropriate when they are published in a digital space. To ensure the scope of well known fan projects are accurately represented, a diverse selection will be considered, including ROM-hacks, game modifications, and fan games. Although there are many other types of fan projects, these are the most popular and relevant to the goals of this paper.

Game modification is the process of modifying a game's code and assets to create a slightly altered or entirely new experience. ROM-hacks are a popular type of game modification that reside in a legally gray area when it comes to fan projects. A ROM, or read only memory, is a file that holds all of the components of a video game including code, scripts, graphics, and sounds. Therefore, a ROM-hack, as described in the article "Breaking the Blackbox: Imagining Feminist Media Through Hacking" by Jaime Lee Kirtz, "is an 'umbrella term' referring 'to the direct manipulation of commercially released video game program data so as to alter the original gameplay, graphics and sound or level designs'" (3). In other words, a ROM-hack of the game *Pokémon: Fire Red* might look and play like the original game, but include an entirely different cast of characters, music, level design and dialogue.

What makes ROM-hacks specifically reside in a legally gray area is that when they are uploaded to the Internet for users to download, they do not contain the game's original ROM.

Instead, ROM-hacks act as a patch file. Downloading a ROM of *Pokémon: Fire Red* would be illegal because that would be installing a pirated copy of the game. However, downloading the patch file of a ROM-hack, and applying the patch onto a ROM of *Pokémon: Fire Red* would not be considered illegal, since the patch file does not contain the original game's ROM, only the changes that would be made if it were applied to that ROM. The article "Why ROM Hacks Never Get Shut Down" by the website Gaming Reinvented more clearly illustrates this concept. "The only things being distributed in the patch are the changes made by the author rather than the original work it's based on. Someone trying to sue over one would have to prove that a series of instructions on what to change in a work is derivative work in of itself... It's like Ford, say, getting angry when someone writes down an article about how you can mod a car you bought from them to look completely different" (Gaming Reinvented 1).

The most famous example of a ROM-hack is the *Mother 3* English Translation Patch. In 2006, Nintendo released the highly-anticipated *Mother 3* for the GameBoy Advance, but only in Japan. A group of professional translators were able to modify *Mother 3*'s ROM, going through the entire game's script and translating everything into English, later publishing the patch file in 2008. The translator who spearheaded the project, going under the Internet pseudonym Mato, stated on the patch's website "Try to find a legit copy of the game. It's not cool to brazenly pirate stuff!" and later during instructions on how to install the patch "You need a copy of the ROM before patching. You're on your own for this step" (Mato 1). This example highlights the interesting position that ROM-hacks find themselves in. In order to run a ROM-hack, a ROM of the game is required, and those are often acquired through illegal means. The only time ROM-hacks ever find themselves in illegal territory is when a ROM is included with a patch. For example, some users began taking the English translation of *Mother 3* and patching it onto

physical GameBoy Advance cartridges, later selling them on places like eBay without Mato or the translation team's consent. This was documented in a post titled "English MOTHER 3 on eBay?" on the website EarthBound Central in 2011, to the confusion of many fans. Although this illegal act was done against the wishes of the *Mother 3* translation team, it raises questions on how the Internet can allow bad actors with the tools to turn a legal fan project into something illegal.

In his aforementioned article, Carl Lindstrom provides information that demonstrates how mods can be both harmful to a company, as well as beneficial. This information will be utilized in conjunction with contemporary examples of mods. Firstly, Lindstrom states "When considering whether an unauthorized use is fair, courts use a four prong analysis. The two prongs most important to mod analysis are the first, the nature of the use and whether it is commercial in nature, and the fourth, how the use affects the 'potential market for or value of a copyrighted work'" (Lindstrom 5). Returning to the Slippi mod example, it affects neither of those prongs; the mod is free, and would arguably have no effect on *Super Smash Bros. Melee*'s potential market because the game is twenty one years old, and has never been re-released. However, Nintendo likely still took action due to the ease of illegally downloading an old game on the Internet as opposed to tracking down a copy.

Secondly, the GameRant article "Super Smash Bros. Ultimate Mod Videos Taken Down By Nintendo," by Dylan McDonald, discusses how the YouTuber, AnimalTV, had their videos copyright struck by Nintendo when they showcased mods in the company's most recent iteration of the franchise *Super Smash Bros. Ultimate*. "A lot of mods are cosmetic, and meant for fans to spice up their game with new costumes or a new character model" (McDonald 1). Although these types of cosmetic mods are not commercial in nature, they would certainly have an effect

on *Super Smash Bros. Ultimate*'s potential market, as the game is currently being sold on Nintendo Switch consoles. This would make sense, but it is something that Lindstrom critiqued in his article. "Perhaps uniquely among derivative works, mods often increase the value and commercial success of the original work. In particular, a mod will directly and quantifiably, boost sales of the original work. The reason is because, unlike fan works in other mediums, mods are unusable without the player owning and using the original game; one does not need to own a Harry Potter book to read Harry Potter fanfiction or own the Star Wars movies to watch a Star Wars fan film, but one does need to own an Elder Scrolls game to play an Elder Scrolls mod" (Lindstrom 14).

