

**REPLY COMMENT OF
THE ORGANIZATION FOR TRANSFORMATIVE WORKS**

This reply comment is submitted by Rebecca Tushnet and Rachael Vaughn on behalf of the Organization for Transformative Works (OTW) in support of the exemption proposal by the Electronic Frontier Foundation (EFF) for the following two proposed classes:

***Proposed Class #7B:** Audiovisual works on DVDs that are lawfully made and acquired and that are protected by the Content Scrambling System, where circumvention is undertaken for the purpose of extracting clips for inclusion in primarily noncommercial videos that do not infringe copyright, and the person engaging in the circumvention believes and has reasonable grounds for believing that circumvention is necessary to fulfill the purpose of the use..*

***Proposed Class #7C:** Audiovisual works that are lawfully made and acquired via online distribution services, where circumvention is undertaken for the purpose of extracting clips for inclusion in primarily noncommercial videos that do not infringe copyright, and the person engaging in the circumvention believes and has reasonable grounds for believing that circumvention is necessary to fulfill the purpose of the use, and the works in question are not readily available on DVD.*

I. Summary of Argument

The OTW supports Class 7B because the present exemption granted in 2010 has worked, and Class 7C because it is necessary to build on the success of Class 7B for works that are not presently available on DVD, which are equally subject to fair use.

The opponents of these exemptions¹ do not allege, much less provide evidence, that the present exemption has increased infringement. DVDs remain widely available, as do methods for

¹ Comments of the Advanced Access Content System Licensing Administrator (“AACSLA”) in RM 2011-7, Rulemaking on Exemptions from Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies, February 10, 2012, available at http://www.copyright.gov/1201/2012/comments/Bruce_H._Turnbull.pdf [hereinafter AACSLA]

copying them wholesale; the exemption affects neither. Nor, indeed, do the opponents provide any evidence that the DMCA's prohibitions are well understood enough to affect the practices of the vast majority of noncommercial remixers unless and until they need to defend their work as fair use. The experience of DVDs, which includes the wide availability of circumvention technologies as conceded by the opponents in 2009 and again in this rulemaking proceeding, demonstrates that a robust market can and will form even in the presence of easy circumvention. Ripping DVDs or creating large, high-quality clips of an Amazon Instant Video are complicated endeavors compared to the alternatives, including the alternatives advocated by the opponents. Circumvention is useful to creators who have specific needs for high-quality footage, and largely irrelevant to people interested in acquiring full, good-enough-to-watch copies who can take advantage of the simpler alternatives. As a result, the marginal effect of the proposed exemptions will continue the current experience under the existing exemption.

II. Statement of Interest

OTW is a nonprofit organization established by media fans in 2007 to promote the acceptance of fanworks as a legitimate creative activity, to preserve the history of fan culture, and to protect and defend fanworks from commercial exploitation and legal challenge. OTW believes that these noncommercial works that make creative use of existing copyrighted material are transformative, and that transformative works are legitimate under US copyright law. OTW provides free services to fans who need assistance when faced with related legal issues or media attention. This comment supports the proposed exemptions for noncommercial remix videos that do not infringe copyright. In filing this comment, OTW represents the interests of a large number of the creators of these videos. Fan-created videos, or vids, that include clips from popular television shows or film rework these clips in such a way that comments on or critiques the original source. As the Office found during the last proceedings, a substantial number of these

Comments]; Joint Comments of AAP, ASMP, BSA, ESA, MPAA, PACA, RIAA in RM 2011-7, Rulemaking on Exemptions from Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies, February 10, 2012, *available at* http://www.copyright.gov/1201/2012/comments/Steven_J._Metalitz.pdf [*hereinafter* Joint Comments].

noncommercial remix videos have strong claims to fair use.² Nor do the opponents contest that the representative examples provided by the EFF for the current exemption are highly transformative, fair, and otherwise further copyright's objective of promoting progress. Accordingly, OTW supports EFF's proposed exemptions that would allow the extraction of clips from a DVD or online distribution services for inclusion in noncommercial remix videos that are found to be fair use.

The DMCA's contours are, to put it mildly, complex and not widely known by nonprofessionals. Without an exemption, the main effect of the anticircumvention prohibitions on remixers was to surprise them when they received a takedown notice, believed they had a valid fair use defense, and discovered that the DMCA made that fair use defense irrelevant because of how they had acquired the footage they used. The OTW's experience under the 2009 exemptions indicates that such remixers are now able to contest notices, asserting their fair use arguments, and that they have been able to successfully use counternotifications under the DMCA as well as other dispute resolution mechanisms such as those provided by YouTube. Rejecting the exemptions would subject users to unanticipated and unfair liability for uses that are otherwise fair under the Copyright Act.

III. Overview of Vidding Culture and Illustrative Example of Vidding Practice

Vids are fan-made videos that involve the re-cutting and remixing of footage from television shows or films, creating a video montage set to a new soundtrack. Vids are usually rapidly cut, preserving little or none of the narrative structure of the underlying source. The purpose of vidding is to remix the source material in such a way as to provide a new narrative, often commenting on or critiquing that source.

² Recommendation of the Register of Copyrights in RM 2008-8, Rulemaking on Exemptions from Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies, June 11, 2010 at 66-68, *available at* <http://www.copyright.gov/1201/2010/initialed-registers-recommendation-june-11-2010.pdf> [*hereinafter* 2010 Recommendations].

For example, vidder Thingswithwings created *The Price*,³ a carefully edited critique of standard media narratives of “manpain,” in which a main character—typically a white male—undergoes trauma and often reacts by exhibiting stereotypically masculine behaviors and attitudes.⁴ Well-known examples of this trope featured in the vid include Harry Potter, Batman, and Frodo from *Lord of the Rings*. A more common and misogynist manpain trope involves harming a female character for the sole purpose of providing a motivation for the male character’s storyline. The vidder used footage from over thirty different films and television shows,⁵ overlaying images from one source on top of another source to show the trope in action. *The Price* ends with dramatic, tongue-in-cheek shots of the men crying. Some of the scenes include effects to stylize the tears, thereby making the point that, although it is very common in mainstream media, the manpain narrative is overdone and blasé.

Creating a work like *The Price* necessitates making use of the footage from the subject media sources. Although Thingswithwings theoretically could have expressed her message in the form of a written essay, *The Price* is powerful precisely because it uses visual editing techniques to comment on a visual source. To create this vid, Thingswithwings relied on two primary techniques for acquiring footage: (1) software tools that are capable of circumventing Content Scrambling System (CSS) encryption; and (2) software tools that are capable of circumventing encryption methods for online distribution services such as Amazon Instant Video and/or iTunes.⁶ Access to high quality source material was critical for the vid to function as a convincing counterpoint to the traditional mainstream narratives. Without obtaining the source footage as described above, the vidder may have been unable to integrate the varied sources

³ See Test Suite for Fair Use Fanvids, ORGANIZATION FOR TRANSFORMATIVE WORKS, <http://transformativeworks.org/node/552> (last updated December 1, 2011) (presenting a collection of several vids discussed in this reply comment including *The Price*) [*hereinafter* Test Suite].

⁴ See FANLORE, <http://fanlore.org/wiki/Manpain> (last updated February 6, 2012) (explaining the definition and history of the term manpain).

⁵ Thingswithwings, *New Vid: The Price (Multifandom)*, DREAMWIDTH (January 16, 2011, 7:40 AM) <http://thingswithwings.dreamwidth.org/145368.html>.

⁶ Email from Thingswithwings dated November 29, 2011 (on file with authors).

having different color palettes and frame sizes into a seamless story using effects, transitions, and other editing techniques.

IV. Vidding is a Legitimate Artistic and Culturally Valuable Pursuit that Represents an Established and Growing Community

The vidding community is a longstanding community with a history of interacting with their favorite television shows, movies, and other visual media for over three decades.⁷ MIT professor and media scholar Henry Jenkins wrote about the community in his 1992 book about participatory culture, *Textual Poachers*.⁸ He described the art of vidding not only as an important form of cultural creation, but as a way of solidifying and maintaining the fan community, creating a source of pride and a means of articulating the commonalities of the group.⁹

Although existence of the vidding community predates digital video technology, vidders have successfully influenced and integrated into modern remix culture. With the tools for digital editing now accessible to the average computer user and means of wide dissemination at a creator's fingertips, the vidding community has seen the same growth as other, more visible forms of remix culture. This growth is largely due to the younger generation's familiarity with digital media, and it will only continue. Approximately 64 percent of online teens in the US have created content on the Internet and one in four young people have remixed content into their own artistic creations.¹⁰

Anthropologist Michael Wesch's research has suggested that there may be as many as 15,000 remix videos uploaded to YouTube each day, and academic Francesca Coppa estimates that there are already tens of thousands created by self-identified vidders elsewhere on the Web, a number that may climb into the millions when taking into account those who are not a part of

⁷ Neda Ulaby, *Vidders Talk Back to Their Pop-Culture Muses*, NPR NEWS (February 25, 2009), <http://www.npr.org/templates/story/story.php?storyId=101154811> [*hereinafter Vidders Talk Back*].

⁸ HENRY JENKINS, *TEXTUAL POACHERS*, 223-249 (1992) [*hereinafter* TEXTUAL POACHERS].

⁹ *Id.*

¹⁰ JOHN PALFRY & URS GASSER, *BORN DIGITAL: UNDERSTANDING THE FIRST GENERATION OF DIGITAL NATIVES*, 112-113 (2008) [*hereinafter* BORN DIGITAL].

any organized community.¹¹ As Professor Wesch has explained,¹² the use of remix remains at least as popular now as in 2009. New vidders thus emerge every day, many of them “inventing” the form for themselves without first being connected to the broader vidding community, just as in previous generations budding writers and artists emerged from a variety of backgrounds.

