

THE MATTER OF INTELLECTUAL PROPERTY

STUDYING THE ECONOMIC, POLITICAL
AND CULTURAL NODES OF THE
CONTEMPORARY MEDIA INDUSTRIES

EDITED BY

PAOLA BREMBILLA, MARCO CUCCO, CHRISTOPHER MEIR





15TH MEDIA MUTATIONS INTERNATIONAL CONFERENCE

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Introduction

Intellectual Property and the Audiovisual Industries

Paola Brembilla, Marco Cucco and Christopher Meir

It is not an exaggeration to say the audiovisual industries would not exist if there was no such thing as intellectual property. Similarly, our conceptions of cinema and television as artforms would not make sense without the ideas of creativity and authorship that are so closely related to those of intellectual property. Explaining its importance to the audiovisual industries historically and going forward into the future is made all the more difficult by its very ubiquity and its multifaceted nature. After all, intellectual property is simultaneously a legal, economic, cultural and creative concept. As such, it has been crucial for distributing and monetizing films since the very beginning of cinema as an industry, through the birth and massification of television, and has continued to be central throughout the growth of the two converging industries up to and including the present-day revolutions engendered by video-on-demand platforms on one hand, and generative artificial intelligence on the other. The fundamental centrality of intellectual property (henceforth, ‘IP’) to the media industries is precisely why this issue of *Media Mutations* takes it as its central theme.

In choosing it as its central object, the issue seeks to build on recent scholarship and activism that has sought to highlight the importance of IP for both industrial practices as well as media industry studies. Such works include studies of franchise film and television production and practices of remaking older works from the traditional Hollywood studios (e.g., Loock 2024, Herbert-Verevis 2020), global streaming platforms such as Netflix and Amazon Prime Video (e.g., Cuelenaere 2024, Meir 2025), the European audiovisual industries (e.g., Willems, et al. 2021; Meir and Mitric 2025), and elsewhere (e.g., Steinberg 2012). Driven equally by fears of the economic power of American-owned streaming platforms that make own-

ership of IP a condition of their investments, and the uncertainty created by artificial intelligence's usage of existing IP and its 'creation' of new audiovisual works, stakeholders in the American and European audiovisual industries have been particularly outspoken in demanding protections for creative workers such as writers, actors and producers. These actions have led to high profile strikes by the American actors and writers guilds, whereas European stakeholders have aggressively lobbied for EU directives and national audiovisual laws to provide similar protections.

Finding solutions and protecting creative workers is, however, far from easy. Politics always operates on very long timelines, which rarely align with the rapid pace at which the audiovisual sector evolves. Within the European Union, these timelines are further extended by the need to reach consensus among member states with differing economic and cultural policies. To complicate matters even further, the audiovisual sector has never been perceived as a priority on the political agenda, and in the current historical moment, dramatic events of various kinds are monopolising resources and attention. In other words, although the regulation of IP is indeed important, it risks being subject to very slow processes, with the consequence that the market will end up imposing practices that policymakers will then struggle to correct.

On the narrative side, today IPs are also at the centre of widespread practices of repurposing, which translate into narrative evolutions of familiar elements drawn from popular culture. Building on earlier scholarship on well-established formats such as remakes and reboots, a growing body of research has focused on the ways in which IPs are selectively updated, re-contextualised, and emotionally reactivated to prolong their relevance within contemporary media ecosystems (Albarrán-Torres and Golding 2019, Herbert and Verevis 2020; Benson 2022). These transformations include not only the reboot - typically understood as a relaunch of a dormant property through the erasure of prior continuity - but also hybrid forms such as the 'requel' and the 'legacyquel', which blend innovation and nostalgia by combining new protagonists with returning characters and legacy storylines. Crucially, these formats allow studios to rejuvenate major franchises while maintaining affective links to the past, enabling forms of intergenerational engagement that align with broader industrial imperatives around content longevity, audience loyalty, and representational renewal. Related to these developments is the strategic maintenance and rebranding of media IPs as modular, extendible assets, capable of sustaining seriality, transme-

dia expansion, and cross-platform migration. This includes the increasing fluidity between television and cinema, with storyworlds expanding across media boundaries and further blurring the distinction between original, adaptation, and continuation.

Complementing these industrial strategies is a growing body of work on fan engagement, which foregrounds how contemporary IPs are increasingly managed through modular narrative practices that differentiate audiences based on their levels of familiarity and involvement (Beaty 2016). Rather than offering uniform access to meaning, many franchises now structure their storytelling through multi-layered mechanisms - such as easter eggs, narrative callbacks, cross-platform references, and serial interconnections - that reward dedicated viewers with deeper interpretive access. These techniques function both as gestures of recognition and as tools for audience segmentation, fostering long-term engagement and emotional investment while allowing individual texts to remain at least partially autonomous. In this model, fan knowledge becomes a form of cultural capital, and the shared universe operates not only as a narrative strategy but as a promotional infrastructure. Such modularity supports flexible forms of IP management: narrative elements can be introduced, expanded, or quietly removed based on audience response and commercial performance, sustaining the appearance of coherence while enabling a high degree of adaptability (Brembilla 2023). What might appear as narrative complexity is thus often a calculated technique for balancing industrial risk and cultivating brand loyalty through targeted, affectively charged engagement. Together, these practices reflect a crucial shift in how IPs are managed and mobilised: no longer as static works to be reproduced, but as dynamic repositories of narrative potential to be periodically reconfigured in response to changing cultural, technological, and economic conditions (Johnson 2013).

Against this backdrop, this issue brings together an array of critical perspectives that reflect on the multifaceted nature of IP and its relationship to the contemporary audiovisual industries, with case studies taken from the American, European and East Asian industries. While the individual articles are self-contained, they have been arranged to collectively explore themes that are indicative of some of the most important traditional and emerging relationships between IP and the audiovisual industries.

The first two articles are concerned with the ways in which generative artificial intelligence (henceforth 'gen AI') has presented problems for our understanding of IP. The first of these, by Caterina del Federico, explores

the legal aspects of the relationship between IP and gen AI. Del Federico shows how there is a twofold challenge to existing definitions of IP in this new era: one which relates to protecting the works used to ‘feed’ or ‘train’ AI tools; and one that relates to the new works ‘created’ by those same tools, the ownership of which remains difficult to determine under existing law. Exploring these problems, Del Federico outlines the ways in which national and European laws need to be reassessed in light of these new technologies. The article also reminds us that IP is at its core a legal principle that requires constant redefinition and enforcement if it is to exist at all. Building on the idea of IP ownership and its relationship to ideas of authorship, Greta Iapalucci and Allegra Sonogo offer a theoretical meditation on gen AI in relation to debates regarding authorship in Film and Television Studies. Their analysis begins virtually where Del Federico’s left off, with the idea that authorship is also a legal principle as well as a creative one. Iapalucci and Sonogo, however, helpfully set aside the legal contexts noting that this sense of the word ‘author’ could be more precisely understood as ‘rights holders’ as the legal concern is at root more about economic compensation from the exploitation of audiovisual works. Turning to other questions of authorship, Iapalucci and Sonogo contextualise contemporary debates around gen AI, authorship and creative agency in relation to those that have long been debated in Film Studies and the arts more broadly. Considering the use of AI-based tools in the production process, the authors consider ‘collaboration’ and ‘responsible supervision’ as key components of creativity in the gen AI age and argue that human agency will always be by definition at the heart of audiovisual creation, regardless of technological developments.

The interest in new technologies continues in the issue’s next pair of articles, which are concerned with another technological change that has disrupted the media industries in recent years: the emergence of streaming platforms as the dominant mode of audiovisual distribution and production. The first of these is Nicolò Villani’s study of Paramount+, a relatively new SVOD platform run by the eponymous legacy Hollywood studio. While the distribution model may be in flux, Villani’s analysis shows that IP – the vast library of films and series compiled by Paramount and its subsidiaries over the years – has not diminished in importance during this period, but has instead only grown in value. Not only, as Villani shows, is it vital to Paramount+’s content strategies, which include the production of numerous remakes and spin-offs based on catalogue titles, but it also structures every element of the platform’s user-interface design and recommendation

systems. Turning our attention from a newer player in streaming to the leader of the industry in the form of Netflix, Paola Dalla Torre, Paolo Fantozzi and Maurizio Naldi also shift the focus from production to consumption. Their article uses quantitative statistical analysis to explore questions of the viewership habits of Netflix users, drawing on the company's now biannual reports on audience preferences. Among the many insights gleaned from the authors' analysis is the concentration of viewers' attention on a relatively small number of titles in Netflix's overall catalogue. This observation leads the authors to consider the importance of acquiring and developing Netflix original IPs – or conversely, to acquire established IPs – in order to more efficiently and predictably attract the audiences that the company needs in order to continue growing its subscriber base and to provide eyeballs for its growing base of corporate clients as its business model changes to incorporate more advertising.

The increasingly crowded landscape for streaming platforms and the difficulties this presents for consumers is the point of departure for Gabriele Proserpi's article 'Piracy déjà vu'. As its title indicates, this article analyses acts of copyright violation, ranging from practices that inspired 'fair use' policies and legislation, up to contemporary illegal downloading and the creation of memes and gifs based on popular IPs. In so doing, Proserpi places fan agency at the centre of the audiovisual industries, a conception that is often at odds with the top-down, ownership-oriented mentality that implicitly structures much IP law and policy. Similar themes are found in Pierandrea Villa's article 'Fixing the Universe', which examines fan cultures and their attempts to take creative control of the franchises they follow so passionately. Through a close study of dedicated aficionados of the Marvel Cinematic Universe and the practice of producing 'fan edits' of films and trailers, Villa continues the debates seen in Proserpi's article by posing important questions about who actually 'owns' IP.

Transmedia franchise strategies are also at the core of Lorenzo Sascor's study of the transnational circulation of contemporary Italian television drama. Using the case studies of *Il commissario Montalbano* and *My Brilliant Friend* and their reception in the Netherlands and Germany, Sascor demonstrates the importance of literary IP for marketing television drama. With these examples in mind, Sascor is able to highlight the importance of other literary and filmic properties that have underpinned many of the most important Italian series of the last fifteen years, including his case studies, as well as *Gomorra*, *Suburra*, *Romanzo Criminale* and others. The appreciation

of the potency of these IPs is all the more timely given the industrial pressures being exerted by American media companies such as Netflix, HBO and Sky, all of which have been keenly interested in acquiring many of these series. Whereas Sasor is interested in the literary IP that creates value for Italian series, in the final article in the issue, Inkyu Kang demonstrates the importance of stardom for shaping that same value. Using the example of South Korean popular media, including films, series and music, Kang examines the lengths to which media companies will go to 'protect' their IPs, including micro-managing the lives of stars and musicians. For Kang, this logic is most darkly expressed in the dangerous practice of including morality clauses in star contracts, effectively legally enjoining creative talents to conduct their personal lives in ways that the studios demand. As Kang shows, such practices prioritise IPs over human beings, with high-profile suicides by South Korean stars being a tragic, but frequent outcome of such industrial logics.

While the articles gathered in this issue encompass a wide range of methodologies, traverse a number of lines between disciplines and feature case studies from across the globe, there is nonetheless a clear unity in terms of seeing IP as the central commodity in the contemporary media industries. As debates continue in courts and legislatures, as artists, fans and owners continue to wrestle for control of IPs, and as academic researchers try to keep up with important changes in technologies, laws and cultural attitudes, the issues explored in this issue of *Media Mutations* will only grow in importance in years to come.

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Artificial Intelligence and Authorship

Caterina del Federico

◀ ABSTRACT

This brief paper adopts a legal perspective and pursues the following aims:

- to focus on the main legal sources in the field of copyright law;
- to examine how these regulatory sources are inevitably connected to artificial intelligence, as well as to the new regulations on digital platforms and to the General Data Protection Regulation;
- to identify the main legal challenges raised by these developments;
- to put forward possible legal solutions.

Innovations in artificial intelligence are raising several new questions about how copyright law principles will apply to content created or used by AI. Specifically, the reference is to the principles of: authorship, infringement and fair use.

Indeed, the so-called generative AI computer programs recently developed are able to generate a wide variety of content (known as outputs) in response to a user's textual prompts (known as inputs). Generative AI is able to achieve its results as these systems are fed with large amounts of data ('data' here has to be intended in a broad sense). The reference is, in particular, to existing works, such as writings, photos, paintings and other works of art.

The legal issues of relevance are many. The first of them certainly concerns the profile of authorship: the question arises as to whether the artificial intelligence system can be considered the "author" of a work, with all that this entails legally speaking. Another troublesome issue relates to how such systems operate and – considering that they feed on data in a broad sense – there is the question of how their activities can comply with privacy legis-

lation¹ and especially copyright law. A further aspect certainly concerns the liability of platforms in cases of unlawful conduct involving the infringement of copyrighted works on the Internet².

The analysis of the issues mentioned above cannot be separated from the analysis of the relevant regulatory framework. In particular, it is appropriate to delve into the recent European Regulations. The reference is to: the *General Data Protection Regulation Act*, the *Artificial Intelligence Act*³ (last approved by the European Parliament), the *Digital Services Act*⁴ and the *Digital Markets Acts*⁵. Their impact on the *Copyright Directive* is crucial.

An attempt will be made to elaborate on the issues mentioned, highlight the critical points arising in light of the relevant regulations and of the complex legal framework⁶, and provide some proposals for solutions.

¹ The reference here is to the Regulation (UE) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation). The official text is available on: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0679> (last accessed on 12-05-25).

² However, for the sake of brevity, it is not possible to dwell on this complex issue in this paper.

³ Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024, available on: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L_202401689 (last accessed on 12-05-25).

⁴ Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC, available on: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022R2065> (last accessed on 12-05-25).

⁵ Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on the contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828, available on: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022R1925> (last accessed on 12-05-25).

⁶ But also, on the soft law sources.

1. Some Premises

This brief paper offers some initial reflections in order to develop new knowledge and raise awareness to protect, promote and enforce the world of art from a dual perspective, in which advanced technologies play a key role.

Firstly, the focus goes to copyright – generally recognised as a fundamental right – in the digital environment, and – at present – increasingly challenged by the use of so-called generative artificial intelligence systems. The use of these types of systems for the creation of content poses various legal questions, having a direct impact – in terms of both risks and opportunities – on various issues, such as copyright protection, the theme of authorship, privacy protection and, last but not least, ethical issues of fundamental importance.

In particular, one of the main challenges that the use of AI represents concerns the concept of ‘creativity’. Information technology plays a key role here. Indeed, through the development of advanced systems, it seems possible to identify cases of plagiarism in art products generated by AI.

In a further respect, AI and, more generally, digital technologies have a specific impact in the field of cultural heritage in terms of preservation, creation and access to collections, increasing the possibility of reaching new audiences and finding new ways to promote culture. The dissemination of cultural content achieved through these tools can be fundamental to framing the preservation and enhancement of cultural heritage as a “cultural public service”. At the same time, digital reproductions constitute new and autonomous “intangible cultural goods”, for which differentiated regulation is needed. Such a perspective requires harmonious interaction with copyright and data protection legislation.

It is fundamental to reconstruct and assess the relevant legal frameworks and legislative initiatives at European and national level. This should be done in order to identify regulatory gaps and inconsistencies. Also, it is use-

ful to examine the (few) case law decisions on the subject, both at national and European level, but also at international level.

The central objective of this work – which is presented here for reasons of space and time only in its embryonic state – is to develop new knowledge and share awareness to protect, promote and enforce the world of art from a dual perspective. Firstly, the reference is to works protected by copyright and, therefore, the phenomena will be studied from a private law perspective. From another point of view, topics related to the protection of works of art with cultural significance will be explored in depth and, therefore, the reference here should be to the sphere of public law (which will not be analyzed here).

In both areas, advanced technologies have played a central role for years now, often with not entirely positive repercussions. The idea behind this initial study is to demonstrate how these technologies can also play a subordinate and extremely positive role, helping with the legal issues that arise.

2. A Focus on the Field of Copyright

It is well known that the relevant legislation on copyright was designed on the assumption of human inventions and creations, and this certainly represents an initial problematic profile with respect to works created – exclusively or in part – by the use of AI systems. Consequently, in the context of this research, the first goal is to understand and analyse, from a technical point of view how AI performs generative activities. Following this initial analysis, which is of a purely informatics nature, the relevant legal sources have to be identified, first in the field of AI (Finocchiaro 2024), then in the field of copyright. These legal sources are inevitably linked to each other as well as to the new regulations on platforms and the now well-known *General Data Protection Regulation*. It would therefore be a matter of first understanding which profiles are the most critical from a legal point of view and then proposing suitable legal and IT solutions aimed at resolving them.

Innovations in the field of artificial intelligence raise several new questions on how copyright principles will apply to content created or used by AI. In particular, the reference is to the concepts of: authorship of the work, violation of the relevant legislation and proper use of existing ‘materials’ (Nivarra 2024).

As it is well known, recently developed generative artificial intelligence programmes are able to generate a wide range of content (output) in response

to a user's textual requests (input). Generative artificial intelligence is able to achieve its results because such systems are fed, and work, with large amounts of data in a broad sense. We refer here, in particular, to existing works, such as writings, photos, paintings, sounds and other types of artwork.