As the law currently stands, a company, such as Nintendo, has the final say on how their intellectual properties are utilized. Lindstrom makes it clear, however, that gaming law surrounding mods should be reviewed and reconsidered under a modern perspective. "But for all their storied and positive effects on gaming, mods and modders are subject to inconsistent and discouraging interpretations of copyright law... In sum, the court held the game mods to be derivative, infringing works: a holding that remains unmodified and unchallenged more than twenty years later" (Lindstrom 3, 11).

Although many of the prevalent Nintendo mods might not harm the company's brand image, they have the potential to harm in other ways. Some users are able to take advantage of the Internet's massive reach to illegally sell mods, such as with the Mother 3 Fan Translation; although the translation team wished for their translation to remain commercial free, their mod raises concerns regarding the limits to publishing certain types of fan projects digitally. Other mods, such as Slippi, potentially incentivize the *Super Smash Bros. Melee* community to download illegal copies of the game in order to utilize their mod. Finally, the *Super Smash Bros.*

Ultimate cosmetic mods call into question the relevance of present gaming law. Currently, the law allows for Nintendo to protect their works against infringing mods. However, Lindstrom makes it clear that much of the precedent surrounding gaming law is outdated, as the medium has evolved significantly over the last twenty years. Gaming mods have the potential to harm Nintendo's properties and income, which is exacerbated by the Internet, but they also have the potential for beneficial impacts, as demonstrated by Lindstrom's arguments. The law, here, must be reviewed and tested to see whether or not it holds up within the present gaming industry.

As opposed to gaming mods, which use a pre-existing game as the base for new content, fan games are developed from the ground up based on an existing property. In his article "Fan Games Are a Constant Source of Legal Drama," Riordan Zentler describes the uniqueness of fan games. "A fan game uses an existing intellectual property. The advantage of going this route is obvious - you don't have to make something out of nothing, and it's easier to get people hyped. The trouble is, of course, copyright laws" (Zentler 1). Since fan games are not attached to any pre-existing officially licensed games, the legal issues surrounding them hardly have anything to do with financials; they are always free to play for the most part. The legal issues come down to how a fan game can infringe on properties, and by extension, potentially impact brand image.

Examples of how fan games can impact a company like Nintendo are described in the Ars Technica article "Nintendo's DMCA-backed Quest Against Online Fan Games" by Kyle Orland. Orland states "online game distributor Game Jolt has removed over 500 fan games from its public pages after it says it received a DMCA request from Nintendo... the list of affected games ranges from standard copyright and trademark infringement like *Mario Minecraft* and *Pokémon: Pewdiepie Edition* to more explicitly brand-damaging titles like *Mario on Drugs* and *Pokémon: Death Version*" (Orland 1). Most recently in January 2022, a user on Reddit named

Dragon_GameDev released a trailer for a Pokémon first person shooter game, as documented in the article “Fan-made Games Can’t Escape Nintendo” by Megan Farokhmanesh. “Even as a fanmake, the game is clearly contrary to The Pokémon Company and Nintendo’s MO, companies that largely produce wholesome family games; shooting Pikachu is not on brand” (Farokhmanesh 1). It is these types of fan games that a company protecting their brand image would be wary of.

Although these are extreme examples, other types of fan games simply gain a lot of popularity, and are later taken by Nintendo for copyright infringement. Some of the most famous examples include fan-made remakes of *Metroid II* and a game called “Pokémon Uranium”, a Pokémon game built entirely from the ground up with original art and gameplay. “The company has issued hundreds of takedown notices to fan projects, from remakes of *Metroid II* to a nine-year old project called Pokémon Uranium” (Farokhmanesh 1). Alex Perry, in his article “A History of Fan Projects That Nintendo Shut Down” demonstrates the diversity of fan games that have been developed over the years; some are large-scale projects, like “Pokémon Uranium,” some are original ideas like “Pokénet,” a game that attempted to turn Pokémon into a massively multiplayer online game. Others are incredibly simple, such as making the original *Super Mario Bros.* playable in fullscreen with a level editor, accurately titled “Full Screen Mario.” Fan games, big or small, appropriate or brand-damaging all must adhere to copyright laws, and the protections Nintendo has placed on their properties.

Since fan games are one of the most popular types of fan projects within gaming, it was important for this paper to contact a fan game developer and receive their perspective. This developer, known online as Maxxis, worked on the aforementioned “Mother 4,” a fan-made sequel to Nintendo’s *Mother 3*. The “Mother 4” project has since evolved into an original game

titled *Oddity*, both as a result of Nintendo taking down many fan games at the time, as well as the developers of “Mother 4” growing artistically. Maxxis, an artist and animator for *Oddity*, has provided their perspective on what a fan game means from the perspective of fans.