Many vidders eschew sites like YouTube due to the low resolution and overall digital quality of the videos in favor of distributing via high-quality downloads of individual vids. There is also a yearly convention held in Chicago, Vividcon, where vidders converge to share and discuss their work in the tradition of the pre-Internet fan gatherings.¹³ Vidding is a recognized form of remix culture, and has been subject to increasing artistic and scholarly attention.¹⁴ In addition, many newcomers are adopting cultural aspects from the traditional vidding community while simultaneously developing practices enabled by new technologies such as connection through online communities, social media interaction, and collaboration on long distance multi-editor projects.¹⁵ Mainstream appreciation of vidding as an expressive art form has been recognized by content owners who have sponsored remixing of their footage.¹⁶

¹¹ Fred von Lohmann & Jennifer S. Granick, Comment of the Electronic Frontier Foundation, In the matter of exemption on circumvention of copyright protection systems for access control technologies, 29, 34 (2008).

¹² Comments of the Electronic Frontier Foundation in RM 2011-07, Rulemaking on Exemptions from Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies, December 1, 2011 at 39, *available at* <http://www.copyright.gov/1201/2011/initial/eff.pdf> [*hereinafter* EFF Comments].

¹³ Vividcon web site, <http://vividcon.com/> (last visited February 25, 2012).

¹⁴ *See, e.g.*, <http://transformativeworks.org/projects/fan-video-bibliographies> (listing substantial and growing body of scholarly work on vids); University of South Carolina Institute for Multimedia Literary, <http://www.video24-7.org/overview/> (last visited February 25, 2012) (including vidding as one significant remix genre).

¹⁵ *See, e.g.*, Anime Music Videos, <http://www.animemusicvideos.org/home/home.php> (last visited February 25, 2012); I’m Vidding It Message Boards, <http://imviddingit.withme.us/forum> (last visited February 25, 2012); Vidders Unite Twitter, <https://twitter.com/#!/ViddersThings> (last visited February 25, 2012).

The community may seem smaller than it actually is because it is less visible than other communities, and its artistic innovations may not be obvious to people unfamiliar with the original sources or with watching heavily edited footage, but that does not make the creators of these works any less worthy of fair treatment under copyright law. Moreover, many newcomers to vidding, especially younger fans, are not necessarily a part of the self-identified community of vidders. They are entitled to the same legal protection for their creative, transformative work, like any artists inventing for themselves a new language of reaction to the world around them.

V. Vidding is a Valuable Educational Tool

Communities of participatory culture have long since been recognized as potential environments for learning. Education Professor James Paul Gee calls these informal learning cultures “affinity spaces,” and includes fan communities as an example along with scientific colleagues and networked teams of businesspeople.¹⁷ Affinity spaces are sustained by common endeavors that cut across demographics, bringing participants together regardless of age, class, race, gender, or educational level. Unlike classrooms where students rarely teach each other, these communities encourage distributed knowledge, each member’s skill set becoming a potential resource for others.¹⁸

The vidding community is a perfect example of this phenomenon. Even in the pre-Internet days of the art, fans held workshops to help teach techniques, and encouraged apprentice-like relationships where a new fan would learn tricks by working alongside a more experienced vidder.¹⁹ Today, vidding technology has changed substantially, but it still involves learning complicated software and editing techniques. The Internet has also made it easier for vidders to maintain a community of practice and bring in new members. For example, on just one blogging community, Livejournal, the “Vidding Discussion” group has over 2200 members,

¹⁶ See, e.g., Candance Jackson, *Pixar-Sanctioned “Upular” Remix Lifts Spirits*, WALL STREET JOURNAL BLOG, <http://blogs.wsj.com/speakeasy/2010/01/07/pixar-sanctioned-upular-remix-lifts-spirits/>, January 7, 2010 (describing sponsorship of the work of remix artist Pogo).

¹⁷ JAMES PAUL GEE, *SITUATED LANGUAGE AND LEARNING*, 87 (2004).

¹⁸ *Id.* at 89.

¹⁹ *TEXTUAL POACHERS*, *supra* note 8, at 247.

and there are also groups specifically for teaching and learning such as “Vidding Newbies.”²⁰ Additionally, experienced vidders often post walkthroughs of their process and explanations of techniques for specific vids so that others can learn by example. In fact, the vidding community has been particularly valuable as a “female training ground,” in that it has been valuable for teaching technical skills to women: web design, coding, video and image editing, and filmmaking.²¹

It is vital to recognize that it is the transformative nature of vids that undergirds these communities—it is interest in commenting on and reacting to the underlying source material that makes people excited to work on and help each other with vids. The importance of the underlying source material is underscored by Thingswithwings commenting on the creation process and meaning of *The Price*:²² “I needed to express the frustration I feel both with the ridiculous/terrible nature of these tired tropes AND with the entirely predictable (and often problematic) large-scale fannish reactions to those tropes.” Footage shot in a public park of people who are not the actors in the featured television shows and movies would not be a sufficient substitute because the video is a critique of the source material and the fan community’s interaction with the source material. The vidding community was formed around this type of commentary on popular texts.

As noted above, remix culture is growing, and the technical savvy of those who have grown up with the Internet is a large part of that. The twenty-five percent of young people who remix content are exposed to a unique opportunity for learning, personal expression, and individual autonomy.²³ Participation in communities that foster shared interests, trust, mutual

²⁰ See Vidding Community Profile, LIVEJOURNAL, <http://community.livejournal.com/vidding/profile> (last visited February 26, 2012) (listing 2212 members on March 2, 2012); Vidding Newbies, LIVEJOURNAL, <http://community.livejournal.com/viddingnewbies> (last visited February 26, 2012).

²¹ Jesse Walker, *Remixing Television*, REASON MAGAZINE, August/September 2008.

²² Thingswithwings, *some thoughts on manpain.um. many thoughts on manpain, actually.*, DREAMWIDTH (January 16, 2011, 10:01 AM) <http://thingswithwings.dreamwidth.org/145564.html>.

²³ BORN DIGITAL, *supra* note 10.

support, and public narratives benefits both the participants and the resulting creative works.²⁴ Common interest in the underlying source provides new creators with an audience that shares their enthusiasm; the audience responds by helping the new creators learn how to do better. Transformation of existing material is the glue that creates the community—audience members volunteer to help creators improve because they want more commentary on their favorite sources.²⁵ Remixing video cultivates cultural literacy in regards to popular media, while also promoting technical literacy.

Fans use the vids as context for exploring and debating deeper themes within the media source material. One vidder notes how rewarding the tradition of creation and commentary in the vidding community can be as it provides an audience with tangible responses to her art.²⁶ “The Price” began a heated online discussion about manpain narratives in mainstream media that ultimately generated over 280 comments.²⁷ In addition to online discussion, creators and consumers in the vidding community also engage in facilitated discussion at conventions covering topics such as race and representation in media culture,²⁸ music theory and composition,²⁹ how hip-hop can inspire vidding,³⁰ comparing vidding to writing,³¹ and video editing in Soviet Russia.³²

²⁴ Gareth Schott & Darrin Hodgetts, *Health and Digital Gaming: The Benefits of a Community of Practice*, 11 J. HEALTH PSYCHOL. 309, 314 (2006).

²⁵ Rebecca W. Black, *Access and Affiliation: The Literacy and Composition Practices of English Language Learners in an Online Fanfiction Community*, 49 J. ADOLESCENT & ADULT LITERACY 118, 123-24 (2005).

²⁶ sockkpuppett, *New Vid – Women’s Work (Supernatural)*, LIVEJOURNAL (August 14, 2007 03:13 PM) <http://sockkpuppett.livejournal.com/442093.html>.

²⁷ See Thingswithwings, *supra* (listing 287 comments as of February 26, 2012).

²⁸ See VividCon 2010 Fanlore Page, FANLORE (last updated December 7, 2011) http://fanlore.org/wiki/Vividcon/Vividcon_2010#Con_reports.2C_Convention_Posts.2C_Panel_Notes_and_Vid_Recs (describing talith78 and Deepa D.’s panel “Race and Representation in Vidding”) [*hereinafter* VividCon 2010 Fanlore Page].

²⁹ See VividCon 2008 Fanlore Page, FANLORE (last updated February 1, 2012) http://fanlore.org/wiki/Vividcon/Vividcon_2008 (describing nestra’s “Music and Composition”

The creation and dissemination of vids also stimulates discussion about these topics outside the vidding community. For example, *Fall of Man*, by obsessive24 mixes footage from the television show *Supernatural* with clips from other apocalyptic media sources and iconic religious imagery including Michelangelo's "Creation of Adam."³³ Using imagery that is both haunting and divine, the vid examines an angel's changing attitude towards humans and god, as the apocalypse looms. The vid was used as a central discussion point in an article discussing the attitudes of young people in the millennial generation about religion and theology.³⁴

VI. Vids Propose Alternative Readings and Realities

In addition to providing fuel for discussion about media studies and popular culture, vidding also encourages alternative readings and interpretations of mainstream narratives. Alongside the religious themes discussed above, *Fall of Man* contemplates a romantic relationship between the angel featured in the video (Castiel) and one of the show's main characters (Dean Winchester). The vid's portrayal urges the audience to challenge *Supernatural*'s portrayal of Dean Winchester as a hypermasculine heterosexual and to explore alternative interpretations of the characters.

panel) [*hereinafter* VividCon 2008 Fanlore Page].