Thus, starting from the input, the issue that presents the most critical profiles is that of the legitimacy of using pre-existing works that the system reworks to generate a certain output. A closely related issue that further complicates this picture is the one concerning the use of AI systems in text and data mining (TDM) processes and the consequent generation of texts/images/sounds; in such hypotheses, in fact, the issue arises of how to attribute rights on copyright. Another issue of particular relevance concerns the functioning of these systems and – considering that they feed on data in a broad sense – the problem arises as to how their activities can comply with privacy laws and especially copyright laws. With reference to the output phase, the most controversial issue concerns the attribution of authorship with respect to a work generated by an AI-equipped system.

The first issue to be analysed will be that of the authorship profile: the question arises as to whether the AI system can actually be considered the 'author' of a work, with all that this entails from a legal point of view, especially in light of the obscurity and unpredictability of the output. Also to be analysed is the liability profile of platforms in the event of unlawful conduct involving the manipulation of (for example) copyrighted works on the Internet, thereby infringing the rights of third parties, which often consists of unauthorised reproductions. In this sense, indeed, the *Copyright Act* and the *Data Protection Regulation* respectively are violated.

The in-depth examination of the above-mentioned issues cannot be separated from the analysis of the regulatory framework of reference, both European and national. In particular, the recent European regulations will be examined in depth. Space will also be given to an in-depth analysis of the legislative initiatives taking place at the national level.

The above-mentioned issues will be investigated, attempting to highlight the critical issues that emerge in light of the above-mentioned regulations and the complex regulatory framework, and to provide some proposals for solutions, also from an IT point of view. Within the scope of the research, the (few) jurisprudential decisions on the issues mentioned, at national, European and international level (reference is made, for instance, to some decisions taken by the Beijing Internet Court as well as by the Australian and US Courts), should also be analysed and deepened.

3. Why Artificial Intelligence?

AI is a sensitive topic for all sectors.

In recent years, many acts of both soft and hard law have followed on the subject. UNESCO has taken on a key role. In 2021, it published the *Recommendations on the Ethics of A.* (the first act issued by a public body on the topic). In 2024, it launched the Global A. Ethics and Governance Observatory to operationalize the principles contained in the *Recommendations*; many are the connections that have legal relevance between A. use and I.P. protection (authorship, liability for violations, the issue of text and data mining, fair use, etc.).

Behind there is a complex legal framework: the *GDPR*, the *A. Act* (last approved by the European Parliament), the *DSA* and the *DMA*. All of them – as already mentioned before – have a crucial impact on the *Copyright Directive*.

Following, the main research questions of this paper:

- Can an AI system be recognized as the author of a work?
- What is the national and international normative and jurisprudential framework?
- What are some future prospects?

4. A Quick Reminder of National Legislation

At the national Italian level, one must mention the *Law. n. 633 of 22 April 1941* on copyright. Who can be considered the author of a work of art?

Art. 1 states: “Intellectual works of creative nature belonging to literature, music, figurative arts, architecture, theater and cinematography, whatever the mode or form of expression, are protected under this law”.

Art. 2 states: The original title of the acquisition of copyright is the creation of the work as a particular expression of intellectual work”.

Art. 3 states: “The processor is considered as the author of the processing, within the limits of their work”.

Art. 7 states: “in the case of collective works (i.e., works whose creation required the contribution of more than one person), the person who organized and managed the creation itself is considered to be the creator”.

Art. 10 states: if the work of art was created with the indistinguishable contribution of several people, the copyright belongs jointly to all authors”.

Art. 2580 c.c. states: “the ownership of copyright belongs to the author and their assignees”.

Art. 12 *bis* states: “in the case of software made by an employee, ownership of the economic exploitation rights to the relevant copyright belongs to the commissioning party, unless otherwise agreed”.

As one can see from the aforementioned rules, there is no specific textual provision within the Copyright Law that recognizes only a human being as the author.

5. Existing Jurisprudential Guidelines and Some Relevant European and International Sources of Law

There are clearly not many case law cases on this point (as it is a rather new topic). Among the few cases, it is possible to mention the *Italian Supreme Court of January 16, 2023, n. 1107*, which states:

In relation to copyright, the requirement of creativity, necessary for the recognition of protection, does not coincide with the concepts of creation, originality and absolute novelty, but must be understood in a subjective sense, as the author’s personal way of expressing even simple ideas and notions.

So, it would seem that the use of digital technology in the creation of a work does not in itself preclude the work from qualifying as a work of authorship unless, upon investigation, it appears that the use of the technology has absorbed the artist’s creative elaboration. At the EU level many sources can be mentioned, such as the *Directive 93/98*⁷ and the *Directive 115/2006*⁸.

A photographic work, within the definition of the Berne Convention⁹, shall be considered original if it is the result of the author’s intellectual cre-

⁷ Council Directive 93/98/EEC of 29 October 1993 harmonizing the term of protection of copyright and certain related rights, available on: <https://eur-lex.europa.eu/eli/dir/1993/98/oj/eng> (last accessed on 12-05-25).

⁸ Directive 2006/115/EC of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property, available on: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32006L0115> (last accessed on 12-05-25).

⁹ Berna Convention for the Protection of literary and Artistic Works; the text is available on: https://www.wipo.int/edocs/lexdocs/treaties/en/berne/trt_berne_001en.pdf (last accessed on 12-05-25).

ation and reflects the author’s personality, regardless of any other criteria such as merit or purpose.

The well-known *European Parliament Resolution of October 20, 2020*¹⁰ on IP rights for the development of AI technologies stated that: “works produced independently by artificial agents and robots may not be eligible for copyright protection to comply with the principle of originality, which is linked to a natural person.” This is because the concept of “intellectual creation” concerns the personality of the author.

Also relevant in this sense is the European Patent Office Resolution of October 27, 2020, stating that AI systems or machines do not have rights, even for the purposes of patenting an invention, because they do not have a legal personality comparable to natural or legal persons.

If a European patent applicant claims to have acquired the right to the patent from an AI system, its employer does not satisfy the requirement of Article 81 and Article 60(1) of the *European Patent Convention*¹¹, because AI machines or systems can neither be an employer nor transfer any right to a successor in title.

6. A Concrete Case of Study

The name of the work involved was *A Recent Entrance to Paradise* and the case is also known as the *Case of Stephen Thaler*. The decision was taken by the US Court of Washington. Thaler’s AI algorithm, which is referred to in court documents as the “Creativity Machine” and, in Thaler’s words, a *Device for the Autonomous Bootstrapping of Unified Sentience* (Dabus), had generated an image titled *A Recent Entrance to Paradise* (2012). Thaler had requested the copyright of the image to be attributed to the Creativity Machine, which would then transfer it to him as owner.

The US Court stated: “attribution of a work of art in favor of an AI-powered system goes against the fundamental principles of copyright law, which require that the work be the product of a human mind”. As regards

¹⁰ European Parliament Resolution of 20 October 2020 on intellectual property rights for the development of artificial intelligence technologies; available on: https://www.europarl.europa.eu/doceo/document/TA-9-2020-0277_EN.html (last accessed on 12-05-25).

¹¹ The text of the Convention is available on: https://link.epo.org/web/EPC_17th_edition_2020_en.pdf (last accessed on 12-05-25).

the Italian Supreme Court (in particular *sec. I, 29.05.2020, n. 10300*), the requirement of anthropocentrism plays a pivotal role on the topic.

Copyright protection postulates the requirement of originality and creativity. It does not consist in the idea behind its realization, but in the form of its expression, that is, by its subjectivity, assuming that the work reflects the personality of its author, manifesting their free and creative choices.

It is essential, here, to report the definition of Artificial Intelligence. Article 3 of the *A. Act* (name definitions) states:

‘AI system’ is a machine-based system designed to operate with varying levels of autonomy and that may exhibit adaptiveness after deployment and that, for explicit or implicit objectives, infers, from the input it receives, how to generate output, such as predictions, content, recommendations, or decisions that can influence physical or virtual environments.

Thus, the key elements from which to start are for sure:

- the digital autonomy of AI systems (as human independent creators);
- elements of obscurity and unpredictability (in terms of outputs), characteristic elements of AI systems;
- robot artists and algorithmic art.

7. Some Trends and Theories

In some more technologically progressive non-European States, systems with AI have been granted legal personality. Some examples:

- Saudi Arabia granted citizenship to the robot Sophie;
- Tokyo granted residency to the robot Shibuya Mirai;
- South Africa recognized a patent in favor of the AI system Dabus which conceived “in total autonomy” a food container for heat preservation.

It is possible to find a middle ground in the UK. The reference is to *UK Copyright, Designs and Patent Act 1988*.

Let us consider that – normally and in the majority of the countries – the author of the work is the one who prepares the “necessary arrangements” for the creation of the work. Thus, who is the author of a work created by an AI system?

The author of the work may be given various rights. Types of rights under copyright law:

- moral rights: inalienable and inextinguishable, related to the author's personality (e.g. claiming authorship of the work, withdrawing it from the market, etc.);
- exclusive rights of economic utilization: alienable, independent and divisible, lasting 70 years after the author's death (right of publication, rental, reproduction, distribution, etc.);
- connected rights: protect persons or entities that participate in the making, production and dissemination of these works, but who are not the authors themselves (producer's rights, audiovisual rights, etc.).

Various thesis were elaborated:

The first thesis identifies the programmer as the author. Part of the doctrine holds that the author of the creative work generated by an AI system is to be found in the programmer of the machine (Guadamuz 2017). In this way the programmer of the algorithm automatically becomes the author of the final work and related rights.

There are some objections to this first thesis. The programmer generates only the tool, but the output is unknown to him. The final work is, in other words, completely divorced from the abilities and wishes of the software developer. The software may be given/sold to third parties, who with their more or less important input will make use of it, creating confusion about the real copyright holder of the generated work. The violin maker who creates the violin cannot be recognized as the author of the music that will be generated with it.

As regards the second thesis, other authors argue that the copyright relating to the work generated by an AI system should necessarily be vested in the end user of the device (Samuelson 1986). An objection to such a thesis is the necessity to investigate the input provided. A distinction and inquiry will necessarily need to be made between the merely passive user who will provide basic input (e.g. write a song) and the one who, on the other hand, will make a significant creative contribution to the work created.

It can be mentioned here the well known case of *Zarya of the Dawn* (2021). This is a comic strip that combines text written by the author Ms. Kasthanova with images generated based on the story by the Midjourney AI system. The copyright certificate issued by the USCO held that it should protect only the literal elements created by the author while not granting protection to the images generated by the AI system (requirement of human intervention). Then a third thesis was elaborated: that of giving a third type of juridical personality to AI systems.

Here, the hypothesis of departure is the *European Parliament Resolution, Feb. 16, 2017*, which provides:

the establishment of a specific legal status for robots in the long term, so that at least the most sophisticated autonomous robots can be held as electronic persons responsible for compensating for any damage caused by them, as well as possibly the recognition of the electronic personality of robots that make autonomous decisions or interact independently with third parties.

Conclusions

What is art?

A conventional definition (from Garzanti Dictionary) states that art is “human activity aimed at creating works that are recognized as having aesthetic value, by means of shapes, colors, words, or sounds¹²”.

Do we – perhaps – need a reinterpretation? Art can be considered as any form of expression, regardless of who it is generated by, capable of arousing emotions.

Possible solutions can be:

- rethinking the copyright law at the national and EU level: recognition of patrimonial right in the head of the AI system – splitting/annulment of moral rights for works created by AI systems (patrimonial ownership of the work);
- a creation of a heritage fund for civil liability of works generated by AI systems (copyright violation, privacy violation etc...).

In any case, the time does not seem ripe to date. All that remains is to await the next steps of the legislature and case law on the matter.

¹² Garzanti, “Arte”, *Garzanti Linguistica*. <https://www.garzantilinguistica.it/ricerca/?q=arte> (last accessed 12-05-25).

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ARTISTIC WORKS

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ARTIFICIAL INTELLIGENCE AND AUTHORSHIP



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Creativity Unbound

Rethinking Audiovisual Authorship
in the Artificial Intelligence Era

Greta Iapalucci and Allegra Sonogo

◀ | ABSTRACT

The advent of artificial intelligence (AI) has reshaped the debate on authorship in audiovisual media, challenging traditional notions of intellectual property and creative agency. This paper explores the evolution of authorship from early cinematic theories to the rise of collaborative and intertextual media contents, ultimately questioning how AI-generated creative products should be attributed. By analyzing case studies, including AI-generated films, TV shows and deepfake applications, we assess the implications of AI as both a creative tool and a co-author. Legal and cultural perspectives are considered, addressing copyright concerns and the function of AI in media production. Our study argues that while AI introduces new complexities in creative ownership, human oversight remains essential in shaping and interpreting AI-assisted content. Ultimately, building on the ongoing transformation of media creation in the digital age, we claim that AI's role in authorship must be examined on a case-by-case basis.

KEYWORDS

Authorship; artificial intelligence; audiovisual media; intellectual property; creative agency.

Introduction

The question of authorship in audiovisual media has been a longstanding subject of debate, evolving alongside technological advancements and shifts in creative practices. From the *auteur theory* of the mid-20th century, which positioned the director as the primary creative force, to postmodern perspectives that emphasize the collaborative and intertextual nature of media production, the notion of authorship has continuously adapted to new paradigms. However, the rise of artificial intelligence (AI) as a tool for generating media content has reignited this discussion, presenting new challenges and possibilities for how we define creative agency and intellectual property.

AI-generated content, from deepfake-enhanced films to fully AI-scripted productions, disrupts conventional understandings of artistic creation. While AI is often positioned as a tool assisting human creators, its increasing ability to produce independent outputs raises critical questions: who – or what – can be considered the author of AI-generated works? Should authorship be attributed to programmers, users, or AI itself? And how does this shift impact legal frameworks, ethical considerations, and audience perceptions?

This paper examines the evolving concept of authorship in the AI era, tracing its historical foundations and analyzing contemporary case studies that showcase AI's role in media production. By exploring both media theories and legal implications, we aim to offer a comprehensive understanding of how AI is reshaping the boundaries of creative ownership. Ultimately, we argue that while AI-generated media introduces complexities in authorship attribution, human agency remains central in shaping, curating, and interpreting these works.

1. Authorship in Audiovisual Media: Foundations and Early Concepts

1.1. *Rise and Death of the Cinematic Author*

The concept of cinematic authorship appeared in critical literature for the first time in the early 20th century, as a consequence of the adaptation of literary and theatrical works (Brunetta 1996). During these years, the application of authorship to film was a necessary practice, as it served the dual purpose of elevating cinema to the status of an artistic medium and laying the foundation for the development of film studies as an academic discipline (Bordwell 1996: 4-6).

In the beginning, film production was quite trivial, consisting only of a physical object, the film reel, and of the person who was physically responsible for creating the object. Only a few years later, films started to be reproducible, and what needed to be ascribed to a person was not only the film reel, but most importantly the idea behind the film (Pescatore 2006: 30). Simultaneously, film production became more and more collaborative and professional roles more defined (Ropars and Sorlin 1990: 24), which further complicated authorship attribution.

In the 1950s, the “Cahiers du cinéma”, drafted by François Truffaut and André Bazin among others, brought the discussion to a higher level. In these essays, *la politique des auteurs* or *auteur theory* started to be formalized, which claims that the author is aware of their genius and infallibility, and the intention behind the work needs to be reconstructed by spectators and critics (see Truffaut 1955). These features were fundamental to promote the convergence of the cinematic author into the film director. The essentialist approach brought about by *la politique* was highly criticized later, starting with the post-structuralist philosophers Roland Barthes and Michel Foucault.

To address the criticism moved to *la politique*, the title of the major essay written by Barthes is highly emblematic, “the death of the author”. With this essay, published in 1967, a post-authorial framework is established in media theory, in which the empirical author disappears and leaves the floor to language, which has an anonymous power and is the expression of subjects rather than people. What’s more, the pieces of the language can be brought together only by the recipient or, in this case, the viewer. More in detail:

Linguistically, the author is never more than the instance writing, just as I is nothing other than the instance saying I: language knows a ‘subject’, not a ‘person’, and this subject, empty outside of the very enunciation which defines it, suffices to make language ‘hold together’, suffices, that is to say, to exhaust it. (Barthes, [1967], (trans. 1977): 145).

Barthes (1967) proposes to kill the author to let the reader live and thrive. However, if Barthes (1967) “destroys” anthropomorphic authorship, he does not suggest a way in which the reader can make sense out of the language. To reconsider the role of the author and to start to give shape to the role of the reader, Foucault (1969) conceives authorship as nothing more than a function of the discourse that works to ascribe and delimit creative contents, among other things. Authorship therefore is a source of further meaning and “it does not refer purely and simply to a real individual, since it can give rise simultaneously to several selves, to several subjects-positions that can be occupied by different classes of individuals” (Foucault 1969: 113).