When asked if “Mother 4” was always going to be developed out of support and admiration for Nintendo, Maxxis stated “Absolutely. I can speak for most Nintendo fans by stating that most if not all fan works are a response to the joy received from us playing these wonderful games, from our childhood to the present day.” Maxxis was then asked what it was like to be working on “Mother 4” at a time when Nintendo was rapidly taking down fan games. Maxxis responded “Personally, practically the same as it feels now as I believed a Mother fan game wasn’t much of a threat (at the time). I believe there’s always a coat of anxiety for anyone to commit to succeeding or remaking an official work and try to live up to that brand, even in smaller endeavors like fan art or rearranged tracks. Seeing Nintendo’s rash actions toward other projects are to this day rather discouraging as a creator in general.” Finally, Maxxis was asked if they felt Nintendo should be more lenient towards fan games, even if they are within their legal right to take action against them. Maxxis provided a thorough response.

“From what I’ve seen with those that create these projects under an established name, their tastes and skills heighten to a point where their ideas mature into something beyond that established brand, and they continue their journey in creating original works onward... So that experience of creating a fan project, whether it sees an end or not, is a worthwhile start for the careers of many current and future developers. I owe most of my skill set from modding *Super Smash Bros. Brawl* as a child, for example. Nintendo should allow for fans to recreationally explore their creativity if the foundation is within their plentiful library of properties.”

Maxxis is able to convey the passion behind not just fan games, but fan projects as a whole; they are created out of love, and allow for the exploration of artistic expression. This, alone, becomes one of the central reasons Nintendo fans find themselves angered by the company's actions. However, fan games, in this case, are subject to copyright law, whether or not they are mostly developed out of admiration. It must also be considered how the Internet plays a role in the proliferation of fan games. Most, if not, all fan games are free to play and easily accessible online, which is seen as a potential threat to Nintendo, as demonstrated through their swift actions. Games such as "Mario on Drugs" or "Pokémon First Person Shooter" can spread online quickly, and give ignorant users a false impression on what kind of content the Nintendo brand produces. If Nintendo does not want a game about shooting Pokémon, it is within their rights to take down that kind of game utilizing their brand name. What becomes unfortunate, then, is the massive breadth of creative, innovative content that independent developers, such as the original "Mother 4" team, are able to develop on their own without funding, but are subject nonetheless to Nintendo's tight grip on the law.

On the surface level, the relationship between Nintendo and their fans seems simple: fans are upset that their derivative works are being taken down by a company protecting their properties legally. The issue at hand, when unraveled, however, becomes a multifaceted relationship hinging upon numerous moving parts; the law when applied to gaming, the Internet's nature as a medium of mass communication, and the intentions behind publishing fan projects within a digital space. With an understanding of how these components come together to create a whole, it can be easy to sympathize with a side and take a firm stance on the issue. However, this issue is not so black and white, and merely labeling a side as "right" or "wrong" is neglecting to acknowledge the complications involved.

It is time to answer the question laid forth at the beginning of this paper. Are digitally published fan projects damaging to Nintendo's brand image and financial status or a harmless way of promoting fan culture? The answer is, it depends on the project. Through the multitude of fan projects analyzed, some undoubtedly had the potential to damage Nintendo's brand, or financially impair them. Many fan projects, on the other hand, were certainly examples of promoting fan culture out of passion for Nintendo, and the desire to express oneself creatively in a public forum.

Where the lines are blurred, then, involves irrelevant gaming law, and taking advantage of the Internet, raising concerns about whether or not limitations should be imposed on publishing fan projects in a digital space. Presently, gaming law is not reflective of the current state of the industry. Much of the precedent that contemporary cases rely upon are from a time when the gaming industry was still considered in its infancy. It is necessary to review not only how the industry has evolved significantly since then, but also take into account the present attitudes and beliefs of gamers. Gaming law that is not kept up to date has the potential to harm fan projects.

On the other hand, some fan projects have demonstrated that their presence on a digital platform has the potential to cause brand and financial damage, whether or not it is the intent of the creators. In this scenario, it should be understood from the creators of fan projects that, when publishing their work to a medium as public as the Internet, Nintendo has the legal right to take down projects they consider harmful to their brand and business. Lawmakers should take into account how the Internet can cause bad actors to sour otherwise harmless fan projects, or, act as a forum for brand damaging fan projects.

The feud between Nintendo and their fans will continue to wage on unless proper communication is had on all fronts. Nintendo should be more clear when discussing why they take down fan projects, as opposed to silently swooping and disappearing. The company must create a clear channel of communication with their fans for the subject. This will also allow Nintendo fans to discuss directly with the company why creative fan projects are important to them and the communities they have cultivated online. Lawmakers, then, must take all of this into account and litigate what is acceptable, and what is infringing within the current landscape of the gaming industry. Once all parties are on the same page, it will become easier to move forward and, perhaps, Nintendo will recapture the magic in the eyes of their most loyal fans.

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