³⁰ See VividCon 2007 Fanlore Page, FANLORE (last updated November 27, 2011)

http://fanlore.org/wiki/Vividcon/Vividcon_2007 (describing Anna Tree's "Hip Hop Vidding" panel).

³¹ See VividCon 2008 Fanlore Page, *supra* note 29 (describing a panel moderated by Blacksquirrel, KK, and Kat A. on the comparison between vidding and writing).

³² See VividCon 2010 Fanlore Page, *supra* note 28 (describing hollywoodgrrl's panel "In Soviet Russia Vid Edits You").

³³ Obsessive24, *new vid - "Fall of Man" - Supernatural - Castiel/Dean*, LIVEJOURNAL (May 18, 2009, 11:42 PM) <http://obsessive24.livejournal.com/261525.html>.

³⁴ Louisa Ellen Stein, *What you don't know: Supernatural fan vids and millennial theology*, TRANSFORMATIVE WORKS AND CULTURES, no. 4 (2010) *available at* <http://dx.doi.org/10.3983/twc.2010.0158>.

Lawyers, in general, should not be in the business of evaluating or interpreting art; the copyright laws are not designed to protect only that which lawyers think is worthwhile expression. Nonetheless, the Joint Commenters, apparently conceding the highly transformative nature of works like Gianduja Kiss's *It Depends on What You Pay*³⁵ (and her numerous other highly regarded vids), instead reach out to attack a different remix video by the same artist. The Joint Commenters assert that *Der Kommissar* is "nothing more than four minutes of clips from *James Bond* films, with a soundtrack provided by popular recording artists *After The Fire*."³⁶ In actuality, the vid provides an alternative reading and critique of the James Bond character.

Of course, even if a single vid were not fair use, that would not rebut the EFF's showing that substantial numbers of noncommercial remix videos are fair uses, the standard the Office has adopted.³⁷ But the Joint Commenters are wrong about *Der Kommissar* as well. The artist has responded to this critique in an appended statement,³⁸ the OTW wishes to put the artist's response in its appropriate legal context. As film/literary scholar Francesca Coppa notes, "*Der Kommissar*, like all vids, uses music as an analytical tool to guide the spectator's eyes to particular elements in the source footage, here to more lighthearted and comical effect. For instance, in the opening moments of the video, Gianduja Kiss shows us a set of near-identical hat tosses (at :07, :08, and :09) from three different Bond films and then creates a montage of paralleled threats, as Bond whirls around to face a gun, an alligator, and the woman who would eventually become his wife.... [T]he spectator is asked to look at scenes across various Bond movies to observe, interpret, and, most of all, enjoy similarities in their formal and narrative elements."³⁹ Coppa points out that the vid highlights and recontextualizes Bond's conventional heterosexuality by pairing him with men as well as women, and by emphasizing "phallic symbols like snakes, lasers, machetes, and flaming sausages, as well as items associated with

³⁵ EFF Comments, *supra* note 12, at 58-60.

³⁶ Joint Comments, *supra* note 1, at 39.

³⁷ 2010 Recommendation, *supra* note 2, at 66-68.

³⁸ Statement from Gianduja Kiss, February 21, 2012, attached as Appendix I.

³⁹ Statement from Francesca Coppa, February 21, 2012 (on file with authors).

sexual kinkiness like dog-collars and whips.”⁴⁰ (Gianduja Kiss is not alone in identifying the disturbing undercurrents linking sex and violence in the Bond films.⁴¹)

In other words, even though the Joint Commenters did not understand the commentary, Gianduja Kiss had a message and the intended audience perceived that message. Courts routinely find fair use when there are multiple interpretations of the meaning of a use.⁴² Moreover, fair use is not reserved for those whose commentaries succeed or match the fact finder’s own opinions.⁴³

Indeed, the fact that the Joint Commenters had to reach back to an early work of a developing artist to find an allegedly “nontransformative” work by her highlights the ways in which artistic development depends on freedom to experiment. One key reason that fair use doesn’t require complete success in communicating its message to every viewer is that most art is not completely successful. In particular, punishing or suppressing early work would prevent artistic evolution and maturation. The highly transformative work Gianduja Kiss produces

⁴⁰ *Id.*

⁴¹ The Real James Bond, YOUTUBE, March 29, 2011, <http://www.youtube.com/watch?v=y1uE5F9EnUA>.

⁴² See *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569, 582 (1994) (framing the fair use analysis in terms of whether parodic or critical element can reasonably be perceived, and lawyers should not be the final judges of worth) [*hereinafter Campbell*]; *SunTrust Bank v. Houghton Mifflin Co.*, 268 F.3d 1257, 1266-1276 (11th Cir. 2001) (finding fair use where the commentary aspects of the work had numerous interpretations); *Blanch v. Koons*, 467 F.3d 244, 252-258 (2nd. Cir. 2006) (rejecting the lower court’s characterization of the work as “banal rather than creative”).

⁴³ See *Campbell*, 510 U.S. at 582 (refusing to evaluate the quality of a transformative use; quoting *Yankee Publ’g, Inc. v. News Am. Publ’g, Inc.*, 809 F.Supp. 267, 280 (S.D.N.Y.1992) (“First Amendment protections do not apply only to those who speak clearly, whose jokes are funny, and whose parodies succeed.”)); *Mattel Inc. v. Walking Mountain Prods.*, 353 F.3d 792, 801 (9th Cir. 2003) (“While individuals may disagree on the success or extent of a parody, parodic elements in a work will often justify fair use protection.”).

couldn't exist if she had never been allowed to practice her art, and it couldn't exist without a community of practice that supported her experimentation.

In addition, of course, the proposed exemptions do not change the underlying substance of copyright law, including the contours of fair use. They only make those contours possible to determine, rather than cutting off any inquiry because of the separate anticircumvention prohibition. Thus, to the extent that individual remixes are not fair uses, copyright owners would retain the ability to take action against them—as they accept is sufficient for uses of footage captured without circumvention.

VII. Vids Are Legitimate Forms of Cultural Criticism

Whether articulating a critique of a character trope common to many sources as in *The Price* or exploring a single character as in *Der Kommissar*, vids are a way to pull layers of meaning out of a media text, to comment on it in a nonconventional yet extremely effective way. There is no question that the role of media in society is changing, and that the current media environment encourages interaction on the part of viewers, blurring the line even more between consumer and producer. Vidding is an important extension of this shift because it demonstrates that these consumer/producers actually have something important to say about what they are watching. And fanvids allow them to do it most effectively: let me *show* you what I see, not tell you what I see.

An example of a vid that effectively demonstrates the value of showing versus telling is Gianduja Kiss's *Dollhouse* vid *It Depends on What You Pay*,⁴⁴ which was highlighted in the comments submitted by the EFF in support of proposed class 7C.⁴⁵ As explained in EFF's Comment, the vid poses intriguing questions about sexuality and personal autonomy by inquiring as to whether foundational concepts in *Dollhouse* can be equated to rape. Because many fans were not satisfied with the show's ability to address this issue, the vid served as an important centerpiece for a critical discussion.

⁴⁴ Gianduja Kiss, *It Depends on What You Pay*, MONSTERS FROM THE VIDS (uploaded April 25, 2009)

<http://www.giandujakiss.com/index.php?set=videos&category=Dollhouse>.

⁴⁵ EFF Comments, *supra* note 12, at 58-60.

Another illustrative example is the multi-fandom vid *On the Prowl* created jointly by vidders Sisabet and Sweetestrain.⁴⁶ *On the Prowl* utilizes images from over sixty different sources (e.g., *Star Trek*, *Twilight*, *Dexter*, *Supernatural*) to present a self-portrait of female fans who enjoy watching their favorite male characters suffer, both physically and emotionally. As the intensity of the music progresses, the pain that the male characters in the vid are enduring becomes more extreme. By featuring increasingly disturbing, rapidly cut images, the vidders invite the viewer to determine the point at which the suffering becomes “too much.” In response to “On the Prowl,” the vidding community examined whether fetishizing male pain—by the media and by vidders—can be problematic. The vid has been recognized in the community as a particularly thoughtful and evocative form of cultural critique.⁴⁷

VIII. Most Vids Constitute Fair Use Under Copyright Law

The fair use provision of the Copyright Act has long since been considered as a means of protecting transformative uses of copyrighted content.⁴⁸ In the Copyright Office’s 2010 Recommendations, numerous examples of vids featuring “extensive editing” were discussed.⁴⁹ Although the Office declined to engage in the exhaustive task of deciding whether the use of each individual clip in the named vids constituted fair use, the Office did highlight the value of providing such commentary on audiovisuals and authorized the proposed exemption.⁵⁰

If one were to apply the four-factor statutory analysis to use of the copyrighted footage in fan vids, it is likely that such use would qualify as a fair use.⁵¹ The first factor favors

⁴⁶ Sisabet, *New Vid!! VVC Challenge: Self Portrait*, LIVEJOURNAL (August 10, 2010, 2:35 PM) <http://sisabet.livejournal.com/400014.html>.

⁴⁷ See “On the Prowl” Fanlore Page, FANLORE (last updated November 26, 2011) http://fanlore.org/wiki/On_the_Prowl (describing “On the Prowl” as “an important vid that you need to watch even though it will be uncomfortable”).

⁴⁸ *Campbell*, 510 U.S. at 569.

⁴⁹ 2010 Recommendations, *supra* note 2, at 66-68.