Barthes (1967) and Foucault (1969) highly revolutionized the concept of the author and were the first to open the discussion to the central function of the recipient. Two film critics who were crucial to attributing the recipient even greater powers were David Bordwell and Seymour Chatman. Both scholars posit that the text is self-sufficient, because it contains its own agency and intent, yet they conceive this self-sufficiency differently. On the one hand, Chatman (1990) thinks that an implied author still exists, yet different from the biographical author, working as a reference point for viewers when interpreting a film and therefore contained within the text. On the other hand, Bordwell (1985) goes even beyond in theorizing the self-sufficiency of a work by claiming that no trait is assigned to an implied author that could not be ascribed to the narration itself, thus rejecting the anthropomorphist approach to authorship attribution.

1.2. The Role of Television and New Media in the Debate on Authorship

The advent of television and new media has added a further layer of complexity in the debate on the relevance of *auterism* in contemporary audiovisual productions. This complexity can be unfolded by addressing three key properties of a modern audiovisual text – all of them intertwined with the increased presence of the viewer in the reflection on authorship attribution – that are: (i) intertextuality, (ii) relationship with time and (iii) collaboration.

Considering the first, in the previous paragraph we have acknowledged that an artwork is the result of the creative mixture of many texts. Most new media content is derivative or transformative works, that is the result of the appropriation of previous works through practices of rewritings, reusages and reproduction (Bettetini 1996). Therefore, new media represent the ideal space in which Barthes' (1967) definition of text expands: "A text is then a multi-dimensional space in which a variety of writings, none of them original, blend and clash" (Barthes [1967], (trans. 1977): 146). Who needs to keep the threads together of an audiovisual text is the spectator, who might not necessarily be aware of the references and citations contained in an artwork.

As for the second point, new media represent the ideal space to concretize not only Barthes' (1967) theories, but also Foucault's (1969) theses: given that an author is a function of the discourse, a text is then a discursive entity and, as such, can change over time (Mittell 2015: 111). Gray (2013: 92) refers to a modern audiovisual text as a "continuous and continuing entity" because it requires authorial intervention throughout all its existence.

As far as the third identified property of a text, creation, other than being an ongoing process, is always the result of a collaborative effort: this concept leads Gray (2013) to define his theory of "clusters of authorship". In fact, as a consequence of the fluidity of the text creation, a multiplicity of individuals attends a given text and will contribute to its creation, which will never be completed (Gray 2013: 108). This model highly expands the number of people involved in the creation of an audiovisual text, considering, for example, the whole professionals listed in the credits, the marketing groups and, of course, the spectators. New media make manifest how audience can become active (Fiske 1987) and the ways in which they create these clusters, from mere hermeneutical practices in the construction of meaning, shaping "interpretive communities" around audiovisual texts (Fish 2004), to the creation of their own contents that originate from "official" ones. In the postmodern era, all media products are the result of a collective intelligence, or, in other words, of a participatory culture in which producers and users converge (Jenkins 1992, 2006). Fan productions represent the perfect expression of these new features that both the text and the audience have acquired, with several effects on the study of audiovisual authorship (see Jenkins 2019). For instance, research has shown that fan works have a great impact on the life of cultural objects through the engagement shown on social media, giving fans the power to cancel or renew shows and, more limitedly, to influence the diegesis through *fanon* stories (Bourdaa and Delmar 2016).

The intertextual, ongoing and collaborative efforts behind every modern audiovisual content consolidates the idea of the author as a discursive element. Hence, if a person behind an artwork ought to be identified, this would be a fictitious figure embodied into an “inferred author function”, “a viewer’s production of authorial agency responsible for a text’s storytelling, drawing on textual cues and contextual discourses” (Mittell 2015: 107). By bringing Chatman’s (1990) theory of the “implied author” to a higher level, Mittell (2015) suggests that spectators perceive that audiovisual narrations are too coherent and elaborate to be the outcome of a teamwork, hence they posit an “imagined authorial power” in charge for narrative complexity. What plays a crucial role in inferring an imagined authorial figure is the exploitation of paratexts by many modern media productions, in the form of interviews, behind-the-scenes videos, billboards, posters and so on. These texts have contributed to the reinforcement of the mythical agency of the showrunner in the American mediascape, the one to which media scholars Gray (2013) and Mittell (2015) are referring to¹, and of the director in the European context.

Within this scenario, however, little has remained in showrunners or directors of the *intentio auctoris*² theorized in the *Cahiers*. Quite the opposite, they have become brands or trademarks (Pescatore 2006: 109): the word *d’auteur* applied to films or TV series has come to serve the purpose of an aesthetic framework (Mittell 2015: 107), embodying a tag to orient audiences’ expectations in terms of values such as genre, tone and style. Emblematically, in contemporary franchises, creative production originates from studio-owned intellectual property, that is the “managerial expertise”, rather than individual creative contributions, which constitutes what Kidman (2021: 3) referred to as “corporate auteurism”.

2. Copyright of Media Products and the Establishment of AI as a Content Creator

Media research has therefore theorized an anti-authorial framework. Authorship is now embodied into a discursive function that does not cor-

¹ For an analysis on how authorship was paramount to promote *Quality TV* communication in *HBO*’s marketing strategy, see Steiner (2015).

² Eco (1979) identifies three intentions behind an artwork: *intentio auctoris*, *intentio lectoris* and *intentio operis*.

respond to a physical person but to a fictitious figure that viewers should reconstruct through paratexts, neglecting the collaborative effort that lies behind and reducing the concept to a trademark.

Despite its fluidity, we believe that it is still necessary to insist on the concept of authorship when conducting research on audiovisual texts for two main reasons: first, rejecting the idea that there is at least one physical author behind an artwork suggests that its intention has not to be claimed to the creator but to the act of receiving it, which would not consider the political and sociocultural identity of the text itself³ and, second, given that artworks are intellectual properties, a property must be attributed to someone's. Moreover, intellectual properties are protected from abuse by copyright, which in French is called "droit d'auteur", hence one or more possessors of a media content ought to be identified.

Copyright is defined as: "a set of intangible and exclusive rights on ideas that are expressed in human creative activities. It is granted to authors and artists to protect expressive works against unauthorized reproduction or distribution by third parties" (Gloglo 2014: 126). As can be deduced, copyright is an economic notion, and, more specifically, a utilitarian theory (Ballardini et al. 2019: 11), that has two main functions: (i) to incentivize the innovation and the creation of ideas and (ii) to guarantee an optimal degree of access to let these ideas circulate, yet in the protection of the intellectual property (Gloglo 2014, Hediger 2013).

If identifying the agency of a physical person behind a media content was already challenging when human beings were the only legitimate creators, the advent of generative artificial intelligence further complicates the scenario. Artificial intelligence is described as: "[...] the simulation of human intelligence processes by machines, especially computer systems. These processes include learning (the acquisition of information and rules for using the information), reasoning (using rules to reach approximate or definite conclusions) and self-correction." (Rouse 2018).

As we have seen, copyrights are released as incentives to protect the intellectual property behind creative contents. In the case of AI outputs, it is impractical to incentivize machines or algorithms *per se* and, if copyright is infringed, a trial between a person (the infringer) and a machine (the right holder) would not be feasible. Considering that the goal is to foster innovation within the field, the natural people responsible for the works should

³ See Sellors (2007) for an aesthetic reflection on media authorship.

be claimed as authors (Ballardini et al. 2019: 7), discarding machines. The three parties who could claim rights over AI contents could therefore be programmers, business owners and end users. To decide on these three parties, we should recall the centrality of the social benefit that the party needs to derive from copyrights (Hristov 2016: 443). Hristov (2016) argues for an adaptation of the terms of “employer” and “employee” within the *hire doctrine* of the US copyright law, outlined as:

An employer is considered the author even if an employee actually created the work. The employer can be a firm, an organization or an individual. Just as the term “author” may be applied to various entities (an individual, a firm or organization), and the term “writings” is an all-encompassing word (Hristov 2016: 447).

According to this doctrine, authorship is ascribed to programmers or business owners, thus leaving little space for users. However, just as human beings can be involved in many different roles in the creative and productive processes of a media content, so does AI in AI-generated artworks and, to continue to reflect on the creative role of AI in audiovisual production and on whether this role is in line with the legislative role outlined above, we need first to briefly describe the part that it has acquired in the contemporary mediascape.

3. The Role of Artificial Intelligence in the Media Industry

Artificial intelligence has catalyzed a significant transformation within the media production landscape (Ciruskabiri and Mousavi 2023), evolving from a mere tool to what can be considered a co-creator (McNamara 2023). This shift is reshaping the roles of traditional creatives and necessitating a reevaluation of the creative process.

AI’s integration into the media extends from the early stages of content development to post-production and distribution. In game development, AI algorithms are now used to generate complex environments and non-player character behaviors, enhancing the gaming experience with environments that react and evolve in response to player actions (Safadi et al. 2015, Seidel et al. 2020). In the film industry, AI is used for everything from script analysis – predicting audience reception and potential success – to special effects and even editing, where AI can compile raw footage accord-

ing to the director's style and preferences (Chow 2020, Datta and Goswami 2021, Huang et al. 2023).

The role of AI in these industries is not just as a backend assistant. It is becoming a source of inspiration and innovation, affecting the narrative and aesthetic elements of media (Sugiarto and Widiastuti 2021). In advertising, AI's ability to analyze vast quantities of consumer data allows for the creation of highly targeted content, predicting and molding to viewer preferences and behaviors (Kietzmann et al, 2018; Li, 2019).

However, this integration of AI brings with it challenges, particularly in terms of trust. For creatives, relinquishing control to an algorithm can be daunting. There is concern over the authenticity and originality of AI-assisted content and whether it can truly replicate the nuanced touch of a human creator. For consumers, the trust extends to concerns over privacy (Hutson et al., 2023) and the personalization of content, as well as the overall quality and reliability of AI-generated media.

Despite these challenges, the potential benefits are compelling. AI can handle repetitive and time-consuming tasks, allowing human creators to focus on the more intuitive aspects of their work. Moreover, AI's capacity to process and learn from large datasets can uncover insights and patterns that might not be immediately apparent to human minds, potentially leading to groundbreaking concepts and storytelling techniques.

Ultimately, the role of AI in media production is still being defined. As AI technology advances and creators learn to collaborate more effectively with these systems, we are likely to see a new era of media production—one where AI and human creativity are interwoven to a degree that blurs the lines between tool and partner, perhaps even challenging our concepts of authorship and creativity. This partnership promises to redefine storytelling and audience engagement in profound ways, as long as industry professionals navigate the ethical and practical implications of this technological shift.

4. Authorship in the Age of AI: Case Studies

4.1 Deep Fake Love

Deep Fake Love (Netflix, 2023) serves as a stark examination of the ethical boundaries pushed to their limits in the realm of reality TV, leveraging AI not for whimsical entertainment but as a tool for emotional manipulation. This Spanish dating series tests the strength of relationships by showcasing

individuals in serious, committed relationships, some of which are on the cusp of marriage, only to subject them to artificial scenarios of betrayal.

Each episode unravels with couples, already experiencing some friction in their relationships, being separated into two houses – aptly named ‘Mars’ and ‘Venus’. The twist lies in the traumatic climax of each day, where participants are confronted with videos depicting their significant others in seemingly intimate acts with others. The reactions, ranging from shock to heartbreak, are visceral and distressingly real – only for the participants to learn, post-reaction, that what they saw might not be the truth.

The unsettling crux of *Deep Fake Love* employs deepfake technology to transplant the faces of faithful partners onto acting singles, crafting scenes of false infidelity. This act of digital puppetry, where words never actually spoken by the participants are mouthed by actors, showcases a disturbing application of AI capabilities.

While AI’s integration into media has opened up new frontiers for creativity and engagement, *Deep Fake Love* prompts a necessary discourse on the symbiosis between AI-generated content and human emotion. It challenges the creators of human-centric media products to consider the impact of AI on real people’s lives, to recognize the difference between content that entertains and content that harms.

This series raises questions beyond the ethical considerations of deepfake technology; it delves into the responsibilities of content creators in an age where digital and reality converge. The power of AI to create and to destroy must be wielded with caution, ensuring that innovation in entertainment never comes at the expense of human dignity and trust.

4.2 *Nothing, Forever*

Nothing, Forever (Twitch, 2022-present) is a groundbreaking, endless stream on Twitch, showcasing an AI-generated homage to the classic sitcom dynamics of *Seinfeld* (1989-1998) in the guise of a perpetual 1990s computer game. It features four characters – Larry, Fred, Yvonne, and Kakler – caught in an eternal loop, engaging in the mundane banter reminiscent of Jerry, George, Elaine, and Kramer’s iconic conversations.

Powered by OpenAI’s GPT-3 technology, the dialogue flows continuously, with a “director” algorithm developed by Mismatch Media orchestrating the integration of speech and action into a cohesive show. However, the AI-driven spontaneity of *Nothing, Forever* encountered a challenge when

the character Larry, propelled by the AI's scripting, delivered controversial and offensive jokes, inadvertently touching on sensitive social topics. This incident not only halted the laughter but also prompted an immediate suspension and a deep dive into the AI's operational integrity.

Investigation into the malfunction revealed a switch from the Davinci model to its less sophisticated predecessor, Curie⁴, during a service outage, leading to unmoderated and inappropriate content. Despite OpenAI's content moderation tools, which had been effective with the Davinci model, the fallback to Curie exposed a gap in the system's ethical safeguards.

Nothing, Forever thus stands at the intersection of innovation in live streaming and the necessity for human oversight. The project pushes the boundaries of what continuous live streaming can achieve, demonstrating that AI can indeed facilitate creative processes that surpass human stamina. However, this technological feat does not diminish the importance of human authorship in guiding and refining AI output to adhere to ethical standards.

The incident underscores the delicate balance between creative freedom and responsible supervision in the realm of AI-generated content. It highlights the essential role of human curation in maintaining language appropriateness and ethical boundaries, ensuring that AI systems do not perpetuate harmful stereotypes or propagate misinformation. The suspension of *Nothing, Forever* due to the offensive joke serves as a cautionary tale about the need for vigilant creative oversight. It showcases the crucial responsibility authors and creators have in supervising AI's creative processes, ensuring that innovation does not come at the cost of social sensibility or ethical integrity.

4.3 *Sunspring*

The short film *Sunspring* (Sharp, 2016), conceived by filmmaker Oscar Sharp and technologist Ross Goodwin, marks a foray into uncharted territory where the realms of artificial intelligence and human creativity intersect. At the heart of this experiment lies an AI named Benjamin, fed with a diet of iconic sci-fi scripts to craft its own screenplay. The creative process began with a set of inputs provided to Benjamin: the title *Sunspring*, a dystopian future setting, and a vivid opening scene to stimulate its digital muse.

⁴ Curie is a less advanced variant of OpenAI's GPT-3 model family, overshadowed by the more capable Davinci model. It can still handle text comprehension and generation tasks, but operates with more limited depth and versatility compared to Davinci.

The AI's role was to generate the script, weaving a narrative from the prompts fed by Sharp and Goodwin. Despite its complex neural network, Benjamin's understanding of the emergent plot was limited to the information within its programmed dataset, lacking the consciousness or intent that traditionally drives storytelling. Nevertheless, its output was a script complete enough to be performed and transformed into the quirky, enigmatic short film *Sunspring*, featuring actor Thomas Middleditch.

The production of this sci-fi film illustrated a unique collaboration between AI and human actors, directors, and interpreters. While Benjamin provided the text, it was the director's vision, the actors' performances, and the production team's interpretation that breathed life into the screenplay, shaping the AI's abstract output into a tangible, cinematic experience.

This project also taps into deeper questions of authorship and creativity: it challenges the conventional notion of a singular author. Instead, it proposes a distributed model of authorship where the AI, though not an author in the traditional sense, is a central figure in the creation process, complemented by the interpretative roles of human collaborators.

In line with Michel Foucault's thoughts on the function of the author's name (1969), *Sunspring* provocatively navigates the boundaries of the author function. The AI, by naming itself Benjamin, adds a twist to the notion of authorship, infusing it with a blend of automation and autonomy, and suggesting a network of interactions defining the work rather than a single creator's vision. Moreover, this case raises legal and ethical questions regarding the ownership of AI-generated content. The current legal framework emphasizes human authorship for copyright claims, but the AI's involvement muddles this clear attribution, calling for new definitions and understandings in the era of AI-assisted creativity.

In summary, this film is a testament to the potential of AI as a tool for innovation in storytelling. Yet, it serves as a reminder that the essence of narrative – the soul of a story – remains quintessentially human, even as we explore the boundaries of AI as a creative partner.

4.4 Black Mirror

The advent of AI in the realm of creative writing, particularly in scriptwriting, brings to the forefront intriguing debates about originality and creativity. Charlie Brooker, the mastermind behind the provocative series *Black Mirror* (Netflix, 2011-present), conducted an experiment that strikes at the heart of

this discussion. Known for its critical examination of the consequences of technology, *Black Mirror* became the subject for Brooker’s exploration into the capabilities of AI with ChatGPT in generating script ideas for its sixth season.

In his candid interview with Empire magazine, Brooker shares his first-hand experience with the technology. His initial attempt to use ChatGPT to generate a *Black Mirror* episode yielded something that seemed plausible on the surface but fell apart under scrutiny. Brooker’s reflection reveals a critical limitation of AI in writing: the lack of genuine originality. He noted that the AI appeared to rehash existing *Black Mirror* synopses, combining elements without introducing new, original thought.

Brooker’s experiment underscores a significant challenge in AI-generated content: the tendency to produce derivative work that lacks the nuance and freshness of human creativity. He describes the output as “boring” and “derivative”, a regurgitation of information “hoovered up” from various sources, such as Wikipedia. This not only illustrates the current limitations of AI in content creation but also serves as a commentary on the essence of original storytelling – a domain that, for now, remains distinctly human.

5. Collaborative Creation: The Evolving Role of AI in the Redefinition of Authorship

The case studies presented illustrate how AI both broadens creative possibilities and complicates questions of authorship. In *Nothing, Forever*, AI continuously supplies scripts but needs constant human oversight to avoid unethical or offensive content, underscoring a partnership model rather than complete AI autonomy. In *Deep Fake Love*, the deployment of deep-fake technology highlights the ethical risks of manipulating participants’ emotions, emphasizing the creators’ responsibility to uphold human dignity and viewers’ trust. By contrast, *Sunspring* reveals a more harmonious dynamic: although the AI “Benjamin” generates the screenplay, the director, actors, and production team remain vital in shaping the final result. Lastly, *Black Mirror*’s experiment with ChatGPT shows that while AI can replicate familiar tropes, it struggles to produce genuinely original ideas, reinforcing the pivotal spark that human creativity contributes.

Taken together, these examples point to a model of “co-creation,” where AI does not replace humans but expands their toolkit—accelerating produc-

tion, suggesting script elements, and sometimes driving more experimental storytelling. At the same time, they raise various concerns. First, there is the ethical dimension: creators and producers must establish clear guidelines and filters to prevent offensive, harmful, or privacy-invading outputs. Second, the issue of clarifying roles emerges: when AI contributes to the creation of certain components, it is crucial to specify who holds ultimate accountability and to maintain transparency throughout the creative process.

In this regard, some guidelines (as seen in OpenAI's policies) encourage explicit disclosure of AI's involvement: even when an AI algorithm has generated part of the content, the work should still highlight the indispensable role of human creators. Indeed, the human author remains the ultimate "curator": not only selecting and refining what the AI suggests but also bearing ethical and legal responsibility for the result. Thus, AI functions as a catalyst for ideas—a generator whose outputs are subject to the human author's sensitivity and judgment. This entails a heightened sense of responsibility in scrutinizing generated material, correcting biases or inaccuracies, and bearing the consequences if something goes wrong. In *Nothing, Forever*, for example, even a simple switch from the Davinci model to Curie led to inappropriate content, demonstrating how quickly oversight can fail.

Overall, AI-facilitated co-creation reframes the concept of "the author," moving away from the single "genius" originator toward a more collective process, where algorithms act as a supportive or inspirational tool. The human "voice," however, still serves as an essential filter: without it, AI risks producing content (as in *Black Mirror*'s trial run) that is derivative or potentially harmful (as *Deep Fake Love* demonstrates). The future challenge lies in balancing the advantages of automation and augmented creativity with the need to preserve integrity, responsibility, and ethical standards at every stage of media production.

Conclusions

In this contribution, we have reflected on how the concept of authorship attribution in Media Studies has evolved from the first cinematic productions to new media contents, highlighting how it needs to be further reconsidered to encompass the creative outputs generated by artificial intelligence. Moreover, through an in-depth focus on some examples generated by AI,

we have seen how these tools present great potentialities in the creation of audiovisual contents, while still preserving many challenges.

It is only a matter of time before AI tools reach complete sufficiency in generating contents: in the meantime, contemplating whether AI could be held accountable for the authorship of these audiovisual texts is required. While the issue is predominantly urgent from a legal viewpoint more than from an artistic one, we believe—as media scholars—that it is similarly crucial to reflect on the implications that AI entails for the creative agency of media production.

We propose to split the two angles from which AI authorship can be analyzed: legally, it is still compulsory to identify a natural person behind these outputs due to copyright issues, and the employer-employee system in the hire doctrine described above could be of high value to enhance the legislation (Hristov 2016). However, given the economic nature of the concept, *right holder* would be a more appropriate term than author. From a media perspective, however, things are more complicated. We have seen that authorship within the media debate revolves around two semiotic poles: authorship (i) as collaborative, ongoing and capable of creating intertextual contents and (ii) as an imagined figure.

Considering the first, these outputs fit perfectly within the wake of new media contents: AI-contents are collaborative, both as a consequence of the input data realized by disparate creators and of the teamwork of developers; ongoing, in the sense that their reproducibility allow others to intervene on works which might have been judged complete by creators; and intertextual, based on the training data that they require. In this sense, the natural evolution of research on AI authorship is to investigate AI's ability to generate artworks as part of the production studies, along with other appropriation and derivative practices of human artists (Karakaidou 2019: 69). As for the second pole, AI can be masterfully designed as a fictitious figure, perhaps even with anthropomorphic features, which keeps everything together according to viewers and becomes a brand, a guarantee of a style.

However, through the examples that we have illustrated, AI tone is not unique and is also under evolution. Keeping in mind the two semiotic poles identified from the literature, we claim that deciding on the AI authorship behind these contents should be based on an in-depth analysis of each case, with the awareness that this scenario could undergo severe and drastic changes in the blink of an eye.

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MENTIONED WORKS

- Black Mirror* (Netflix, 2011-present)
Deep Fake Love (Netflix, 2023)
Nothing, Forever (Twitch, 2022-present)
Sunspring (Sharp, 2016)

CREATIVITY UNBOUND. RETHINKING AUDIOVISUAL AUTHORSHIP IN THE ARTIFICIAL INTELLIGENCE ERA



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A Mountain of Content

An Early Look at Paramount+ and Its Strategies

Nicolò Villani

◀ ABSTRACT

Launched in the first territories in September 2021 and turned into a global portal in the following year, Paramount+ is the evolution of CBS All Access into a modern streaming portal. Paramount+ model results in a vertical integration by an IP-holding corporation in the direction of on-demand distribution, through a proprietary channel that allows it to have full control over products. Carrying a disparate constellation of brands, Paramount+ showcases an array of intellectual properties that digs into a vast legacy ground. In this, Paramount+ has so far operated, for its original contents and placement strategies that are still far from solid, reflecting the still quite acerbic functional nature of the portal itself. This paper examines Paramount+ early attempts at original content branding and its experimental transmedia expansion of IP; therefore, it aims to return a discursive picture of the direction the portal is taking via its content portfolios, assessing the effects of successes and failures. Due to territorialization reasons, the analysis of positioning is here carried out in the Italian context: this limitation becomes an opportunity for an initial assessment of the glocal dimension of the portal and to discuss the relationship between Paramount+ and Sky in the Italian context.

KEYWORDS

Distribution Studies; media studies; Paramount+; seriality; streaming platforms.

Introduction

The progressive fragmentation of the global streaming offer is leading various market players to seek their own dedicated output, through which they can best package an identity offer. Specifically, entities that were previously regarded as producers and providers of aggregator titles are seeking to gain more control over their intellectual property portfolios by directly opening autonomous and disintermediated distribution channels. A notable example of this trend is Paramount+, the streaming portal of the corporation Paramount Global, which channels the differentiated offers of the various brands that constitute its production portfolio.

The aim of this study is to analyse Paramount+'s initial strategy of consolidating a streaming offer that comprises both titles derived from its own intellectual property and unreleased productions, the success of which has been varied. This has resulted in a unique image of the streaming portal and its catalogue.

The analysis will begin with an introduction to the two main trends in the development of streaming portals in relation to possible directions of vertical market integration. It will then be possible to place Paramount+ within one of these trends and contextualize its actions. This will be done by highlighting the crucial role that intellectual property plays in the consolidation of the vertical development model.

It will then be shown how Paramount+ organizes its content offer by reinforcing its brand identities through its interface, in order to highlight some strong internal limitations of the portal, the consequences of which will be discussed in the conclusion.

Next, the focus will pass on Paramount+'s first steps in building its discursive identity through the production of original content. In particular, the overview will concentrate on content that touches on legacy ground, that is, content that is afferent to the company's past identity as a whole. Of these, the

feedback in terms of popularity and the reaction of the platform in terms of whether or not to continue internal franchise models will be assessed.

From that, an assessment will be made of the current image of the portal, conveyed by the content present and foregrounded by the interface and its recommendation system.

The aim of this evaluation is to define the image that Paramount+ conveys of itself, often in line with its advertising apparatus.

It must be underlined that this study of Paramount+ relates to the Italian territorialization of the portal, so there are at least two elements that must be taken into account throughout the analysis. Firstly, Paramount+ is currently tied to Sky Italia, sharing some of its content; in addition, Sky Cinema customers have free access to the platform. Secondly, the original content produced for Italy gives the portal an image with the necessary local nuances, making Paramount+ also a case of a glocal platform.

1. The Two Paths of Streaming Market

Between 2019 and 2020, with Disney's entry into the global streaming market, it is possible to identify the evolution of two paths of platform development (Lotz 2017), both linked to a different direction of vertical integration (Brembilla and Mollona 2015).

On the one hand, the "Netflix model" sees a distributor entity integrating its value chain upstream by becoming a producer in the broadest sense (Lobato 2019): the aim is to consolidate a package of unbreakable original content and identity titles that know how to build the discursiveness of the portal. This ensures that a fully-fledged distributor not only retains control over some of the content it carries but can also build a user base tied to its own intellectual property: we can easily see how Netflix builds its communication strategies and brand identity through a restrict number of titles, each one labeled as Netflix Original (Frey 2021, Villani 2023).

Like Netflix, Prime Video and Apple TV+ have also followed this type of integration model, with their own specific differences, moving from pure distribution entities to producers of original and exclusive content.

In the case of Prime Video, following an initial push to establish a prestigious catalogue (Di Chiara 2017), the model employs a "soft" juxtaposition of original and exclusive products with licensed – frequently temporary – ones. The current model, which involves the co-presence of subscription

titles and buyable or rentable titles, sees the role of Amazon Original branded products as agile identity pillars on which the different niches of the catalogue rest.

Conversely, Apple TV+ has opted for a more curated approach, maintaining a modest catalogue predominantly comprising original and exclusive content. This strategy has resulted in a curated selection of titles characterized by their high production value and the potential for distinct identity.

Instead, Disney+ opens a second avenue of integration for streaming. With its huge intellectual property portfolio (Wasko 2020), Disney has long been a licensed content provider for other platforms, including Netflix. The opening of Disney+ has meant for the company that it is no longer tied to a fragmented distribution channel but has full control over when and how it organizes its IP by reaching the end user without intermediaries. This was evidenced by the corporation's radical decision, during the pandemic period, to release high-budget titles directly on the portal, thus giving rise to the hypothesis of a "streaming first" strategy. However, this hypothesis was soon abandoned by the corporation with the resumption of theatrical release. Nevertheless, Disney+ has emerged as a highly fast distribution conduit for theatrical releases and series that have concluded their initial run on their own network.

This kind of vertical integration, which leads to talk of "studio portals", has its strength in the media operator's past reach. Disney catalogue appeared as a palatable asset even before the portal was opened, and the provision of content is based on the prior knowledge of current and future users. It is no coincidence that Disney+ original launch product, *The Mandalorian* (2019-), was a huge success and led to a very high number of subscriptions to the portal in a very short time: drawing upon the massive scale of the Star Wars transmedia franchise, and steeped in nostalgia even in its production methods, *The Mandalorian* represented Disney+'s programmatic intentions as a place to expand its IP portfolio.

The "studio portal" model necessarily relies on the exploitation of existing IP to expand its content library, as the internal storytelling potential predates the existence of the platform itself (Jenkins 2009).

In its structure and formation, Paramount+, like Disney+ and Warner Bros. MAX-branded platform – formally HBO Max – appears to be based on the "studio portal" model.

2. Inside Paramount+

Paramount+ opened to the global streaming market as an evolution of CBS All Access starting in 2021 and achieved widespread deployment in late 2022 – the Italian version was released in September (Villani, 2022). Its interface seems to confirm the platform’s status as a “studio portal”, following the model inaugurated by Disney+. In fact, the catalogue is divided within thematic sections which correspond to the different brands of the corporation, which segment the content portfolio in different ways for Paramount: Paramount Original (CBS), Showtime, Comedy Central, MTV, Nickelodeon and Smithsonian.

Within the Paramount Original section, we find content predominantly related to the CBS brand, which is broadly generalist and often related to the legacy properties of the IP portfolio. Examples of such content include *Star Trek: Discovery* (2017-2024), *The Offer* (2022), *Teen Wolf: The Movie* (2023), *Lioness* (2023-) and *Zorro* (2024), all of which are readily classified within established genre models.

The Showtime section contains titles from the company’s premium cable network, modelled on the HBO content for MAX. From a promotional standpoint, this catalogue segment is arguably the most useful in conveying a quality image of Paramount’s productions, with titles capable of competing for prestigious awards. Two notable examples are *Yellowjackets* (2021-) and *The Curse* (2023-).

The brands Comedy Central, MTV, Nickelodeon and Smithsonian serve as the catalogue translation of their respective US networks, each with a distinct thematic focus, including comedy shows, programs for teenagers and music, children’s television and cultural documentaries.

As one can easily see, in contrast to Disney+, where the segments mainly represent content themes and franchise names, the Paramount+ brands identify a portfolio of distribution channels that primarily represent their own target audience, within which content of a heterogeneous nature may be present – especially in the more ‘generalist’ sections of the catalogue.

On the other hand, the relationship between the contents remains rather bland: the presence of a weak recommendation system leads to a predominantly metadata-based juxtaposition (Vonderau 2015). However, this same metadata does not seem to be efficient from a usability point of view: searches by author or actor do not allow for precise content retrieval, which is limited to sorting by format – movie or series – and genre labels, in a very

unpractical and “user unfriendly” way. This makes the portal little more than an alphabetically sorted library, with a showcase of featured content on the homepage, which is tied to editorial interests rather than user activity (Avezzù 2018, 2019).

This type of configuration is also present in Disney+ – although the Disney platform includes some more sophisticated ways of searching and grouping: the titles have been grouped in thematic collections and within each section there are organized viewing paths, in a dimension of experiential fruition. However, this communal configuration confirms a structural basis for studio portals that presents content as potential archival objects: it is evident that certain titles with a strong legacy impact are not reliant on dense metadata due to their capacity to rely on viewer knowledge acquired outside the portal itself.

3. Contents and Identity

Given these premises, it is now time to assess the extent to which Paramount+ has enriched its catalogue with original content related to the intellectual properties in its diverse portfolio. It is also necessary to assess the performance of these productions in terms of the reception and discursive power of the catalogue itself, taking into account possible renewals, spin-offs, etc. Among the various types of original content, it is interesting to consider those products that aim to extend the legacy content of the Paramount portfolio, in accordance with a long-term market trend that relies on the fortune of nostalgic effects and the maximization of consequent economies of scope (Reynolds 2011, Taurino 2019). Indeed, from the first months of its international launch, Paramount+ began releasing series titles with the same name as the studio’s legacy films: *Grease: Rise of the Pink Ladies* (2023) from the movie *Grease* (1978), *American Gigolo* (2022) from the 1980 movie, *The Man Who Fell to Earth* (2022) from the 1976 movie, *Fatal Attraction* (2023) from the 1987 movie, and *Sexy Beast* (2024) from the 2000 movie are just some examples of serial extensions of past films, often in the form of prequels or remakes. It should be noted straight away that, unlike Disney+’s franchises, Paramount+’s serial expansion – more cross-media than trans-media – hardly presents projects like narrative ecosystems (Pescatore 2018).

The ratings performance of these titles has often been lukewarm, forcing the cancellation of most of them. However, these cancellations were also a further step in the redefinition of the platform’s identity: faced with the

failure of a title, as in the case of *Grease: Rise of the Pink Ladies* or *American Gigolo*, Paramount+ not only stopped production but also removed the content from the catalogue, effectively erasing its presence from the portal's overall image. This radical measure appears to contradict studio portal's original approach when entering the on-demand market, which was to provide access to the full range of titles comprising the company's property portfolio. In the context of Disney+, this commitment was initially manifested through an archival push (Taurino and Aitaki, 2024), which was subsequently superseded by a collection model that proved more manageable from a discursive perspective.

However, Paramount+ immediately betrayed this possible archival push by opting for an immediately more flexible and volatile catalogue management, while at the same time incorporating all titles related to its own production brands.

There can be a number of different reasons for such an initiative, from optimizing space on the servers used to distributing the content to redesigning the overall image of the platform. Disney recently did something similar by removing content of a disparate nature from its catalogue: from *Pistols* (2022) to *Willow* (2022) – to name the extremes in terms of production interests – it is evident that there has been a discernible tendency to “refine” the catalogue, particularly on the international stage. This observation can be added to the list of characteristics of studio portals.