⁵⁰ *Id.*

⁵¹ See Sarah Trombley, *Visions and Revisions: Fanvids and Fair Use*, 25 CARDOZO ARTS & ENT. L.J. 647, 672 (2007) (applying the four factor test to conclude that fan vids constitute fair use)

noncommercial and transformative use,⁵² both of which vids clearly are. As detailed in Part II(D), vids are regularly created for purposes of commentary or criticism, which is the same favorable use found in *Campbell v. Acuff-Rose*. Vidlers generally do not sell their creations.⁵³ Moreover, the proposed exemption only applies to noncommercial videos, favoring fair use.

The second factor refers to the creative nature of the underlying work and whether the underlying work has been previously published; if the copyright owner has already disseminated the work widely, fair use is more readily found.⁵⁴ Courts do not weigh the creative nature of a work heavily against fair use in regards to transformative works such as parodies.⁵⁵ Because vids by their nature are based on work that is widely disseminated, the application of the second factor analysis also supports a finding of fair use.

The third factor considers the amount of the original work taken, which also favors vids. In the vast majority of vids, not only is each clip used very short (rarely longer than a couple of seconds), the amalgam of the clips for a single vid comprises an extremely small fraction of the entirety of the source material. For example, *The Price*, as a multi-fandom vid includes clips from over thirty sources, some of which are only a few seconds in length. Exemplary mono-fandom videos illustrating this point include *Fall of Man*, which is a several minute long creation based on four seasons of *Supernatural*, and *Handlebars*, which contains only three minutes and

[hereinafter Trombley].

⁵² *Id.*; see also *Sony Corp. of America v. Universal City Studios, Inc.*, 464 U.S. 417 (1984) (finding fair use for noncommercial time-shifting).

⁵³ Trombley, *supra* note 51, at 662.

⁵⁴ *Arica Inst. v. Palmer*, 970 F.2d 1067, 1078 (2d Cir. 1992).

⁵⁵ *Campbell*, 510 U.S. at 586 (creative works are usually the subject of transformative uses); *Kelly v. Arriba Soft Corp.*, 336 F.3d 811, 820 (9th Cir. 2003) (published works are more likely to be subjects of fair use because “the first appearance of the artist’s expression has already occurred”); *Arica Inst., Inc. v. Palmer*, 970 F.2d 1067, 1078 (2d Cir. 1992) (fact that copied work was “published work available to the general public” weighed in favor of defendant on second factor).

twenty-seven seconds of material extracted from three entire seasons of the *Doctor Who* series (over thirty hours of content).⁵⁶

The fourth factor in the fair use analysis considers any potential market harm of the new use. It is highly unlikely that a vid could be considered any kind of substitute for the underlying work.⁵⁷ Not only does it contain such a small fraction, but as explained above, the point of a vid is not to tell the same story as the original work, but to comment on it or to reinterpret it. It is well-established that copyright owners are unlikely to license critical or parodic works; there is and should be no market for authorizing critical commentary, whether in video form or in academic articles. Moreover, vids often make little sense to someone unfamiliar with the source material, or contain many different sources. For example, when watching *The Price* or *On the Prowl*, someone not intimately familiar with the cited shows may find it nearly impossible to even identify each of the sources. If anything, vids may actually help the market for the original by sparking a viewer's interest in the source material or encouraging vidders to purchase DVDs or access to online source material for the purpose of making vids.

It is not necessary for the Office to decide whether any individual vid is fair use. This exemption only applies to remix videos that are found not to be infringing, so it is sufficient to say that there are strong fair use arguments. In order for a court to be able to even address this claim, however, it is necessary for the proposed exemptions to be implemented.

Opponents to the proposed exemptions argue that they would permit “circumvention of DVD and online access controls for use of clips in virtually any audio-visual production, including infomercials, brand awareness efforts, and mainstream film releases.”⁵⁸ OTW reiterates that the proposed exemptions apply *only* to videos that do not infringe copyright.⁵⁹

⁵⁶ See Test Suite, *supra* note 3.

⁵⁷ Trombley *supra* note 51, at 669.

⁵⁸ Joint Comments, *supra* note 1, at 39.

⁵⁹ Although vids are not sold, the OTW also notes that the opponents misstate the scope of the proposed exemptions, which cover only noncommercial uses. Under the First Amendment, newspapers, movies, and other forms of non-advertising communication are fully protected—something the Joint Commenters strongly advocate for in every other forum and situation. See,

Accordingly, if a vid were found to constitute fair use, the techniques the vidder used to obtain the footage to make the vid would fall under the exemption. Alternatively, if another vid were not found to constitute fair use, then the vidder would not be exempt from § 1201 liability. Thus, the proposed exemptions will only serve to protect those who are making legal use of the copyrighted material.

IX. Without the Proposed Exemptions, the DMCA Has a Negative Impact on Vidders Who Make Legitimate Fair Use of Source Material

A popular art form among fans for three decades, vidding has existed without significant resistance from copyright holders, in much the same way as other fanworks such as fan fiction. However, in some cases, overzealous protection has blurred the line between wholesale copying and copying to create user-generated content (such as remix). Frequently the efforts of content owners aimed at preventing piracy have a chilling effect on fair uses. Since vidders and other remixers are not copyright lawyers, they do not distinguish between ways of creating digital files, unless and until they face takedown notices and wish to claim fair use; without an exemption, they then cannot assert even valid fair use defenses.⁶⁰ The Office’s decision to grant

e.g., Brief of *Motion Picture Ass’n of America* as Amici Curiae Supporting Respondents, *Brown v. Entertainment Merchants Ass’*, 132 S.Ct. 81 (2011) (No. 08-1448). While infomercials and other forms of advertising are commercial speech, standard movies are not. *Lakewood v. Plain Dealer Publishing Co.*, 486 U.S. 750, 756 n. 5 (1988) (“Of course, the degree of First Amendment protection is not diminished merely because the newspaper or speech is sold, rather than given away.”); *Cardtoons, L.C., v. Major League Baseball Players Association*, 95 F.3d 959, 970 (1996) (“The fact that expressive materials are sold neither renders the speech unprotected, nor alters the level of protection under the First Amendment. [Plaintiff] need not give away its trading cards in order to bring them within the ambit of the First Amendment.”) (citations omitted); *cf. Campbell*, 510 U.S. at 584 (noting that most fair uses involve speech with an economic incentive).

⁶⁰ As much as we might like to believe that the DMCA exemption proceedings are matters of national import, they are not well known. Thus, the opponents’ fears of “misunderstanding,” AAP at 39, are simply misguided. They have not produced any evidence that the 2009 exemptions led to an increase in infringement, which should have resulted by their theory, and

the exemption proposed during the last rulemaking session for non-commercial videos helped to reverse such an effect.⁶¹ It is important that copyright law continue to protect legitimate fair users.

X. Alternative Methods for Procuring Media Footage Are Not Available or Suitable for Vidders

As explained above in Part II, most vidders prefer to obtain footage by: (1) using software to rip DVDs that they own; or (2) using software to circumvent access controls for content that they have purchased. Some people do have access to other methods for obtaining television and film clips. For example, during the 2009 hearings, the MPAA demonstrated a process for obtaining film clips by pointing a camera at a flat screen television (known as “camcording”). This requires a large-screen TV, a perfectly dark room, and a high-quality digital video camera—often out of reach for noncommercial videomakers. In addition to camcording, it is possible obtain footage without circumventing access controls by using legacy hardware for analog video capture (which is also expensive and often unavailable) or digital screen capture software such as CamStudio (PC)⁶² and CamTasia (Mac).⁶³ These methods are not suitable for the majority of vidders for a variety of reasons, including expense, counterintuitiveness, and lowered quality.

a. Alternative Methods Do Not Provide the Quality Needed for Vidding

the reason is that the existing exemption is neither understood nor misunderstood by most online creators: it is simply unknown.

⁶¹ As noted in the introduction, the OTW’s experience under the existing exemption is that it has enabled vidders to exercise their fair use rights when overbroad DMCA takedowns or other forms of content filtering wrongly identify their work as infringing. None of the vidders with whom the OTW has had contact who have counternotified or contested a YouTube Content ID match have faced further action from copyright owners.

⁶² CamStudio Website, <http://camstudio.org/> (last visited February 26, 2012).

⁶³ CamTasia Website, <http://www.techsmith.com/camtasia.html> (last visited February 26, 2012).

In 2010 the Office recognized that “certain uses require high quality in order for the purpose of the use to be sufficiently expressed and communicated.”⁶⁴ For vids, the visuals are extremely important. For example, multi-fandom vids like “The Price” and “On the Prowl” require mixing dozens of different sources to create a seamless story. Without a high quality source, the cropping, zooming, and color correction to make the final product appear uniform can be impossible. But both screen capture and recording off of a screen produce distortions in frame rate, color, and other key features that interfere with editing, even if they may be able to produce watchable copies under certain specific circumstances.⁶⁵

The opponents claim that alternatives to circumvention are sufficient for the purposes of noncommercial remixers, but fail to recognize the distinction between consumption (watching) and editing. As the Office recognized in 2010,⁶⁶ a lower-quality digital file such as that produced by digital screen capture or filming a screen may sometimes be watchable. However, both screen capture and camcording distort color and contrast. Moreover, each round of editing—applying effects, filters, time changes, or even simply editing different clips together in a montage and then producing a final output file—degrades quality further.⁶⁷ As a result, a remix made with that same low-quality digital file could easily lose important details or become unwatchable. Or, as scholar and vidder Tisha Turk succinctly noted in her 2009 commentary, “Garbage in, garbage out.”⁶⁸ It is for this reason that an exemption is necessary, and also unlikely to interfere with any legitimate interest of copyright owners, since those interested in pure copying do not need circumvention tools to make or procure watchable copies for pure consumption.

⁶⁴ 2010 Recommendations, *supra* note 2, at 66.