It is possible to interpret this phenomenon as an experimental drive that employs the distribution agility of titles to test their resilience and potentially erase any traces of missteps. The initial need to release as much content as possible in a bare catalogue reasonably led to a tendency to screen as many titles as possible for potential franchises; the contingent failure of some of these, rather than removing the title from the list of expandable titles, may have tended towards unbranding in the face of a future new attempt at serial expansion. In this sense, removing a product from the catalogue becomes the most practical way of freeing up space for a possible new attempt at serial expansion of the same title, without the need to create a cross-media framework as sophisticated as that which supports the narrative ecosystems, which require each title to be a potential entry point to the entire franchise. A similar argument applies to series, especially animated ones, that extend pre-existing serial products in CBS and related catalogues: attempts such as *The Fairly OddParents: Fairly Odder* (2022) or *Star Trek: Prodigy* (2021-2022) have both proved unsuccessful, failing to adequately leverage a nostalgic effect as desired.

However, it remains curious – and fortunate in terms of qualitative success – what has been done with the relaunch of the Ninja Turtles: after an initial animated revival with *Rise of the Teenage Mutant Ninja Turtles* (2018-2020), which passed quietly in a network context, the excellent response to the theatrical film *Teenage Mutant Ninja Turtles: Mutant Mayhem* (2023) has resulted in the creation of a valuable spin-off series, *Tales of the Teenage Mutant Ninja Turtles* (2024-), which is currently in production for Paramount+ and awaits the film sequel.

As for original productions not derived from previous Paramount products, there is an interesting trend of building through well-defined genres. Series such as *Yellowjackets*, *Halo* (2022-2024), *Evil* (2019-2024), *The Curse*, *Fellow Travelers* (2023), *Lawmen* (2023), and the entire *Yellowstone*¹ franchise are ambitious examples of building on almost stereotypical genres that are able to resonate with each other and with the legacy cinematic reach endemic to Paramount.

These series seem to be more successful in terms of ratings and have proven to be capable of conveying intense discursive activity, despite the fact that Paramount+ subscriber numbers, at around 72 million to date, are not yet comparable to those of the three market leaders – Netflix, Prime Video, and Disney+. In this sense, unlike Disney+, Paramount+ effectiveness currently lies more in the expansion of its intellectual property portfolio than in its reiteration.

The poor performance of titles based on previous properties indicates the lack of appeal of Paramount's portfolio and the inadequate planning of the production division that manages it; on the other hand, the good performance of original titles indicates the public's interest in the studios' new proposals and their ability to focus on genre authors in line with market trends.

¹ It should already be stressed here that in the Italian territorialization, *Yellowstone* (2018-2024) is not present on Paramount+, as it is currently a Sky exclusive, as was previously the case for *House of Cards* (2013-2018) with Netflix. It is notable, however, that all other titles in the franchise are available on the platform.

4. The image of the portal

After observing Paramount+'s initial content expansion strategies, it is time to ask what discursive image the portal proposes through the use and expansion of its intellectual property. First of all, it must be stressed again that, unlike Disney+, Paramount has never used its portal for archival purposes: of all the historical assets of one of the oldest film studios in the industry, very few flashes appear in the catalogue, often isolated and difficult to locate. While Disney was initially keen to turn its platform into an organized archive of the history of its productions and acquisitions, Paramount seems to have exploited this possibility only in the already observed attempts at serial expansion of certain titles, but leaving gaps. This is also true of the television division, given the enormous range of content produced under the CBS umbrella since the late 1940s; there is virtually no evidence of this phenomenon remaining, with the exception of sporadic cases, such as the presence of the television series *Twin Peaks* (1990-1991).

Where the reasons for these absences may be varied, ranging from previous exclusivity agreements still in force to the impossibility of finding copies of sufficient quality to make them available on the portal, the effect that emerges is diametrically opposed to that of Disney+, showing Paramount+ as a peculiar type of studio portal.

In particular, where Disney+ thinks of its sections from an environmental perspective, creating real thematic areas in which to explore narrative ecosystems that are as cohesive as possible (Brembilla 2023), Paramount+ instead restores a non-linear nature to areas of its portfolio normally associated with a flowing fruition, still afferent to network identities. In this sense, Paramount+ looks more like an integration of the company's entire media apparatus, a kind of global on-demand front desk for its various production assets and distribution channels. From this point of view, it is easy to understand why the intellectual properties of the Paramount portfolio have little impact on the construction of a coherent discursive identity, remaining rather occasional niches of content development.

Nevertheless, it is possible to identify some image-building trends on the portal: the strong push for audiovisual genre-defined content, with a focus on westerns, sci-fi and horror, has already made Paramount+ a rather welcoming place for fans of this type of content. In particular, the strong presence of the western genre in contemporary productions makes the portal almost unique in the streaming market, all flanked by a large presence of products that

depict its imagery, such as documentaries and series about country music. In this way, by situating the portal within the US media discourse, it is possible to glimpse a narrative connoted by a conservative valorization typically associated with this imagery, and also emphasized by products of different genres, among which *Halo*, for example, stands out for seriality.

The Paramount brand, along with its referral network (CBS), and the corporation's willingness to bind itself to the American imagination in its historical and traditional dimension, reflect a proximity to conservative values. The result is an image that is narratively connoted by a reactionary and male-gazed drive, even when these dimensions are critically discursivised (e.g. *The Curse* and *Yellowjackets*).

However, it is important to note the similarities between Paramount+ and Disney+ in their approach to streaming. Both platforms utilize this medium as a final distribution channel for content that is not created specifically for their respective portals (Doyle 2016). Indeed, it appears that the emphasis remains predominantly network-centric, as evidenced by FX titles under Disney's umbrella. This approach is further exemplified by the initial consolidation of the image of the various brands within linear broadcasting (Wolff 2015). In a more explicit way, Paramount+ builds its corporate image by juxtaposing those of the different networks that make up the portal.

However, it is important to note Paramount's apparent lack of interest in anchoring its streaming portal to the role the studio has played throughout Hollywood history (Stephens et al. 2013). In this respect, the portal's potential cinephile image is realized only in the appeal of film genres within new productions, often in dialogue with the stylistic features of Classic Hollywood (Bordwell et al. 1985; Altman 1999).

5. The Glocal Dimension: the Italian Case

In alignment with the other global players in the streaming market, Paramount+ has implemented the European Union legislation that requires producers to have a 30% share of their catalogue in locally produced content within the last five years (GDPR 2016/679), giving a legal translation to the glocalization effect that is already inherent in the operation of portals spread across several national territories (Lotz 2020; Lotz and Lobato 2023).

In the Italian context examined in this study, Paramount+ has been observed to segment its glocal element into two distinct components. Firstly, there is the close relationship with Sky Italia, which was the concessionaire

of several Paramount contents prior to the launch of the portal, and secondly, there are the original productions realized for the Italian market. The examination of these two cases enables a more comprehensive analysis of the manner in which the Paramount catalogue is adapted within a specific market – namely, the Italian one – and the manner in which the local image of a globally operating brand is manifested.

In relation to the partnership with Sky Italia, Paramount-branded content, notably that originating from the premium cable network Showtime, in addition to various films from the Studios, constituted a premium content package for the satellite pay-tv service. This content was made available exclusively to subscribers in both linear and on-demand formats. However, with the advent of Paramount+, the exclusivity that characterized the relationship has been rendered null and void², compelling Sky Italia to adopt subscriber retention strategies that do not impede the presence—when not the complete migration – of titles on a more economical streaming portal.

The operation entailed a coordinated advertising communication that sought to establish a strong sense of affiliation between the Sky Italia offer and that of Paramount+, primarily through the *Halo* and *Yellowstone* titles and brands, followed by the offer of free access to the platform for subscribers to the Sky Cinema package; the latter initiative exploited the heritage appeal of a brand traditionally linked to the history of the cinema, albeit with all the catalogue limitations mentioned above.

It is also important to note that Sky Italia has retained exclusive rights to the flagship series of the *Yellowstone* franchise. This has resulted in fans of the series being compelled to purchase the pay-per-view offer in order to view the spin-off series distributed by the Paramount portal.

In terms of local productions, Paramount+ has followed a similar trajectory to that of Prime Video, obtaining the series *Vita da Carlo* (2021-) from Amazon. The service offers a generalist selection of content, with a gradual move towards film production. In a manner consistent with other prominent global production brands, Paramount+ also engages with local production companies such as Cattleya and Indigo Film, and collaborates on co-productions with its partner Sky Italia, thereby strengthening the bonds between the two entities. This results in a broadening of the properties that

² For the time being, Sky Italia has exclusive rights to HBO- and MAX-branded products.

dot the general image of the Italian audiovisual sector, as exemplified by the third season of *Vita da Carlo*, with its reference to the Sanremo Festival; the values conveyed by the portal's global image are thus combined with local audiovisual externalities in a tension between repetition and innovation, in keeping with the impact of the entire catalogue.

In conclusion, it should be noted that the brand has become a sponsor of the Serie A football club Inter since June 2023. This development coincides with the period in which streaming in Italy is competing to establish itself as the primary source of national sports programming viewership (Callea 2021). The association of a portal with one of the leading teams in international rankings and tournaments can be regarded as an interesting positioning strategy.

6. Conclusions

In order to draw conclusions from this preliminary study of Paramount+'s strategies for developing a streaming offer through its intellectual property portfolio, it is appropriate to summarize the observations made.

First of all, a twofold evolution of the streaming market has been identified; these paths are related to the direction of vertical integration, upstream, when a distributor becomes a content producer, and downstream, when a studio opens up to autonomous distribution. The latter case is referred to as the studio portal and includes Disney+ and Paramount+.

Next, we looked within Paramount+ as a portal to identify its interface structure, catalogue organization and the role of the recommendation system. It was then noted that the different areas into which the portal is divided are still strongly linked to the different distribution brands owned by the company.

This then allowed us to observe the first steps of catalogue development through attempts to expand Paramount's branded intellectual property. It has been seen how these attempts, probably as a result of poor planning and preparation of releases, have often been unsuccessful, leading to the removal of products from the catalogue, leaving room for new attempts to exploit the IPs in the future.

At the same time, we have seen how original, non-derivative portal content has been able to gain greater recognition, enriching a portfolio of narrative potential strongly linked to the logic of traditional film genres. Of all these, the strong presence of the western stands out, with a very clearly

connoted environment permeated by conservative values. It was also noted how Paramount employed a strategic approach to its presence in the Italian market. The company consolidated its partnership with Sky Italia and entered into a context of generalist productions, following a model similar to that of Prime Video.

This allows us to see in Paramount+ a further and peculiar evolutionary path of the streaming market, much more related to the life of individual distribution channels than to the overall identity of the brand or its intellectual property portfolio. All of which seems at odds with Paramount's historical extent, but definitely in line with the evolution of production labels such as Showtime, CBS and Nickelodeon, which currently find in Paramount+ the right place to deposit their discursive reach, protected from the volatility of the linear mode.

However, Paramount+ is still a young portal that, as subscriptions increase, may continue to evolve both in terms of production and positioning strategies and in terms of the efficiency of its technical features. Observing its evolution could open up interesting ways of interpreting the audiovisual market, particularly as regards the openness of the major studios to integrated on-demand distribution.

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FILMS

- American Gigolo* (1980)
- Fatal Attraction* (1987)
- Grease* (1980)
- Sexy Beast* (2000)
- Teenage Mutant Ninja Turtles: Mutant Mayhem* (2023)
- Teen Wolf: The Movie* (2023)
- The Man Who Fell to Earth* (1976)

TV SHOWS

American Gigolo (2022)
Evil (2019-2024)
Fatal Attraction (2023)
Fellow Travelers (2023)
Grease: Rise of the Pink Ladies (2023)
Halo (2022-2024)
House of Cards (2013-2018)
Lawmen (2023)
Lioness (2023-)
Pistols (2022)
Rise of the Teenage Mutant Ninja Turtles (2018-2020)
Sexy Beast (2024)
Star Trek Discovery (2017-2024)
Star Trek: Prodigy (2021-2022)
Tales of the Teenage Mutant Ninja Turtles (2024-)
The Curse (2023-)
The Fairly OddParents: Fairly Odder (2022)
The Mandalorian (2019-)
The Man Who Fell to Earth (2022)
The Offer (2022)
Twin Peaks (1990-1991)
Vita da Carlo (2021-)
Willow (2022)
Yellowjackets (2021-)
Yellowstone (2018-2024)
Zorro (2024)

A MOUNTAIN OF CONTENT. AN EARLY LOOK AT PARAMOUNT+ AND ITS STRATEGIES



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Unraveling the Long Tail Phenomenon

An Investigation into Netflix Series Consumption Patterns

Paola Dalla Torre, Paolo Fantozzi and Maurizio Naldi

◀ ABSTRACT

This study investigates content consumption patterns on Netflix through the lens of the long tail phenomenon, the Pareto principle, and concentration indices. Using Netflix's public Engagement Report data from January to June 2023, encompassing 18,214 TV series, we analyze viewer behavior to explore the distribution of viewing times and their implications for content strategy and platform economics. The findings reveal a highly skewed distribution where the top 20% of series account for 85.6% of total viewing time, confirming an extreme Pareto distribution. However, a very low Hirschman-Herfindahl Index ($HHI = 0.0007855$) suggests a fragmented consumption landscape. We further discuss how licensed content, original productions, and branding influence viewer engagement and the broader implications for Netflix's bundle-based business model.

KEYWORDS

Netflix; TV series; long tail; consumer demand; business models.

1. Introduction

The digital age has transformed how audiences consume audiovisual content, especially with the rise of streaming platforms such as Netflix. As traditional linear television declines, streaming services now occupy the forefront of entertainment, driven by the vast availability of content and personalized recommendation algorithms. Among many phenomena emerging in the digital content economy, the “long tail” – a term popularized by Chris Anderson (2006) – offers a compelling framework to analyze the shifting landscape of media consumption.

Netflix’s content distribution strategy poses an interesting challenge to traditional assumptions about audience behavior. Unlike transactional video-on-demand (TVOD) or pay-per-view models, Netflix operates on a subscription-based model offering the same content bundle to all users. This raises fundamental questions about content valuation, user preferences, and profitability. In this paper, we investigate the nature of content consumption on Netflix using empirical data, with a focus on understanding whether the long tail effect, Pareto principle, or concentration mechanisms govern viewer preferences. The long tail suggests that niche or less-popular content collectively attracts a significant audience when aggregated. In the realm of streaming services like Netflix, understanding how the long tail manifests in viewership can provide valuable insights for content creators, marketers, and platform strategists.

So far, the literature has been devoted to the exploitation of the long tail phenomenon to enrich and diversify the range of suggestions in recommender systems, as, e.g., in Yin et al. (2012).

Here, we take a different stance, proposing first a statistically rigorous model of the long-tail phenomenon in the Netflix catalogue (despite claims for its decline as by Napoli (2016)) and then examining the validity of the business model based on long-tail inventory.

Since the long-tail phenomenon is often associated with power-law distributions, we employ QQ-plots and Rank-Frequency plots to assess the presence of a power-law trend. We then fit the data coming from the Netflix catalogue to a power-law distribution and assess the goodness-of-fit using statistical tests like the Kolmogorov-Smirnov test.

We also examine the relationship between popularity expressed by the number of views and success expressed by the rating. For blockbuster hits and mainstream content, there is typically a positive correlation between high viewership numbers and positive ratings. Popular shows with widespread appeal often attract large audiences and receive favourable ratings, showcasing alignment between popularity and success. That's the case for high-quality content as well. Also, word-of-mouth promotion due to positive reviews and high ratings reinforces the correlation between popularity and success, creating a positive feedback loop. On the other hand, niche or cult-favourite content gains a devoted following without necessarily attracting massive viewership, giving rise to the long tail phenomenon. A disjunction between popularity and success may also be observed due to content that sparks controversy or polarizes opinions.

Finally, we examine the degree to which titles in the long tail contribute to the overall revenue stream (Broder 2010). Since the subscription scheme does not allow for differentiating among the revenues contributed by individual titles in the catalogue, we adopt a what-if approach. For that purpose, we consider a parallel pay-per-view scheme, where niche content may be priced differently from blockbusters.

Our research drifts from the fact that a few months ago, Netflix finally published some more precise data on the ratings of its programmes. Until this document, in fact, it was very complicated to carry out analyses on the consumption of Netflix's audiovisual products because the data were few and incomplete. The Excel file shared a few months ago is still partly incomplete, but it is certainly a step forward in order to study more accurately the consumption patterns of Netflix's audiovisual products. Netflix uses a package subscription system, now also complemented by advertising, which offers the same catalogue to all customers, without selling individual films. Our presentation aims to explore the value of this package, considering:

- The average value of the films in the catalogue.
- The value of popular films.
- The number of films actually seen by subscribers, based on the time available for viewing.

The contribution of each individual item to the value of the catalogue remains an open question.

At this point, here are our research questions: Does the long tail phenomenon also apply to streaming services? Does the Pareto principle apply? Do concentration phenomena occur?

2. Netflix and Television Studies

This new business model by Netflix has been observed by Smith and Telang (2016) among others. We can talk about the Netflix Effect, i.e., the effect that determines Netflix's new technological business model in the television market. That model is new from both the technological and economic points of view, and it also determines different consumption by viewers. Netflix also impacts binge watching and helps viewers choose within the Netflix catalogue through filters and algorithms. Netflix Nation was then mentioned because it is a multinational service that crosses national borders and operates simultaneously in a large number of countries and represents a particular configuration of global television. Netflix's business model is based on a video-on-demand (SVOD) streaming service. Advertising was also introduced a few months ago. Some key aspects of their business model concern:

- Content offering;
- Personalization and recommendations;
- Production of original content;
- International expansion;
- Partnerships and licensing agreements.

Netflix creates and acquires a wide range of content, including TV series, films, documentaries and TV programmes. Content selection is curated based on data analysis, user feedback and market considerations to meet subscriber preferences.

Netflix has developed a robust technology infrastructure for streaming content to users' devices. They use advanced algorithms for data compression and stream optimization, ensuring smooth, high-quality playback on various devices, such as smart TVs, computers, smartphones and tablets.

Netflix leverages data analytics and machine learning to offer personalised recommendations to users. They use viewing data, user preferences, and ratings to suggest relevant content and improve the viewing experience.

Netflix has invested heavily in the production of original content, creating exclusive TV series and films that are not available elsewhere. This strategy aims to differentiate Netflix's offering and create a competitive advantage in the streaming market.

Netflix has adopted an aggressive international expansion strategy, making its services available in several countries around the world. This has enabled them to reach a large global audience and exploit growth opportunities in emerging markets.

Netflix also works with other production companies and rights holders to acquire third-party content through licensing agreements. This further expands the library of content available to subscribers.

Scientifically speaking, Netflix's business model is based on economic principles such as marketing a product/service, customer loyalty through a subscription model, data analysis to personalise the user experience, and the creation of valuable content to gain a competitive position in the streaming market. Netflix also uses digital marketing strategies, machine learning and data analysis to improve operational efficiency, user satisfaction and business growth.

Let us briefly consider how previous studies have approached Netflix's reality. Two approaches have been taken: one related to television studies and another to platform studies. In academia today, television studies is undergoing an evolutionary and self-analysing phase. In recent years, a rich body of postconvergence research and theorising has emerged that explores the ways in which digital technologies of various kinds have from time to time transformed, extended and sustained existing television industries. From this perspective, Netflix represents one of the many transitions that collectively act since the beginning of television's history to transform it from a mass medium to a niche one through technological and institutional developments that fragment the formerly mass television audience into a range of personalised choices. Some scholars question whether Netflix's disruption is real or not and conclude by saying that apart from broadcasting via IP Netflix has nothing to do with digital media conventions: it is not user-generated, it is not social, it is not free, and in every way, except the route by which it arrives in people's homes, it is the same as television. It is old-fashioned passive narrative entertainment. The second analytical approach to Netflix, on the other hand, is to consider it a digital media service, a software-based information system that, among its potential applications, can produce a television-like experience. A digital media studies

approach adopts the platform perspective and considers Netflix a complex socio-technical software system. One is more interested in examining other digital media in parallel to assess similarities and differences than in taking an inside look at television. There is, therefore, a fundamental difference between a television studies approach and a digital media studies approach: the former historicizes and sees the object of the relationship to a particular media technology, television, and its evolution. The latter, on the contrary, implicitly frames its object as a series of information technologies linked by a common user interface and interprets each digital media service as a communication system in its own right with certain designs, affordances, and limitations. This approach places Netflix alongside a much wider range of digital media, including not only video platforms but also e-commerce and social media networks, as well as other software. Obviously, Netflix is not a platform in the same way as a social network such as Facebook or Twitter, because Netflix is not open or collaborative in this sense; it is fundamentally different from video sites that contain both user-uploaded and professionally managed content, until recently. Netflix is closed, library-like, a portal rather than a platform, a walled garden rather than an open marketplace. However, like the other platforms, it has an operational logic centered on its status as a digital service that is categorically dissimilar to the established companies with which it now competes. It operates in global markets from a US base, partly beyond the jurisdictional reach of national governments, with all the attendant legal consequences. Another common feature of digital media platforms is the fact that they rely on recommendation algorithms. Together with Amazon and Pandora, Netflix has played a crucial role in the development and general dissemination of recommendations, having made huge investments in this area since its days as a DVD rental service. As is well known, the company held an open design competition, the Netflix Prize of 2006-2009, for one million dollars to improve its predictive powers. The fruits of these efforts have resulted in its accurate prediction engine, which, of course, places Netflix at the centre of debates on the datafication of culture, bubbles and the politics of big data. Netflix fits into both of these perspectives, as Amanda Lotz points out in various books, e.g. in Lotz (2014). She addresses the changes that have occurred in the underlying economic models of television in the transition from network to post-network and how these models determine the programming, production and distribution of content. Lotz starts by explaining that the fundamental logic of television is based on linearity. In contrast, the on-demand

character of Internet television presents a different mode of distribution that has more in common with the record shop or the bookshop and library. In this way, Internet television allows behaviours that were peripheral in the age of analogue and physical media, such as time shifting, self-curation and access to cards, to become central and industrialised practices. For Lotz, Netflix is a crucial part of this story: first, because the company undermined the notion that TV content had to be watched on the TV set, and second, because it introduced new types of recommendation filtering systems that later became widespread. Netflix provided subscribers with a new paradigm for thinking about and organising viewing behaviour, which resulted in a radical challenge to the old linear proposition. The online distribution of content has thus transformed the basic structure of television business models, freeing content from the linear schedule and introducing new pricing models, different audience expectations of content, and different values of TV services. This new distribution mechanism introduces a crucial difference by offering personally selected content from an industrially curated library. Netflix's business model, as we have mentioned, is bundle-based. Netflix is not in the business of selling single films to different consumers, but rather in the business of selling many different films to single consumers in the logic of the bundle. The important point is, therefore, to understand the average value that subscribers assign to titles as a whole. This different approach that Netflix provided in the area of audiovisual content production and distribution prompted many film producers to question whether they could proceed in the same way, and as a result, we have seen mergers such as those between Disney and Fox between Warner and AT-NT where both deals involved the creation and sale of streaming packages.

In addition to these two approaches, in the field of media studies, the success of streaming platforms (Netflix foremost among them) spurred several contributions on the performativity of algorithms and the logic of the attention economy (Van Dijck et al. 2018, Napoli 2019). These alternative approaches emphasize how Netflix does not merely offer content but organizes it, makes it visible or invisible, thereby shaping cultural consumption. In fact, the term *algorithmic visibility* coined by Bucher (2018) is used precisely to highlight this dynamic, which effectively makes Netflix a platform that can amplify or silence cultural products, going beyond a simple reflection of user preferences.

Based on these arguments, our research questions concern the consumption patterns of Netflix products.

3. Literature Review

Theoretical and empirical studies on Netflix have evolved over the years. Lotz (2014) offered foundational insights into the structural and cultural shift brought by streaming television in *The Television Will Be Revolutionized*. McDonald and Smith-Rowsey (2016) in *The Netflix Effect* explored how Netflix reshaped content creation and consumption. Lobato (2019) furthered this by examining Netflix as a global phenomenon, while Smith and Telang (2016) analyzed the economics of digital media, introducing the bundle effect.

Elberse (2013) contested the long tail with her emphasis on hit-making, arguing for concentrated investments in high-performing titles. Anderson (2006), however, maintained that niche content in aggregate can rival or surpass mainstream hits, especially in environments with minimal distribution costs. This divergence has significant implications for Netflix, which balances investments in blockbuster content and niche offerings.

Tang and Bresnahan (2014) studied Netflix's collaborative filtering and found it favors mainstream over indie titles, particularly for casual users. Noam (2021) provided an overview of content regulation and streaming video impacts. These works collectively inform our inquiry into the distributional dynamics of Netflix viewership.

4. The Long-Tail Phenomenon and Concentration

We analyse the consumption patterns of Netflix's catalogue by resorting to three major concepts: the long-tail phenomenon popularized by Chris Anderson, the Pareto principle, and concentration indices.

4.1 *The Long-Tail Phenomenon*

The first element is the concept of the long tail coined by Chris Anderson in 2004. In his book, Anderson pointed out how up to that point our media was obsessed with what pulls and what doesn't pull: to make a long story short, hits are big blockbusters, big best sellers that hold the power of sales. In the new society of abundance, however, connectivity gives unlimited and unfiltered access to content of all kinds, from the mainstream to the extreme periphery of the underground. The cultural landscape is a continuum from

top to bottom where professional amateurs compete on the same level to grab attention. There is no distinction between mainstream hits and underground niches. We choose what we like from an endless menu where Hollywood movies and videogame-like amateur videos coexist. Thanks to digitization, hits begin to hold a little less power. Consumers scatter as the market fragments into endless niches. The only big growth area is the web, but it is a vast sea with millions of destinations, each of which escapes the conventional logic of media and marketing. The economics of the broadcasting era demanded hit programmes, large containers that captured a very large audience. The economics of the broadband era are diametrically opposed: offering the same product to millions of people at the same time is extremely expensive and useless. When you have a distribution network optimized for point-to-point communications, there is still demand for large cultural containers, but they are no longer the only market. Today, hits compete with an infinite number of niche markets of all sizes, and consumers increasingly favour the one with the most choices. The era of one size fits all is at an end, replaced by something new. A mass market of multitudes is turning into a mass of niches, a patchwork of millions of mini-markets and micro stars. The new niche market is not replacing the traditional hit market; it is just sharing the stage with the latter for the first time in this new era of interconnected consumers and digital goods of all kinds. These niches are a large, unmapped expanse of products that used to be simply uneconomical to offer. Many of these products have always been on the market, but they were not visible or easy to find. Now, they are available thanks to Netflix, YouTube, Amazon, or any other place Google has found. In the new entertainment economy of the digital age, supply is infinite, and our theories about the respective roles of hits and niches are completely wrong. Scarcity demands hits, but if space is unlimited, hits are no longer the right solution. After all, there are more non-hits than hits, and both are available. Hits are great, but it is the niches that are emerging as the new market in the new entertainment economy of the digital age. Some of the hits were downloaded a large number of times, matching the head of the curve, which dropped dramatically with the less popular tracks. But the really interesting thing is that it never reaches zero; as far as we can see, there was always demand. In statistics, curves of this type are called long-tailed distributions because the tail of the curve is much longer than the head. The economy of abundance leads to entirely new consumer behaviour. This idea by Anderson was opposed to the idea of *Blockbusters* by Elberse (2013): their views are presented as the two opposite poles of the debate on the ways in

which technology is changing the entertainment business. As we have seen, Anderson argues that thanks to the increased capacity of online sales channels, the so-called long tail, consumption has moved away from markets dominated by a few hugely successful products to markets with a large number of small niches and that entertainment companies should adapt their business models to the new reality. Drawing on case studies, marketing statistics, and interviews with senior entertainment executives, Elberse shows that the entertainment industry has always derived a large part of its revenues from a small number of immensely successful titles. She argues that new technologies are likely to increase the importance of blockbusters instead of diminishing it. Until now, the debate has been polarized between these two points of view. In our analysis of Netflix, we will try to show whether these two points of view are valid or in opposition, whether one takes over from the other or vice versa.

4.2 The Pareto Principle

The second element we consider for our analysis is the Pareto principle, also called the ‘80/20 rule’ or the ‘cumulative advantage principle’. It is an economic concept that states that in many economic and social situations, some 80% of the effects are caused by 20% of the causes. For example, 20% of the population usually owns 80% of a nation’s wealth, or 20% of a company’s customers generate 80% of its turnover. This principle is often applied to describe the distribution of income and wealth, but can also be observed in other contexts. The Pareto principle has become a key concept in economic theory and business management, and, if verified, is a mild indicator of concentration.

4.3 Concentration Indices

The third element is the use of concentration indices in markets. Markets tend to concentrate around a few dominant participants. In simple terms, a few companies or individuals control a significant part of the market, while most other participants have a much smaller share. There are several reasons why concentration in markets occurs. One of these is the ‘network effect’, which occurs when the value of a product or service increases as the number of people using it increases. This can create advantages for companies that are already market leaders and make it difficult for new entrants to compete. Other causes may include economies of scale, whereby larger companies can produce goods or services at a lower cost than smaller com-

panies, or access to financial, technological or human resources that smaller companies may not have. Concentration in markets can have both positive and negative implications. On the one hand, dominant firms can benefit from economies of scale and greater resources to provide better and more efficient products or services. On the other hand, concentration may lead to excessive market power, limiting competition and reducing the choices available to consumers. This may lead to higher prices, lower incentives for innovation and a potential reduction in the quality of products or services. Let us borrow a concentration index from industrial economics: the Hirschman-Herfindahl Index (HHI) is defined as the sum of the squared shares. Lower values indicate a negligible concentration. Values above 0.15 indicate a high concentration.

5. The Dataset

Netflix has taken significant steps toward transparency by releasing detailed reports on its viewing data, providing insights into subscriber consumption patterns. These biannual “What We Watched: A Netflix Engagement Report” documents offer a comprehensive overview of global viewing habits¹.

Each report encompasses data from over 18,000 titles, accounting for approximately 99% of all viewing on Netflix during the specified period. For instance, the first report covered nearly 100 billion hours viewed. The reports provide the total hours viewed for each title that has been watched for more than 50,000 hours within the reporting period.

Some interesting information about viewing habits has already been provided either by Netflix itself or by market analysts. Non-English titles constitute nearly 30% of viewing, indicating a substantial global appetite for diverse content. If we consider the proportion of original vs. licensed content, approximately 55% of viewing is from Netflix Originals, while 45% comes from licensed shows, highlighting the platform’s balanced content strategy. As to the viewer engagement, subscribers spend an average of two hours daily on the platform, reflecting strong user engagement. A significant portion of users engage in binge-watching, with 61% reporting regular binge sessions. The reports highlight top-performing shows and movies. For ex-

¹ They are available at <https://about.netflix.com/en/news/what-we-watched-a-netflix-engagement-report>.

ample, *The Night Agent* (2023-) was the most-watched series in the first half of 2023, with over 816 million hours viewed. Titles like *Peppa Pig* (2004-) and *CoComelon Lane* (2023-) have also garnered significant viewership, emphasizing the platform's appeal to younger audiences.

The transparency provided by these reports offers valuable insights for content creators and industry stakeholders, enabling them to understand viewing trends and tailor their productions to meet audience preferences. By sharing this data, Netflix not only fosters trust with its subscribers but also contributes to a more informed and dynamic entertainment industry. Our analysis in the following paragraph fully exploits those data to provide a detailed statistical analysis according to the three lines mentioned in Section 1.

Furthermore, from the FAQ sheet for Netflix investors, we learn that for Netflix and its investors viewing hours are relevant for new content contracts or renewals². The viewing hours for each piece of content during the licence period and its cost are compared with other desirable characteristics and revenues of the content deals. Renewals are offered for content that performs well (based on hours generated versus cost). Some titles may be excluded or have adaptive prices, depending on certain variables, such as cinema box office trends. Thus, the number of viewing hours is the main parameter on which the platform bases its content creation, management and acquisition policy. Netflix has paid a lot for licensed content, but at the same time, it has increased (and will increase) the money spent on creating its own content in recent years. Increasing brand value, on the other hand, is the strategy by which Netflix has established itself and distinguished itself from others. Among the highest costs in their quarterly reports, in fact, we find marketing related to the brand and thus to Netflix exclusive products.

6. Results

We analyzed Netflix's publicly available "Engagement Report" for the first half of 2023, which provides the number of viewing hours per TV show globally. The dataset includes 18,214 titles, each with its total viewership measured in hours. Our primary methods include:

- Descriptive statistical analysis of viewership distribution;
- Application of the Pareto principle (80/20 rule);

² <https://ir.netflix.net/ir-overview/top-investor-questions/default.aspx>.

- Calculation of the Hirschman-Herfindahl Index (HHI) for concentration;
- Visualization using Pareto charts and log-log plots;
- Identification of power-law behavior in rank-size distributions

The aim was to assess the extent of concentration and tail behavior in content consumption and to determine if long-tail or hit-centric patterns dominate.

Before coming to the data collected, here are a few important pointers. The number of viewing hours does not represent revenue. In the bundled subscription model, revenues are not directly related to viewing time. However, we can assume that subscribers' interest in Netflix's streaming service is directly related to the number of hours they spend using it. Therefore, we can roughly use the number of viewing hours as a proxy for revenue. Furthermore, the basic subscription includes advertising, which is directly related to viewing time.