⁶⁵ *See, e.g.*, Appendix II (Statement of Akemi42) (discussing difficulties with color, clarity, and flicker due to frame rate disparity).

⁶⁶ 2010 Recommendations, *supra* note 2, at 66.

⁶⁷ Statement of Akemi42, February 28, 2012, attached as Appendix II.

⁶⁸ Library of Congress Rulemaking Hearing Section 1202, Testimony of Tisha Turk, May 7, 2009, *available at* <http://www.copyright.gov/1201/hearings/2009/transcripts/> [hereinafter Testimony of Tisha Turk].

Before introducing the perspectives of the vidders themselves, we want to be clear that it's a profound mistake, contrary to the very heart of copyright, to require artists to justify their artistic choices, especially to people unfamiliar with the artform. *Bleistein v. Donaldson Lithographing Co.*, 188 U.S. 239, 251 (1903) ("It would be a dangerous undertaking for persons trained only to the law to constitute themselves final judges of the worth of [a work], outside of the narrowest and most obvious limits. At the one extreme, some works of genius would be sure to miss appreciation. Their very novelty would make them repulsive until the public had learned the new language in which their author spoke."), *quoted in Campbell*, 510 U.S. at 582 (applying nondiscrimination principle to fair use). The very reason an exemption is needed is to prevent the suppression or alteration of the artistic evolution of this popular artform. Screen-captured or externally recorded source, which has not yet gone through the extensive editing engaged in by vidders, may look acceptable to people who don't follow the art form. But that's no more relevant than the fact that people who aren't fans of popular music may think that an acoustic guitar is basically the same as an electric guitar. However, to avoid any confusion, we also want to explain why the high-quality source produced by circumvention makes a difference to the results of video editing.

Vidders routinely apply the following effects to source footage, all of which inherently suffer from lower-quality source:

- Zooming in and out (to add internal motion to static footage, as well as to create the effect of intimacy and/or distance)
- Extreme close-ups and/or cropping (to draw the spectator's attention to elements in the background; to reprioritize the hierarchy of images in the frame; to eliminate some unwanted visual piece)
- Brightness and contrast adjustment (to make certain elements easier to see; change the emotional tone of a scene; to blend footage from disparate sources)
- Saturation and hue adjustment (same as above)
- Color correction (same as above, but also to create specific associations with or among images using color, where the color becomes symbolic or thematic.)
- Time adjustments (speeding up and slowing down) (to change the rhythm of footage, to create urgency or draw attention to certain acts of internal motion, to score footage to the fixed beat of music or otherwise synopate image and sound)
- Overlays (to create narrative and visual depth; to layer images associatively, to juxtapose elements within the frame)

Here's Luck has provided an extended analysis of her vid *The Test* to illuminate some of

the technical choices involved:

CROPPING

Star Trek (2009) is shot in action-movie widescreen (aspect ratio 2.35:1); the original TV series (1960s) is shot in standard NTSC fullscreen (aspect ratio 4:3). In practical terms, the movie is 720x304 pixels while the original series is 640x480 pixels. This means that every single use of footage from the original series has to be 1) resized up to 720x540 to match the width of the movie frame, and then 2) cropped to 720x304 (that's 236 pixels -- more than a third of the image) to match the height of the movie frame. Starting from high quality source is thus especially important for the TV clips; if the starting image isn't absolutely clear, the enlarged image will lose considerable detail, and that detail is critical once the frame is cropped or the resulting image may not be recognizable as quickly as the vid requires.

COLOR MANIPULATION

The lighting and color palettes for the '60s TV show and 2009 movie are markedly different; the colors of the Starfleet uniforms, for example, are much more somber in the movie (they're crayon-bright primary colors in the series). In a vid that relies on juxtaposing characters from the two texts and representing the two worlds as contiguous, the color of the TV series has to be desaturated to match the movie. It's much more difficult to do this if the color information of either source has been compromised by capture methods that either desaturate the source (screen capture) or exaggerate the brightness and contrast (camcording). In addition, several shots from the movie were desaturated (to suggest memory) and/or overlaid (to suggest characters communicating with or thinking about each other). Desaturation only works by contrast -- if the footage is already desaturated, the effect can't happen -- and layering of images requires exceptional clarity of both or the result is a muddy mess.

THE "GLITCH" EFFECT

This effect is key to the vid; it's the most obvious one, the one that most of the meaning of the vid relies on, and the one that is most consistently cited by viewers in comments as a critical part of the vid's effectiveness. Some commenters have assumed that the effect is a way to mask quality deficiencies in the TV footage, but in fact the effect relies on pristine source: at several points in the vid, the TV footage is presented in its pristine form and then "fuzzed": static and glitches that imitate the effect of old VCR tape are gradually *added* to the source to create an impression of a once-clear signal losing strength and ultimately fading out. The success of this effect relies on the quality of both TV and movie footage. The effect relies on contrast: the old footage has to look like it's been degraded. But if it's too degraded, the viewer can't actually see what's going on (especially since the clips from the series are generally quite short). Thus, the movie footage has to be VERY clear -- clear enough that even a relatively minor glitch or fuzz effect will be noticeable -- and the TV footage does too, because otherwise the vidder can't control the degree of fuzz or quality degradation.

SPEED MANIPULATION

More than a third of the clips in the vid have had their speed altered (usually slowed down). In a few cases, such as when Kirk runs his hands down Spock's arms, the speed change is actually quite dramatic. Small changes are required to stretch a short clip a few frames longer or to land a particular frame on the beat; dramatic changes usually serve to heighten the sensuality of a clip, to draw attention to bodies in contact, which is important to the vid's implication of a sexual relationship between characters. That the small changes aren't noticeable and the large changes aren't jerky is entirely due to using DVD-ripped source, which has enough frames per second to absorb a wide range of speed alterations.⁶⁹

As Thingswithwings notes below, these effects are “often invisible after the fact, but necessary in order to highlight what you need to highlight.”⁷⁰ It’s hard to explain in words why one image is worse than another; a person unfamiliar with the form might think that the first image has a slightly fuzzier background than the second, but that matters a great deal if the fuzzy

⁶⁹ The audience understood how these effects mattered to the meaning of the vid, even without access to Here’s Luck’s explanations. Wingstar wrote:

[O]ne great vid that came to my mind was The Test, by here’s luck, which vided the trope [in Star Trek: XI] where Spock!prime transfers some memories of TOS [the original series] Spock/Kirk slash to the rebooted Jim. It uses this fantastic "glitch" static effect to signal the difference between current events and memories (starting at 1:00). There's also some kind of overlay on top of the TOS clips that adds to the "memory" effect while simultaneously concealing any differences in source quality that might exist. And there's definitely some slow-mo and some close ups in the slashy TOS clips that help signal "ROMANCE" to the viewer. Then starting at 1:56 throughout the end of the vid, there are overlays of the TOS clips on top of reboot footage so that it appears as though reboot!Jim is re-experiencing those memories throughout the rest of the movie.

Help: Urgent Vidding Expertise Needed, LIVEJOURNAL (February 26, 2012, 9:57 PM), <http://vidding.livejournal.com/2821305.html> [hereinafter *Vidding Expertise*].

⁷⁰ Laura Shapiro’s *Hurricane*, for example, uses multiple techniques—zooms, cropping to remove other characters, masking, contrast adjustment, saturation adjustment, time adjustment, and a substantial amount of color correction—to combine footage from two shows to create a new, constructed narrative about two female characters. Because the color palettes of different shows and movies differ substantially, color manipulation is vital to create the impression that the two shows actually take place in the same world.

background is what you're working to bring into focus.⁷¹ Editing also matters as an artistic statement: the color correction and multiple effects found in many vidders' work serves as a signature and an instant indicator that the viewer is watching a vid, rather than an unaltered portion of a show or movie.⁷² Again, the OTW emphasizes that the Office should not override vidders' judgments about the necessary quality of their materials, any more than it should determine that a certain size of canvas is big enough for a painter.

Francesca Coppa posted to the vidding forum on LiveJournal to ask about vids that used these effects and why they were necessary.⁷³ Within 24 hours, dozens of respondents had provided particular examples and explained the meanings of those effects:

[Blaine Anderson, a Glee vid, contains:] "Colour adjustments to show past vs. present. Zooms and extreme close-ups (1:17) to show interiority: Blaine is lost in a memory; the surrounding world has been clipped out. Close-up also heightens emotion for the same reason: all there is to look at is his sad expression -- no distractions of clothing, background, etc. Slow motion adds a dreamy quality in certain places in addition to helping the visuals match the beat. [T]he vidder bolted it together two days after a large percentage of the footage aired [I]t's a prime example of our need for immediate access to HQ [high quality] source, so we can make our commentaries, our visual essays, while they're hot. This was right in the middle of all the swirling, raging discussion in the immediate wake of a very controversial episode. That hasn't been possible for any of my own previous fandoms, but it happens all the time now; it's becoming an increasingly sharp tool, and it's amazing to see. In several places there are masks cropping out a second person in the frame, repurposing footage to tell a different story.... "The past" is indicated by grayscale, but also a distressed film effect. In some places the corruption of the footage literalizes the corrosive effect of abuse and hate speech on Blaine himself. In other places, notably the assault scene, it lends a sort of heightened, old school horror movie feel. There are monsters here. The first zoom I mentioned (of Blaine's face) is for emotional impact, but there's a second one later, where Blaine is sitting in bed, wearing an eyepatch, and the vidder zooms in to focus on where he's holding hands with Kurt.

⁷¹ See 2010 Recommendations, *supra* note 2, at 66 ("One particular example of 'bringing the background to the foreground' was demonstrated in the vid, How Much Is That Geisha In The Window, by Lierdumoa.) Likewise, in Jonathan McIntosh's *Buffy vs. Edward*, which critiques the gender narrative of the *Twilight* series, McIntosh had to cut out significant portions of the frame to put Edward and Buffy in the same scene, which required higher-quality source.

⁷² See, e.g., dazzlme89 Channel, YOUTUBE, <http://www.youtube.com/user/dazzleme7> (using color correction to sharpen footage and increase saturation as a baseline effect).

⁷³ Vidding Expertise, *supra* note 69.

This is similar to the vidder's use of masks: she needs us to focus on the information in one corner of the frame, so she simply removes the rest.” --Stultiloquentia

I was going for a scrapbook kind of feel, so it needed a lot of really tight cropping and the jumbling effect of the overlays. - China Shop

What We Had by cherryice [is a Doctor Who vid that] uses ghosting [an editing technique that creates multiple images onscreen] wonderfully, especially at the start when Mickey, Martha and Jack are walking away from the Doctor and into the battlefield; they're leaving the safety and adventure of their travels and going heading out to the abyss, and with that leaving a piece of themselves behind. Also at the end, when the Doctor is holding the Master's body and Rose is crying at Bad Wolf Beach, Jack and Mickey and Martha are behind them, out of focus and in the background, and the vid zooms in, enhances the colours and makes us look at them instead. Because for all they've done for the Doctor, for all they've given up and suffered through, they're still just blurs in the background to the Doctor's great tragedy. --Stardust_rain

“My "Numb" Employs zoom and brightness adjustments. This is a commentary on Hutch's stresses and angst, particularly with Starsky at death's door. "Falling Slowly" uses sepia, for intimacy, quietness, and familiarity with another person, reflecting on times past. "Something to Talk About" using flash transitions to support the paparazzi photography theme."Extreme Ways" using cropping closely to cutting parts of the central image off, showing intensity and rawness.” --Laura McEwan

I tend to use many of those effects in all my vids. A recent vid [Be With Me](#) is a good example. Zooming/cropping is for focusing on a subject/character, speed adjustment for pacing and internal motion to fit the music. Colour correction, brightness etc is necessary on some of the source for clarity and uniformity. I do use a shift in saturation (from monochrome to colour) to illustrate a new beginning in a character's life. Overlays are used for showing parallels & mood. -Thedothatgirl

Here's what I can think of off the top of my head! bendtothesun's [here I love you](#) (White Collar) employs a series of colour effects throughout to create and amplify an emotional narrative - to create the sense of emotional distance, emotional epiphany, etc., and effectively creates a queer romance where there isn't one on the show. jesuit24's [Steady As She Goes](#) (Star Trek; youtube link) uses a glow effect of some sort to make Star Trek look more - weird and sweaty, I guess? And it uses a TON of speed changes, forward-reversed-forward clips in order to get motion to repeat, and cropped closeups to give the whole show a feeling that the original footage doesn't have. Lots of examples of pretty much every effect you're looking for! My vid [Here it Goes Back Again](#) (Back to the Future) has a whole section where I fake "rewinding" and then "replaying" the video, in order to basically fix the crappy ending of the third movie...What's harder to demonstrate, and what I wish these folks would understand, is that speed changes/cropping and zooming/colour correcting/etc is often invisible after the fact, but necessary in order to highlight what you need to highlight in the time available... Also, this isn't about ~great art~ or anything, but a lot of people who vid Community or Parks and Recreation, myself

included, use a lot of zooming in order to cut out the (very intrusive) end credits, which play over parts of the show. Without high-quality footage, this is simply not feasible. If you want people to be looking at Troy and Abed being adorable instead of the credits, you need to zoom. Same thing when you're trying to cut out the rating labels or advertisements. –Thingswithwings

[For one vid, e]ach effect has a particular job to do in this vid. The closeups, zooming and cropping -- effects related to movement -- simply generate a sense of movement and flow throughout the vid, moving viewers from one section to the next fluidly. I also use these effects to emphasize certain aspects of a clip, or words. I used brightness, contrast, saturation, color corrector, and hue adjustment to blend the footage from different sources together more fluidly. I used hue adjustment for the black and white sections of the vid to provoke a sense of "voyeurism/a screen" and emphasize the notion that these characters were being viewed, or watched.... [For another,] Again, each effect has a job to do. The zooming, closeups and/or cropping again are used to sew the vid together into a coherent whole by use of movement. I also use zooms to emphasize important elements in a shot. I used brightness and contrast adjustment, saturation, color corrector and hue adjustment to weave disparate sources together and make everything seem coherent and like it belonged to the universe of the vid. I used time adjustments to fix timing issues at points. ... I used a glowing effect to provoke a sense of warmth and comfort about 2/3 of the way through the vid. I was trying to convey Byron's particular affection for his half-sister by use of this effect, and by tweaking the coloring in that clip (warm, soft colors). – Mrsundance

Small Blue Thing for incredibly smart and effective color work throughout, turning blue objects red ... as well as overlays to draw connections between moments/people, especially the two in the first 10 seconds. Lay Me To Sleep ... for color and saturation, overlays, light effects and other dreamy effects ... , creating an effective contrast between the bright, surreal feel of the dreamy colors/lights and the intensely horrifying events and violence that are actually happening. One of mine maybe, Keepsake for overlays at the section beginning around 3:50 to both call back to past moments and highlight the reasons for the justified anger when the song and characters finally lose it and get angry. Or Mercy Street for overlays throughout that connect two people who were often not in the same scenes, but shared many narrative parallels/juxtapositions, and to create intimacy. – Chaila43

[I]n Here We Come, On The Run! I use overlays in the choruses to link the central character with her military opponents in a visual way given they rarely appear on screen or on the battlefields themselves. ... so say we all ii (It's All Part Of A Bigger Plan) ... uses overlays constantly to highlight the repeating motifs of the show, while also[,] by using still as well as moving footage for the overlays, giving a stuttery, technological feel to the vid that fits with its themes about religion and technology, like a corrupted cascade of downloaded (divine) information. The overlays add to the sense of chaos and incoherency while, on closer inspection, [they] are always relevant to the underlying video. – Beccatoria

The White Collar vid Hot Mess uses glitch/distortion effects to underscore beats of the music and suggest a system, or person, on the edge of breakdown. Frequent zooms, plus a habit of cutting almost exclusively by fading quickly to white and then back, dial up the sense of emotional intensity and instability. I'm pretty sure the saturation's boosted in most of the vid, making everything that much more feverish, and the brief moments of grayscale add to the general chaos. Taken together, the effects help convey the idea that Neal Caffrey is, well, a hot mess. Luminosity, speaking of her (ahem) rather well-known 300 vid "Vogue" in an interview with New York Magazine, says: "I wanted to allude to the graphic novel, so I split the screens and tinted them with flat color." One example of the vid's use of saturation effects is the sequence between 4:15 and 4:23, which is in black and white except for a bar of full color that moves across the screen in time with the music. – Enemyofperfect

Anime music videos (AMV)⁷⁴ have the same features. As one community member explains:

"FOTOGRAFIA La Soledad" (Sola) ... required all kinds of effects I had never seen collected together before. ... The vid may look like a straightforward pairing vid, but due to the source it's working with, it's actually engaging in a discussion about memory, death, belonging, love, and what is "real". The use of real footage, cutout overlays, and the camera+graffiti effect reenforce the idea of longing to be "real" and to live a normal life, and also reflect on the nature of how we remember or forget the dead much more effectively than the show did As a counter-example, I would say that "Salva Hitomi" (Escaflowne movie) is severely hampered by being released in such low quality, especially in the parts where the saturation was changed or where there is a particularly light or dark background, because it's hard to tell what's happening on the screen. ... I had to watch the vid 3 times to be able to catch what was happening, and I own this source and am very familiar with it. There is something to be said for visual clarity having a greater emotional and intellectual impact, allowing the message of a vid to come across more clearly to its audience. ... Arefadedaway's "Fairy Tale" (Princess Tutu, Utena). A feminist retelling of fairy tales using two classic feminist retellings of shoujo, illustrating why the two series were truly radical in the realm of storytelling because of their presentation of women's relationships with each other. I think this vid effectively refutes the idea that a simple series of clips is not revolutionary, or that it doesn't need clear images to work with. Even simple cuts can become visually distracting and reduce the power of a vid if they're done using badly encoded, downloaded video, because clear images process quicker in the human brain. – Briar_pipe

Another explains that AMVs “typically rely on digital editing more heavily than Western-source vids”:

Skittles by Koopiskeva also relies heavily on digital editing ... : The effects quite simply are the whole point of this vid; without them it would have no impact. Redona by Oro\$hi

⁷⁴ Statement from Mizuki Ito, November 22, 2011, attached as Appendix H in EFF Comments, *supra* note 12.

combines images from multiple series in a single frame, does something to change the colors of some series and just generally edits heavily to produce a unified feel ... An AMV About TV by Re-Evolution Studios combines different series into a single frame and uses some kind of editing (I am very much a layperson) to give a classic "tv-screen texture" to some scenes. There's a lot of editing in here -- the character reading a book had had her blush added and her book changed and obviously the scene where someone is watching an AMV on youtube is an edit. This is another one of those vids that wouldn't make any sense without the edits Moe Moe Rebellion by Asylum Studios has editing similar to that in An AMV About TV, and again that editing is essential to the sense of the piece. ... Note that both Moe Moe Rebellion and An AMV About TV have jokes about series and about anime fandom that may be somewhat incomprehensible to non-fans, although the editing skill and transformativity should be obvious regardless -- Undomielregina⁷⁵

AMV editors even work frame by frame, changing the original so that, for example, characters do a dance from a different series.⁷⁶

Quality is also important to other remix communities, such as that of political remix artists. As artists like Jonathan McIntosh, Elisa Kreisinger, and Joe Sabia explained,⁷⁷ they are attempting to reach mainstream audiences and encourage them to rethink the meaning of popular culture. But, as they know from their own work, many in those audiences will ignore messages that seem crude and amateurish. Quality is therefore a political tool as well as an artistic one, enabling remix artists to communicate on the same level as political campaigns and mainstream media productions.

b. Alternative Methods Do Not Allow for Timely Commentary

As described in Part III(D), an important function of vids is to provide critical commentary about the source material featured in the vid or about media culture in general. Often, the timing for expressing such commentary is critical. Although most vidders prefer DVD as source, some turn to extracting clips from online distribution services when DVDs are not

⁷⁵ Vidding Expertise, *supra* note 67. Undomielregina's last point should be re-emphasized: in many cases, the meanings of vids won't be understandable without a background in the original. That doesn't make them non-transformative, any more than *The Wind Done Gone* was non-transformative because there are many people who've never read *Gone With the Wind*.