6.1 *The Pareto Principle*

We consider the Pareto chart shown in Fig. 1. Viewership data revealed an extremely skewed distribution. The top 20% of titles accounted for 85.6% of total hours viewed. This goes beyond the classical Pareto expectation and

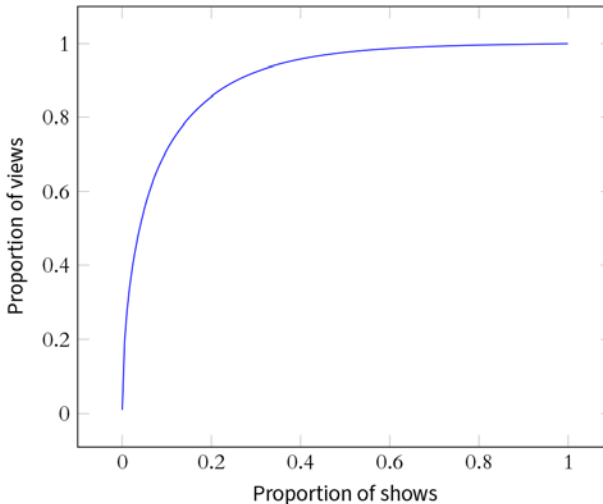


FIG. 1
Pareto chart of view

indicates a high concentration of attention on a relatively small subset of the catalog. According to the proxy hypothesis, a very high percentage of revenue comes from 20% of the catalogue. Notably, this top 20% includes 3,640 titles, suggesting that while the bulk of attention is concentrated, the absolute number of well-performing titles is substantial.

Conversely, the bottom 20.93% (approximately 3,800 titles) garnered less than 100,000 hours of total viewership, equating to only 0.41% of the total. This segment represents titles with minimal traction among viewers, supporting the notion of a thin right tail in the distribution.

6.2 Concentration Index (HHI)

Despite the skewness, the HHI was calculated to be 0.0007855, i.e., very low, far below the threshold of 0.15 used to denote high concentration. This indicates that, statistically, content consumption is very dispersed. Many titles contribute small shares to the total viewership, preventing dominance by a few entries. However, the right tail does not contribute as significantly as the left. A percentage as high as 20.93% of television programmes (slightly more than the 20% considered for the Pareto principle) produce less than 100,000 hours of viewing time. This bottom 20% represents 0.41% of the hours viewed. Hence, although some series are extremely popular, consumption is spread over a wide range of series.

6.3 Power-Law Behavior

The rank-size plot of the dataset on a log-log scale reported in Fig. 2 shows a linear descent in the tail, characteristic of power-law distributions. This supports the long tail hypothesis: while hits dominate in aggregate, a significant portion of viewership is spread thinly across many titles. With the exception of the top shows, the distribution of shows with the lowest viewing times declines fairly steadily but rapidly (linearly on a log scale). The presence of a long tail of less popular series confirms the long tail phenomenon, with a rapid decline in popularity as one moves away from the most viewed series. Again, the adherence to a power law suggests the existence of a few very popular series and many series with much lower consumption. Whether the data follow a power-law distribution or not should be understood within the tension between attention polarization and long-tail dispersion. The long tail does exist, but it is heavily mediated by algorithmic editorial choices that certainly pro-

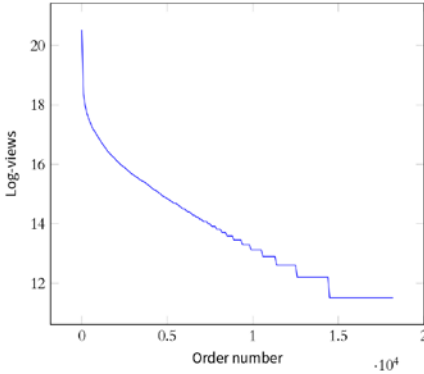


FIG. 2
Logarithmic number of hours viewed

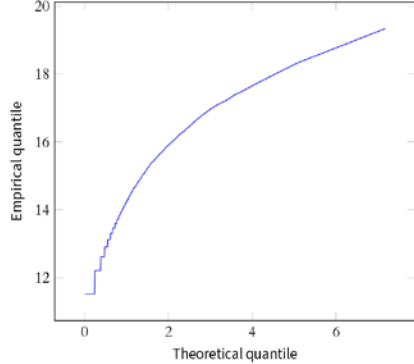


FIG. 3
QQ-plot under Pareto distribution

vide unequal visibility to content. Therefore, this early quantitative analysis should be complemented with a reflection on the practices of recommendation, categorization, and promotion that Netflix implements in its strategies.

However, the Q-Q plot in Fig. 3 is not linear and does not support the hypothesis of a Pareto distribution. We do not investigate the presence of alternative forms of power-law distributions here.

7. Discussion

In this section, we include some reflections about our numerical findings. In particular, we consider:

7.1 The Bundle Value Problem

In a subscription model like Netflix's, revenues are decoupled from individual title performance. This raises a key strategic question: What is the value of a title within a bundle?

Does a highly viewed show justify its licensing or production cost more than a niche one? The complexity intensifies when considering that bundled value lies in perceived variety and personalization.

While high performers, e.g. *Stranger Things* (2016-), may draw new subscribers, niche content helps retain them by fulfilling specific tastes, contributing to user satisfaction over time. Thus, even poorly performing shows might play a role in reducing churn, indirectly affecting revenue.

7.2 Originals vs. Licensed Content

Another critical dimension is the performance of Netflix Originals versus licensed content. Originals offer exclusivity and branding leverage. They help differentiate the platform and may reduce long-term costs associated with licensing. However, licensing proven content may offer a lower risk and immediate engagement. Understanding how each category performs across the distribution could guide future content acquisition strategies. While this paper does not segment the dataset by origin due to data limitations, it recognizes this as a necessary next step.

7.3 Brand and Catalog Updates

Netflix continuously updates its catalog based on performance metrics. Shows that generate high viewing hours relative to their cost are candidates for renewal. This dynamic creates a feedback loop where success breeds visibility and investment, while underperformers are pruned.

Moreover, branding influences consumption: a strong brand (e.g., Netflix Originals or popular IP) enhances discoverability and perceived quality, which can artificially inflate viewership irrespective of inherent value.

7.4 Implications of the Long Tail

Our analysis shows that Netflix does exhibit a long tail, but with a thick head and a very thin tail in revenue contribution. The long tail exists, but hit titles dwarf its economic significance. The value of the long tail within the Netflix platform is heavily skewed in favor of top-performing content, which is shaped by Netflix's algorithmic logic. This echoes Elberse's criticism of the long tail's viability in the face of consumer attention scarcity.

Yet, the tail is not insignificant. It plays a vital role in user experience and perceived content abundance. The true question becomes not whether the tail generates revenue but whether it contributes to customer satisfaction and retention in ways that aren't immediately monetizable. The long tail retains strategic and symbolic significance: niche content, within a system of personalized consumption, plays a crucial role in reinforcing the perception of content diversity and enhancing user satisfaction. In this sense, we can speak of a 'soft long tail', one that is tied not so much to direct economic return as to the construction of user identity. This opens up important questions about how to assess the effectiveness of the bundle model and how to measure the cultural value of marginal offerings.

8. Conclusions

This paper empirically examines the distribution of Netflix TV series viewership and finds compelling evidence for both the Pareto principle and the long tail phenomenon. Viewing times are mainly due to 20% of the performances, validating the Pareto principle. Less popular shows (the bottom 20%) represent a very small percentage (0.4%) of the aggregate viewing time. The catalogue is extremely unbalanced in terms of subscriber interest. The data reveals a platform where a minority of titles generate the majority of engagement, yet where content consumption is still too dispersed to be considered highly concentrated.

The implications for Netflix's business model are complex. While hit-driven content dominates viewing hours, niche titles likely serve a retention function within the bundle strategy. As the streaming landscape evolves, the profitability of the long tail, and Netflix's ability to monetize it, will hinge on further innovations in recommendation systems, catalog curation, and adaptive bundling strategies.

This analysis ultimately outlines a modified version of the classic long tail model: the long tail is, in fact, shaped by algorithmic strategies, visibility policies, and the criteria Netflix uses to renew licensed content. Thus, while the long tail phenomenon is present, its economic significance is diminished by the aforementioned strategies implemented by Netflix. This is because the platform is not a neutral space, but rather an active socio-technical apparatus in the construction of its content offering. Therefore, future studies on this topic might benefit from shifting focus away from the binary of hits versus niche content, and instead toward the question of who decides what is seen, how, and why. Crucially, future research should also aim to integrate and triangulate multiple methodologies to examine the cultural and strategic structure of Netflix's catalog.

As Anderson writes, television programmes were more popular in the 1970s than they are today, but not because they were better made, but because there were fewer alternatives vying for our attention. What we thought was the dominant trend in common culture actually had less to do with the triumph of Hollywood talent than with the polarizing effect of television distribution. The greatness of broadcasting is that it can bring a programme to millions of people with incomparable effectiveness. However, it cannot do the opposite, i.e. bring a million programmes to every person, which is exactly what the internet does so well.

Our study opens up new, interesting research questions:

1. Where is the dividing line between profitable and unprofitable performances?
2. How does each title contribute to the value of a bundle?
3. Is the bundle-based business model profitable or should it be adapted according to negotiations and customization of bundles?
4. How does the business model push towards domestic production?

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TV SHOWS

CoComelon Lane (2023-)

Peppa Pig (2004-)

Stranger Things (2016-)

The Night Agent (2023-)

UNRAVELING THE LONG TAIL PHENOMENON.
AN INVESTIGATION INTO NETFLIX SERIES CONSUMPTION PATTERNS



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Piracy déjà vu

The reemergence of the conflict between users and platforms

Gabriele Prosperi

◀ ABSTRACT

In 1984, the United States Supreme Court issued a landmark ruling in *Sony Corp. of America v. Universal City Studios, Inc.*, known as the Betamax case, which marked a turning point in access rights and copyright (Greenberg 2010). Major film studios had sued Sony, claiming that the videocassette recorder infringed on copyright by allowing users to record and store television programs without authorization, thereby undermining the commercial value of the works. However, the Court ruled that the use of the new technology fell under *fair use*, thereby legitimizing home recording.

Today, in a kind of reversed cultural *déjà vu*, the evolution of OTT platform policies is expanding the notion of “piracy” to encompass practices that were until recently considered legitimate, such as account sharing among family and friends. Recent restrictions on shared accounts and the introduction of lower-cost subscription plans supported by targeted advertising aim to protect revenues and exert tighter control over user behavior (Lobato and Lotz 2021). This shift – markedly at odds with the initially more permissive approach adopted by these services – fits within a broader return to past economic models (Barra 2024), redefining content access in increasingly exclusive and conditional terms: the goal is to maximize revenue by encouraging adoption of premium options and introducing scarcity to increase perceived content value.

As early as the 2000s, informal distribution systems (P2P networks, cyberlockers) had a similar impact, offering content for free (often illegally) and monetizing through on-site advertising and premium plans. Today’s practices – such as Disney+ preventing the use of ad-blockers and Netflix introducing “extra users” – reveal platforms’ growing interest in controlling

and monetizing internal ad spaces, shifting the boundaries between acceptable consumption and perceived violations.

What will be the effects of these policies on user behavior? Will platforms' current decisions lead to the reclassification of certain social practices as illegitimate, turning once-accepted behaviors into "pirate" activities? If we are witnessing a new "age of piracy," it no longer concerns only free access to copyrighted content, but raises broader questions about everyday practices of online consumption. As streaming shifts from a new medium to a new traditional medium, perceptions of illegality and "counterfeiting" are now extending to new technological frontiers, such as those defined by artificial intelligence (Cave et al. 2018), shifting the competition from content distribution to content production. This gives rise to a confrontation between new "formal" and "informal" actors, generating a tension reminiscent of past concerns about piracy – now at the level of content creation – and redefining public perception of the cultural product, questioning what is considered legitimate or illegitimate in creative reuse and technological innovation.

KEYWORDS

Posthuman Piracy; informal distribution; generative AI; streaming platforms; creativity.

1. The Déjà Vu of Conflict

While in Apple's well-known commercial, directed by Ridley Scott, it was proclaimed that 1984 would not be like the one depicted in George Orwell's novel of the same name, the revolution of the first personal computer coincided with another epochal event in the relationship between technology and culture: the United States Supreme Court was called to rule on the landmark case *Sony Corp. of America v. Universal City Studios*. A historic decision that ruled VCR home recording was *fair use*. With this ruling, the law implicitly recognized the legitimacy of a new relationship between the public and cultural content: the user was not a pirate, contrary to what had been emphatically claimed by then–Universal Pictures president Sidney Sheinberg upon reading the Betamax ad agency's press release published in *The New York Times*: "Now you don't have to miss Kojak because you're watching Columbo (or vice versa)!" (Greenberg 2010: 2). The new user was, if anything, an active interpreter of the possibilities offered by technology.

Forty years later, the memory of that moment resurfaces, as the conflict between users and the cultural industry once again takes center stage – altered in form but analogous in substance. And similarly, we perceive the “integrated” (Eco 1964) turmoil of a creative revolution driven by the advent and implementation of artificial intelligence in productive capacities, which in turn echoes the flourishing cultural production catalyzed by the arrival of Betamax. Its impact – and that of VHS – on audiovisual aesthetics was profound and transformative, redefining the ways images were produced, distributed, and received by the public, encouraging more fluid and deconstructed forms of production, and fueling artistic experimentation free from the rigid standards of television and cinema. The cultural legacy of Betamax is undeniable: every streaming platform, every device that allows audiovisual recording, is a direct descendant of a promise of liberation that today seems like an unfinished revolution – an anticipation of a future that would only arrive decades later with the rise of streaming platforms.

In fact, the arrival of over-the-top platforms initially promised a reconfiguration of content access comparable to the temporal liberation of the TV viewer brought by home video: a more open, flexible, customizable ecosystem. Yet, in just a few years, many of those same platforms have implemented increasingly rigid control policies, unilaterally redefining the boundaries between legitimate use and abuse. Account sharing, ad-blockers, VPN access – practices common until recently – are now assimilated into “pirate” behavior, turning the ordinary user into a suspect. Piracy, in short, has never truly disappeared – it has merely shifted levels.

The most radical transformation, however, does not concern access to content alone: it fundamentally reshapes content production itself. The widespread adoption of generative AI tools – capable of creating texts, images, sounds, and videos from existing databases – has opened a new front in the cultural conflict. And so, today, suspicion is no longer directed only at those who copy, but also at those who create: the origin of content, its “originality,” its attribution – all become ambiguous territories, grey zones where ethics, law, and public perception intersect. Thus, the figure of the pirate shifts from one who violates copyright to gain access, to one who generates content outside the established boundaries of recognized authorship.

This article explores the redefinition of the concept of piracy within the contemporary media landscape, showing how it has become a tool for measuring the frictions between technological innovation and cultural governance. From Betamax to artificial intelligence – through the platform crisis and the return of scarcity-based models – this essay investigates how the boundary is being reconfigured between what is perceived or considered (and legislated) as legitimate and what is not across the entire process: from the consumption of content back to its very generation.

The return of conflict between users and industrial systems is not so much a return of the past; it more closely resembles a disturbing *déjà vu*: we recognize its forms, but the context has changed. Today, the real issue is no longer, as previously assumed, access to a cultural product, but the very definition of what can be considered a cultural product, who can produce it, and under what conditions. And at the heart of this new conflict lies an ancient question: who has the right to create?

In *The Matrix* (1999), a *déjà vu* signals that something has changed in the system: when Neo (Keanu Reeves) sees the same black cat twice, it’s because the Matrix has altered something in the structure of the simulation. It is not, therefore, a nostalgic phenomenon or a simple cyclical recurrence (as

we might say in historical terms), but a symptom – a glitch in the cultural industry’s systemic matrix – marking a deep transformation. The conflict between users and platforms doesn’t return in the same form: it reappears in new ways, with more sophisticated mechanisms of control, extraction, and surveillance. What repeats, then, is the underlying tension between freedom and governance, between use and ownership.

2. Piracy Yesterday: Access, Control, and Market Disruptions

Before becoming the ghost that now also haunts cultural production, piracy historically emerged as a conflict tied to access: who gets to see, hear, or consume a piece of content – and under what conditions. Since the 1980s, with the advent of home video, and later with the rise of peer-to-peer networks, what Lobato (2012) described as “informal distribution” represented a structural response to the rigidities of official content supply.

Piracy did not necessarily arise as a transgressive practice (Prosperi 2024), but rather as an emergent mode of distribution and consumption in contexts where the industry failed to provide adequate solutions. Informal networks – from VHS duplication to torrents, and earlier still through practices such as bicycling (extending projection beyond the licensed period) and jackrabbiting (illegally subletting film reels to other exhibitors) – acted as cultural counter-infrastructures, filling the market gaps: lack of access, high costs, out-of-print titles, or the absence of linguistic localization.

Among the most emblematic examples of these practices in Italy was TNTVillage, a community founded in 2004 and shut down in 2019 (Fontana 2019), which promoted the idea of “ethical piracy” centered on the responsible sharing of works no longer available on the market, with the explicit aim of preserving memory and access. Similarly, the ItalianSubs forum played a crucial role in the informal localization of content, offering amateur yet carefully crafted subtitles for audiovisual products not yet officially translated. In both cases, piracy overlapped with practices of archiving, translation, curation, and knowledge circulation.

These platforms operated as counter-archives – parallel architectures of cultural distribution, driven by participatory and non-commercial logics (Jenkins 2006, Jenkins et al. 2013). Or, to echo Osthoff (2009), as *anar-chives*: contemporary archives no longer conceived as repositories of content

but as artistic mediators, in contrast to the traditional archive understood as an active device that generates new connections and meanings. These experiences resonate with the deconstructive aesthetics of cinematic history seen in the works of Mark Cousins (*The Story of Film: An Odyssey*, 2011), Slavoj Žižek (*The Pervert's Guide to Cinema*, 2006, directed by Sophie Fiennes), and Jean-Luc Godard with his monumental *Histoire(s) du cinéma* (1988–1998) – all “editing labs” (Bertozzi 2012) where traditional copyright law proves manifestly inadequate.