⁷⁶ Nostromo, *AMV-RunningMan*, NOSTOMO OFFICIAL WEBCAVE (uploaded March 12, 2011) <http://www.nostro.fr/?p=642> .

⁷⁷ EFF Comments *supra* note 12.

available. For example, *It Depends on What You Pay* incorporates material from both seasons 1 and 2 of *Dollhouse*. At the time of the video's release in April 2009, *Dollhouse* was only legitimately available through online distribution services, not on DVD. Season 1 was later released on DVD in July 2009, and season 2 was not released on DVD until November 2010. The use of clips obtained through circumventing access to online episodes of *Dollhouse* enabled her to comment on the show when it was on the air, participating in an ongoing conversation, rather than requiring her to wait months for the DVD release (at which point the show had been cancelled).

Timing is also critical to a vidder when the vid serves as commentary concerning recent developments in the source material, as with the *Glee* example discussed above. Likewise, Akemi42 produced *God's Love* as a reaction to *Supernatural* Season 7 episode 2, which aired on September 30, 2011, and revealed the apparent death of a beloved character on the show.⁷⁸ The vidder relied on technology for circumventing encryption on Amazon Instant video to obtain the clips she needed to produce and release the work by October 1, 2011 in immediate reaction to revelation on the show. As of the date of this reply comment, *Supernatural* Season 7 is not available on DVD. Therefore without relying on the proposed exemptions, the vidder would be unable to express her views about the source material in visual form.

c. Alternative Methods Require Expensive Equipment and Software

Creating a clip via a smartphone, as suggested by the opponents, does not create a high enough quality file to allow editing, even assuming a creator knew that there was a legal difference between ripping and recording. Moreover, the proposed smartphone solution requires spending several hundred dollars on a phone, excluding 2/3 of Americans at the present time.⁷⁹ Recording via a separate device requires a high-end digital camera (whether separate or included in a smartphone) *and* a large flat-screen TV, all in a large, completely darkened room of the

⁷⁸ Akemi42, *God's Love*, AKEMI42 EXPERIMENTS IN VIDEO EDITING (October 1, 2011)

<http://www.akemi42.com/2011/10/01/gods-love/>.

⁷⁹ See Christopher MacManus, Pew: One-third of U.S. adults own smartphones,

http://news.cnet.com/8301-1035_3-20078528-94/pew-one-third-of-u.s-adults-own-smartphones/,

July 11, 2011 2:15 PM PDT.

proper size to focus the camera on the TV output. Further, some of the screen capture programs with better functionality are prohibitively expensive.⁸⁰

However, the noncommercial artists who make vids are often pink-collar workers. Even if they had the necessary space and darkness to get the recording reasonably well-focused, they could not afford such equipment. As Tisha Turk testified, “Camcording . . . has adverse effects in that I can’t do it.”⁸¹ She characterized using a camcorder as counterintuitive, impractical, and expensive, representing two months of her mortgage for the camera alone, and she was at the high-income end of creators. Though prices on cameras or smartphones may now be \$300 instead of \$900, that still represents a significant expense unavailable to many.

All these alternatives prove is that there is no prospect of harm from an exemption. Screen capture, smartphones, and other alternatives concededly produce results good enough to watch, meaning that camcording is the mode someone who simply wanted to copy—especially for commercial purposes—could easily use. The transformative uses described here, in contrast, uniquely depend upon the exemptions.

d. Alternative Methods Are Counterintuitive and Thus Won’t Be Used

Even if a vidder is willing to sacrifice significant quality, does not have timing constraints that will impact the content of her vid, and has access to the necessary equipment, it is unlikely that she will appreciate that the methods discussed by the opponents are legally preferable to extracting footage from a DVD they own or an online source to which they have access. The result is a digital literacy test, that, like the classic literacy test, will discourage participation—here, participation in making meaning from and as part of culture.

Historically, the literacy test required prospective voters to interpret an often arcane provision of the law.⁸² Under the DMCA, the test proposed is that fair users understand that a

⁸⁰ See CamTasia Website, *supra* note **Error! Bookmark not defined.** (listing an exemplary screen capture program for a license fee of \$299).

⁸¹ Testimony of Tisha Turk, *supra* note 68, at 0130.20-0130.22 .

⁸² See, e.g., Bobby M. Rubarts, *Comment, The Crown Jewel of American Liberty: The Right to Vote; What Does It Mean Under the Amended Section 2 of the Voting Rights Act?*, 37 BAYLOR L. REV. 1015, 1018 n.12 (1985) (discussing the irrelevance of the questions asked in

digital file created in one way is illegal, while a nearly identical digital file created in another way is legal. The technologies at issue here are important because they are readily available to individuals. Furthermore, to laypeople, especially the artists who are inventing remix culture on the fly, and they are indistinguishable from other readily available technologies. The opponents' proposed regime is a trap for the unwary.

As Francesca Coppa has pointed out, this legal regime has particularly damaging effects on members of marginalized groups who are already likely to be nervous about expressing themselves.⁸³ Female vidders have historically been reluctant to step up and claim cultural legitimacy, and uncertainty hinders both production of transformative works and vidders' ability to achieve mainstream recognition.⁸⁴

Paying for content and then using widely available software to capture clips seems fair and reasonable. In fact, the most obvious solution for avoiding § 1201 liability is to download a copy of the footage needed from an unauthorized source. The anticircumvention regime, absent the proposed exemptions, is completely counterintuitive to those who are not deeply familiar with the DMCA: how could it be better to download something illegally than to use footage that was legally purchased? These are amateur artists, not copyright lawyers; it is not unreasonable that they would be unfamiliar with a rule that seems contrary to a basic understanding of copyright law. Without an exemption, vidders—especially the tens of thousands of young people who are inventing and reinventing the form for themselves, without an established connection to a larger community—risk becoming liable or having their fair uses suppressed simply because they did what seemed like the fairest thing for the copyright owner and paid for a copy from which they could clip.

e. Alternative Methods May Not Exist in the Future

literacy tests to the substance of political participation).

⁸³ Library of Congress Rulemaking Hearing Section 1202, Testimony of Francesca Coppa 0119.4-0120.4, May 7, 2009, *available at* <http://www.copyright.gov/1201/hearings/2009/transcripts>.

⁸⁴ *Id.* at 0120.5-0120.17.

Although the tools for camcording and digital screen capture may be available today, this may not always be the case. To prevent piracy, many content owners are utilizing secure methods to restrict delivery of streams to video players.⁸⁵ Unfortunately, such methods also restrict access to consumers such as vidders who wish to extract screen captures of the content for the purpose of fair use. Further, as focus shifts from delivery of content on physical media toward streaming content (often delivered via portable devices), the demand for DVDs and other consumer-controlled media systems is decreasing. If the quality of footage recorded using a camera pointed at large flat screen television is not sufficient for editing vids, the quality of footage recorded from a camera pointed at a laptop or an iPhone will certainly prohibit the type of use contemplated by vidders.

f. Authorized Sources for Clips Are Unavailable

First, it should be noted that licensing is not a substitute for fair use as a matter of law: copyright owners cannot deprive transformative users of the right to make unauthorized uses by expressing a willingness to license.⁸⁶

In any event, licensing is not an option for noncommercial remixers: the opponents do not offer evidence that there is any mechanism by which a noncommercial user, as opposed to a commercial entity, could select and receive high-quality clips of a range of television shows and movies (since remixers comment on many different sources) suitable for editing.⁸⁷ Studios

⁸⁵ See e.g., Protect video content (Flash Media Server), Adobe Support, <http://kb2.adobe.com/cps/405/kb405456.html> (last updated May 24, 2010) (detailing the utility of Real-Time Messaging Protocol and SWF Verification for preventing screen capture).

⁸⁶ See, e.g., *Castle Rock Entertainment, Inc. v. Carol Publishing Group, Inc.*, 150 F.3d 132, 145 n. 11 (2d Cir.1998) (“by developing or licensing a market for parody, news reporting, educational or other transformative uses of its own creative work, a copyright owner plainly cannot prevent others from entering those fair use markets”).

⁸⁷ Compare Reply Comments of the DVD CCA in RM 2008-8, Rulemaking on Exemptions from Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies, at 16 available at <http://www.copyright.gov/1201/2008/responses/dvd-cca-inc-38.pdf>, to Reply Comments of the MPAA in RM 2008-8, Rulemaking on Exemptions from

occasionally offer selected clips for fans to embed on their own sites or otherwise promote the optical version, but that does not enable remix or commentary.⁸⁸ Indeed, in the most widely discussed example of such authorized fan activity, the rebooted *Battlestar Galactica* franchise offered clips of ships fighting space battles for fan uses, but no clips featuring any characters.⁸⁹ Anyone interested in illustrating or discussing the show’s treatment of race, gender, torture, or politics (just to take the most obvious examples) would have been unable to do so using these clips.

Prohibition on Circumvention of Copyright Protection Systems for Access Control

Technologies, *available at* <http://www.copyright.gov/1201/2008/responses/mpaa-46.pdf> at 16 (referring to the studios’ then-stated plans to create an online clip service for film professors), and, at 10-11 (asserting that an exemption was not needed because, within three years, the MPAA expected that it would launch a clips server for media and film professors, though it acknowledged the major movie studios had not agreed on parameters and clearances had not yet been obtained). These promises for some indefinite future “fix” have changed, but still do not offer any recourse for ordinary, noncommercial creators. *See* AACS LA Comments, *supra* note 1, at 2-4. As testimony in the 2009 hearings indicated, many if not all studios have agreements with actors that generally prevent the grant of free or low cost licenses, which is why the best they can offer to professors is a letter promising not to assert their own claims – which, notably, does not enable the recipients to circumvent. *See, e.g.*, Library of Congress Rulemaking Hearing Section 1202, Testimony of Peter DeCherney, May 6, 2009, *available at* <http://www.copyright.gov/1201/hearings/2009/transcripts/>

⁸⁸ *See* AACS LA, *supra* note 1, at 8-9. What the DVD-CCA describes as “certain other limits” on use of unedited, embedded clips or playlists actually allow revocation of a license for any reason, including disagreement with the message being conveyed.

⁸⁹ Julie Levin Russo, *User-Penetrated Content: Fan Video in the Age of Convergence*, 48 CINEMA J. 125, 126 (2009) (“[U]ser-generated advertising typically features a top-down arrangement that attempts, through its interface and conditions, to contain excessive fan productivity within proprietary commercial spaces. . . . [The Battlestar Galactica contest’s] conception of sanctioned derivative filmmaking is extremely narrow, notably excluding the character-based dramatic scenes that make up the majority of the show.”).

In addition, licenses always reserve the right to control criticism or uses that the copyright owner does not think reflect well on its image—precisely the uses that are most highly critical and transformative, such as *It Depends on What You Pay*. The copyright owners of *24* and *Law & Order* wouldn't let the Lear Center use them as centerpieces of an analysis of how popular media portray terrorism in *Prime Time Terror*, and they certainly wouldn't let individual artists create lesbian love stories (a popular *Law & Order* genre) or critiques of the American use of torture.⁹⁰

XI. Conclusion

The vidding community is one example of a group of artists harmed by the absence of EFF's proposed exemptions. Vids that comment on and critique popular media represent legitimate cultural contributions. Without the proposed exemptions, vidders have no appropriate alternatives available for extracting footage for use in their expressions. In the spirit of copyright law's dedication to promoting creative work, the OTW supports the proposed exemptions for non-infringing, noncommercial videos.

⁹⁰ Cf. AACS LA Comment *supra* note 1, at 9 (“the studio *reviews* the request and, *if the studio agrees* to the license, responds with a link to the desired clip”) (emphasis added).

Appendix I: Statement of Gianduja Kiss (Vidder) **February 21, 2012**

In the comments of Steven J. Metalitz et al., http://www.copyright.gov/1201/2012/comments/Steven_J._Metalitz.pdf, the opponents of the EFF's proposed exemptions identify an earlier vid of mine, *Der Kommissar*, as nontransformative. Contrary to what the opponents say, this vid was intended as a political/cultural commentary. These commenters seem to be unfamiliar with vids, so they aren't particularly skilled at reading and understanding them. Moreover, I'd been vidding for less than a year, and so the message doesn't come across as clearly as I'd have liked. I've learned a lot since then and I believe my skills, including my skills at communicating my messages, have improved since I made *Der Kommissar*.

The opponents describe *Der Kommissar* as "promotional." But, at least in my experience, "promotional" materials, such as trailers for Bond films, portray Bond as tough, competent, unbeatable, and sexually irresistible to women. In other words, they fetishize his (heterosexual) masculinity. My vid, by contrast, portrays Bond as hapless, vulnerable, bewildered, and often at the (sexual) mercy of the people around him. I don't consider it "promotional" at all.

When I made *Der Kommissar*, I wanted to illustrate, in a humorous way, sexual anxiety in the form of sexualized violence in Bond films, in order to undermine some of the portrayals of masculinity in those films. So, the vid is dominated by images of Bond being beaten up and victimized, often in sexualized ways. Roger Moore slides down a banister and gets whacked in the crotch; there's the famous scene of Connery's crotch being menaced by a laser, a woman tries to knife Connery's bond in the crotch after two previous scenes of unwanted kissing/sexual violence (Bond with a woman, and Bond with a man). A woman tries to kill Bond by wrapping her legs around his waist and crushing him while they're both mostly naked. And of course the vid features the infamous scene from *Casino Royale* in which Bond is tortured with genital whipping.

I played with images of gender and power in the vid. For example, the opening sequence shows James Bond repeatedly tossing his hat, except that in the final shot in the sequence, the hat is a frilly pink ladies' bonnet. He gets trapped in a bed by a woman, and in the opening, there's a sequence of shots of someone menacing Bond (with guns, with an alligator) that ends with Bond seeing a woman (Diana Rigg), to make the point that the woman was the most frightening/menacing to him. There's another sequence with people finding other people in their beds. First, Bond walks in to find women in his bed, then, a woman walks in to find Bond in her bed (positioning Bond as the woman), and finally, Robert Davi gets in bed with Bond. The implication of homosexuality is meant to undermine the hypermasculinity of Bond's image. (The vid generally uses standard shot-editing techniques to suggest a sexual relationship between Dalton's Bond and Robert Davi's villain.) A shot of Bond leering at a woman through binoculars is juxtaposed with a shot of Bond looking at a man through binoculars (I actually manipulated the shots there to create a lens view that wasn't in the original film). Bond hits several men and finally knocks a woman down on the bed; Bond then gets hit by several men, hit by a woman, and attacked with flaming sticks of meat, to illustrate the reversal from masculine power to masculine anxiety.

I had several images of a snake menacing Roger Moore, because snakes are a common phallic symbol. One time, women look on and smile while a snake drowns him. Once again, the idea was to show Moore essentially drowning in/menaced by male sexuality. That's why the tag line for the vid is "Why did it have to be snakes?": It's a reference to the snake/phallic images in the vid (and a jokey reference to the line from Raiders of the Lost Ark).

In a completely obvious pun, on the line "he's got the power" I show a villain stroking a cat (a signifier of feminine sexuality), and on the next phrase "and you're so weak" I show Bond being knocked out, drugged, falling, several times in succession.

Though I will be the first to admit that I wasn't as clear as I'd have liked in getting my point across, I know that at least some people who are adept at "reading" vids were able to perceive it. For example, in 2008, Thingswithwings posted an incredibly nice commentary on several of my vids. At the time, I'd had no prior contact with her at all, about my vids or anything else. Nonetheless, she accurately described Der Kommissar as "all about sexual violence."
<http://thingswithwings.livejournal.com/23647.html>.

I am submitting this statement to explain that I did intend a commentary and that the community that I was trying to reach could understand that commentary, even if not everyone would recognize it. In particular, I want the Copyright Office to recognize that protection can't and shouldn't turn on the vidder's skill.

Appendix II: Statement of Akemi42 (Vidder) **February 28, 2012**

An illustrative example of the practical differences associated with various methods for obtaining vidding footage involves my experience with the film *Watchmen*. I have used four different methods to extract clips in order to make my non-commercial fan videos.

Method 1: Using software to circumvent CSS encryption on a DVD copy that I purchased

- DVD Decrypter (free)
- Mac the Ripper (free)

Method 2: Using digital image capture software to capture images on the screen of my computer as they played on Amazon Instant video (also purchased)

- CamStudio (free)
- Hyperionics (free)
- CamTasia (free trial, \$299 list price)

Method 3: Using a video camera to capture images on a television screen playing the Blue Ray disc according to the method suggested by the MPAA

- 40 inch flat screen television in my home
- Playstation 3 with Blu-Ray player (about \$240)
- Canon VIXIA HF R20 Full HD Camcorder (about \$350)

Notes on Logistics

Method 1 is relatively straightforward process that utilizes readily available software. I used both DVD Decrypter for the *Watchmen* footage, but I have also used Mac the Ripper for other vids. The whole process generally takes less than one hour.

I attempted Method 2 on a Windows-based PC using CamStudio and Hyperionics, but both programs stopped recording several times while the video was playing. At one point, I received an error message from Amazon indicating that I was attempting to play the film on more than two devices at the same time. Frustrated with these technical obstacles, I switched to a Mac running CamTasia, which was ultimately successfully in outputting a video file.

Method 3 required the most substantial amount of equipment including the television, video camera, a tripod, and a table to position the camera. In addition, I had to wait until night time to make the recording because the room in which my television is housed has large windows with no coverings. Once the equipment was set up, I did not experience any logistical errors.

Notes on Quality

Generally Method 1 provided the best quality clips for vidding purposes (e.g., enabling zooming, adjusting frame sizes, color changes). The clips that Method 2 produced were very difficult to manipulate in terms of zooming and crops. They also generally appeared less polished and clear. Due to the presence of the television in the picture, Method 3 required substantial editing on the front end. The brightness of the television also made any sort of color adjustment nearly impossible. In addition, the flicker of the images made the editing process very unpleasant.