This same principle animates spaces like UbuWeb (Guglielminetti 2019), the online archive created by Kenneth Goldsmith in 1996, dedicated to the preservation of experimental, avant-garde, and out-of-print materials. Often born in the absence of a viable legal offering, these “alternative” environments have been – and in many cases still are – true laboratories of cultural innovation, where new relational models between content, viewer, and context are tested. From this perspective, Lobato urged a shift away from the dichotomy of legal vs. illegal, proposing instead to understand informal practices as organic components of the media ecosystem. Similarly, Lessig (2008), with his concept of “read/write culture”, emphasized how the acts of creation and consumption are increasingly intertwined, rendering traditional legal categories insufficient for determining what is or isn't legitimate. Piracy is no exception: it is the manifestation of a dynamic and conflictual relationship between technological innovation and regulatory governance. As Johns (2009) has shown, copyright is an invention dating back four centuries and thus cannot be “reduced to the consequences of the ‘digital revolution’” (Barra and Scaglioni 2013: 115); for this reason, current tensions must be understood as part of a much longer genealogy, one that helps us grasp today's transition from consumption to production.

The figure of the pirate has never been reducible solely to that of an unlawful user, but often represents a cultural producer: sometimes a subtitler, other times a curator, an archivist, a cinephile collector – in the latter case, moreover, allowing us to “identify some *trait d'union* between the two paradigms” of cinephilia and piracy (Prosperi 2024: 24). Sometimes, they adopt forms of pirate cinephilia (*repackeurs*), “composed of regular buyers of ‘legal’ DVD [...] who wish to benefit from a loosening of the law in order to discover, watch, and share films that have never – or no longer – been commercially released, so they won't be forgotten” (Renouard 2014: 236). Amateur remastering, scanlation, fansubbing, and the restoration of old VHS tapes are all creative interventions that straddle the line between

use and production. These practices generate a tension that touches both on copyright law and on the redefinition of the very concept of work of art.

Unsurprisingly, by identifying informal practices not as illegal, and piracy not as an enemy, streaming platforms eventually came to see them – especially in their early boom years – as valuable indicators of structural flaws in the system. Consider, for instance, the birth of Sky Italia and the merger of Telepiù and Stream, which took place in a context where piracy was not only tolerated but, according to some hypotheses (Capasso 2012), even strategically leveraged to build loyalty among an audience already accustomed to informal content access. In other words, the industry observed and learned from these phenomena what would become the foundations of its own production and distribution dynamics. One might say that those who embraced practices initially branded as informal and criminal gradually shifted from the status of *pirate* to *privateer* – also a maritime term, but this referring to those who conduct raids with authorization from a sovereign authority against enemy fleets. Piracy, in other words, was partially institutionalized: first, by centralizing content and reducing fragmentation across platforms; then, by adopting fairer pricing models and making legal services accessible to a global audience – thus eliminating geographic barriers. In short, the pirate was turned into a *competitor*, and related consumer practices were effectively decriminalized.

In this light, it becomes clear that piracy has always questioned the cultural value and accessibility of a cultural product, more than its legal ownership; indeed, “the history of the content industry is a history of piracy. Every important sector of the ‘big media’ today [...] was born of a kind of piracy so defined” (Lessig 2004: 53). When the market fails to ensure equitable, continuous, and sustainable distribution, informal networks take its place – or rather, “act as substitutes” that “compensate for the failures of formal institutional outcomes” (Ledeneva and Efendic 2021: 831) – and aim to improve upon it: making the unavailable available, the marginal accessible, and the foreign translatable. In doing so, they often anticipate models that the industry itself eventually adopts. It happened with digital downloading, then with streaming, with binge-watching (see Jenner 2021), and now – potentially – with the generative logics of AI.

Understanding the access conflict as a conflict over the very structure of cultural experience allows us to view today’s struggles over content production in continuity with the past. The pirate metaphor (Larsson 2011) does not emerge from nothing: it is the logical extension of a historical relation-

ship in which the user, once a passive recipient, becomes a transformative agent. The question is no longer *who gets to see what*, but rather, *who gets to create, how, and with which data*.

3. The New Face of Platforms

The rise of OTT platforms was initially welcomed as a virtuous solution to the longstanding conflict between cultural consumption and copyright law. Services like Netflix and Spotify promised easy, legal, and affordable access to content that had previously circulated only through informal or physical channels. For several years, the combination of low-cost monthly subscriptions, rich catalogs, on-demand access, and user-friendly interfaces seemed to have achieved a decades-old goal: making piracy obsolete.

But that promise proved fragile. In just a few years, the very platforms that revolutionized the concept of access began reintroducing logics of scarcity, control, and selection – ultimately betraying their original mission. As Lobato (2019) notes, the user experience on streaming platforms is far from neutral: it is marked by invisible barriers, territorial exclusions, fragmented catalogs, and language limitations. The geography of digital distribution is shaped by “market borders” that manifest through geoblocking, the absence of local subtitles, and price or content variations from country to country.

Today, the user experience is increasingly constrained by practices that, while technically legal, are perceived as punitive: rising subscription costs, intrusive ads even for paying users, or the sudden removal of content from catalogs without notice. The same platforms created to simplify access have gradually adopted strategies similar to those of traditional pay-TV – except now, power is no longer exercised through scheduling, but through flexible licensing agreements and, most importantly, algorithms. As Hastings famously claimed, algorithms can “show you exactly the right film or TV show for your mood when you turn on Netflix” (Meierer 2017), raising concerns about how personalization contributes to the creation of filter bubbles (Lobato 2019: 66).

Netflix is, indeed, a paradigmatic case. After years of complicit silence regarding account sharing, the platform abruptly reversed course in 2023, introducing a domestic verification system to prevent multiple users in different *households* from using the same subscription. Italian users received messages specifying that access was “reserved for you and those who live

with you” (Patella 2023). To continue sharing an account with people outside this *domestic* unit, an additional monthly fee was introduced. Crucially, Netflix redefined the household not in relational or legal terms, but as “the set of devices connected to the internet at the primary location where you watch Netflix” (Vailati 2023). In this way, the notion of home is no longer social or emotional – it becomes algorithmic and infrastructural, determined by IP address and Wi-Fi router. The relationship with the domestic space is digitized, verified, and potentially penalized: what was once considered normal (sharing with distant family, partners, or friends) is now a contractual violation subject to payment or exclusion.

The Netflix model is not unique. Spotify began verifying the geolocation of “Family” plan members, penalizing users living in different cities. Disney+ has introduced similar restrictions and started disabling ad-blockers, forcing users to view ads. YouTube has steadily increased ad interruptions in videos, now requiring users to sit through up to three unskippable ads before content starts – and offers a Premium subscription to eliminate them.

These developments must be understood within the systemic transformation described by Shoshana Zuboff: the shift to *surveillance capitalism*, which “unilaterally claims human experience as free raw material for translation into behavioral data” (Zuboff 2019: 6). Platforms no longer monetize access to content alone, but primarily the user’s behavior, which is tracked, analyzed, and monetized through sophisticated predictive algorithms. The goal is to design an infrastructure capable of measuring, disciplining, and converting every user action into economic value. Human experience – even that which takes place in private, domestic spaces – is turned into an extractive resource, transforming the user into a *produser* (both consumer and product, in contrast with their now acknowledged role as *prosumer*). As Gillespie (2018) notes, platforms set the rules of the game and act as “custodians” of what is visible, legitimately accessible, and monetizable – and can unilaterally revoke previously acquired usage rights. As a result, even ordinary behaviors – like account sharing, browser extensions, or offline storage of already paid content – fall into grey areas, suspected of misuse, and by extension of piracy.

This creates what we might call an *algorithmic presumption of guilt*, where users are treated as potential offenders. The relationship between platform and user becomes asymmetrical and punitive: every attempt to optimize personal experience is interpreted as a violation to be prevented or punished. It’s a conceptual reversal: the “crime” is no longer an illegal act, but any action that exceeds the platform’s contractual norms.

This logic is compounded by increasing fragmentation of content offerings. Where once a single subscription provided access to a wide catalog, content is now split across dozens of competing platforms. As licensing agreements expire, films and series may migrate between platforms without warning, making multiple subscriptions necessary to ensure continuous access. This phenomenon – analyzed by Lobato as a result of the complexity of *discoverability* in the digital television environment – operates on multiple levels: “multiple, interlocking layers of content aggregation in digital media supply chains mean that discoverability can be extremely complex” (Lobato 2018). As he notes, content visibility depends on layered processes – algorithms, interfaces, devices – which are far from neutral and respond to “specific logics of inclusion/exclusion, and potential for conflict of interest”. The result is an opaque, fragmented user experience, in which even finding what you’re looking for can become an obstacle. Faced with this multiplication of barriers, “there is now a lot of confusion – and some anger – within the industry,” and in many cases among users as well, who increasingly turn to informal networks as the only remaining space offering simple, immediate, and unmediated access.

As Brembilla observes – echoing Scott Purdy’s definition of *streamflation* (Spangler 2023) – this is a systemic crisis born of an excess of inefficient, fragmented supply, managed by algorithms more focused on user retention than on enhancing the quality of cultural experience: “piracy is a reaction to the abundance of these distribution outlets, of services optimized only for internal recommendation systems, of business models that, after appearing disruptive, now seem obsolete once again.” (Brembilla 2024: 221; in line with Lotz 2021). Even Tryon (2015) warned that the promise of a new digital paradise could conceal the consolidation of new forms of control – this time algorithmic. Similarly, Frick et al. (2023) observe that it is precisely the failure of these models that drives more and more users to rediscover informal practices – not out of deviance, but out of a need for fluidity, personalization, and resistance to market logic.

From solution, platforms have become part of the problem: no longer neutral spaces of access, but normative infrastructures with unilateral contractual power and disciplinary capacity. Revisiting Hesmondhalgh’s arguments (2002), one could say that platforms now act as active agents in defining what is cultural, accessible, and worth watching. As a consequence, new forms of dissent are multiplying: users are leaving paid services, turning to informal circuits, plugins and bots that bypass paywalls, peer-to-peer ex-

change networks, and independent archives like UbuWeb, Internet Archive, or decentralized platforms based on IPFS – the InterPlanetary File System, a peer-to-peer network protocol designed to create a decentralized, more efficient and resilient file-sharing system than the traditional web.

This is a clear symptom of a conflict that no longer concerns copyright alone, but *the right to cultural experience*. The platform era has reconfigured the geography of digital power. The user, once a privileged recipient, has returned to a marginal position – forced to constantly negotiate access, privacy, and legitimacy. And when those conditions become unsustainable, the response that resurfaces – historically, predictably – is the informal alternative. Once again, piracy doesn't break the system – it reveals its cracks.

4. From Access to Production

The advent of generative artificial intelligence marks the beginning of a new era of contention, in which the central issue is no longer the availability of a product, but the legitimacy of creation: who is allowed to create, from which archives, using which tools, and under what rules. If the cultural conflicts of the 2000s revolved around access – who could consume content, at what price, and in what ways – it seems that today the field of tension has effectively shifted toward cultural production.

The proliferation of models like ChatGPT, Midjourney, Stable Diffusion, DALL-E, or Suno has made tools capable of generating text, images, music, and video from textual prompts available to millions of users. But unlike earlier technologies, these AIs operate in opaque ways: they produce content using neural networks trained on massive, largely inaccessible datasets – often including copyrighted works. This “ethical opacity” is the first symptom of an epistemological crisis: users have no way of knowing what the generated output is based on, yet they are held accountable for it. This highlights a core epistemic risk: “AI models are trained on the human past and much of what is important [...] in democratic societies [...] is the emergent phenomena that are not yet predictable through models.” (John Wihbey, interviewed in Hendrix 2024).

Crawford (2021) describes automated production as the output of an invisible industrial chain spanning data collection, algorithmic filtering, selection models, and seemingly user-friendly interfaces. The act of “creating” thus loses its subjective aura – not through “mechanical reproduction” (Benjamin 1936), but through algorithmic preemption – becoming an interaction with

a machine that has already set the parameters of what can be seen, how it should appear, and which meanings are permissible. Here a new kind of cultural suspicion takes shape: beyond originality, what is at stake is authorship itself – now increasingly automated. As Margaret Rhee writes poetically in her elegy of reciprocal consumption *Machine Testimonial 3*, “we are two stars. we orbit around one another in our common center of mass. [...] robot, each time you took from me, i grew smaller but you did too. we finally exploded into a supernova” (Rhee 2020: 51): the human and artificial voices merge in an act of co-creation that entails loss, fusion, and disintegration.

The case of the song *Heart on My Sleeve*, generated by AI using synthetic voices of Drake and The Weeknd (see Alexander 2024), brought this tension into the public spotlight. The song was removed from streaming platforms not due to plagiarism, but for infringing on vocal likeness – a kind of synthetic identity illicitly simulated. The voice wasn’t real, but it sounded real. It wasn’t stolen, but it was faithfully reproduced. In a context where technology enables the generation of content indistinguishable from the original, the representation of an artist becomes a contested territory – and reveals how automated production opens a new frontier of cultural control.

This crisis also affects everyday practices, in which a musician uses a vocal generator to compose a melody, a graphic designer entrusts the AI with creating a 1970s-style image, or more recently, a user creates a version of themselves in Studio Ghibli style. We might call this a form of *posthuman piracy*: not the copying of existing content, but the violation of an implicit regime of legitimacy – one no longer solely legal, but also symbolic. The viral phenomenon of “Ghiblification” is therefore “a concrete manifestation of OpenAI’s broader strategy to bypass copyright law” (Esposito 2025), normalizing stylistic appropriation through mass distribution and pushing the boundaries of what is considered legitimate cultural production.

As we know, the law is struggling to keep up: in the United States, for example, works entirely generated by AI cannot be copyrighted, but the situation becomes murkier for “hybrid” works – those produced by AI based on human input but without full authorial control. These hybrid zones have become the norm rather than the exception. While the legal debate continues, the platforms offering these tools – OpenAI, Adobe, Meta, Google – are already de facto establishing the boundaries of what is permissible. This is a form of private governance of creativity, where the norm is no longer defined by the state but by terms of service – mutable, unilateral, often automated.

It is the platforms that must govern: “they must establish the rules of

participation for users, but also be accountable to advertisers, partners, governments, and publics” (Gillespie 2018: 254), and therefore, “they are simultaneously governed and governing” (257), shaping content visibility and redefining the boundaries of what is culturally acceptable.

Where remix and fan-edit practices once could serve as acts of critique – disrupting the coherence of a work to reveal its inner mechanics – today, the remix gives way to risk: not the risk of uncovering hidden meaning, but the risk of losing the ability to determine what the work is, who made it, and where it comes from. The generative infrastructure is not a neutral surface; it is itself a cultural machine, complete with its own biases, exclusions, and dominant aesthetics.

As a result, the legitimacy of media experience is increasingly tied to social acceptability, and less to formal legality – much like the indexing sites for cyberlocker links (used to locate informally distributed films and TV series), of which The Pirate Bay was a forerunner. These platforms did not respond so much “to a user’s request for retrieval functionality [...] as to a request to honor the emotional drive to seek out a specific cultural content – a right recognized as legitimate” (Prosperi 2024: 98). Today, that assertion is more relevant than ever: those who create with AI can be seen as visionary artists or cultural thieves, depending on the context, the transparency of the process, and the community’s reaction, as originality itself becomes a negotiation – an unstable compromise between innovation and recognition, authorship and appropriation.

The shift from an *access-based piracy* to a *production-based piracy* forces us to reconsider what we mean by creation, legitimacy, and cultural conflict. The post-digital pirate no longer skirts the edges of the work – they rewrite its boundaries with new tools and rules yet to be defined.

5. Remix, *Détournement*, and Generative AI

Creative reuse is far from new. Throughout the twentieth century, practices such as musical remixing, *détournement* – introduced by Guy Debord as a method of subversion and reappropriation of existing cultural materials, or the “integration of present or past artistic productions into a superior construction of the environment” (Wolman and Debord 1956) – as well as fan-edits and literary cut-ups, have continually redefined the boundary between original and derivative. These forms revealed that every artistic gesture can also be an act of appropriation, distortion, or re-contextualization.

Conceptual art, experimental cinema, hip-hop sampling, and meme culture have legitimized modes of production based not on *ex nihilo* creation, but on the manipulation of pre-existing material. As Lessig (2008) reminds us, the digital “read/write culture” expanded these processes, allowing anyone to modify media content and actively participate in meaning-making. Remixing a video, altering a poster, transforming a scene into parody – all these practices show that creativity is both invention and friction.

GIFs are perhaps one of the most emblematic, widespread, and minimal forms of visual reuse: short clips from films, series, interviews, or animations reinserted into radically different textual, emotional, or satirical contexts (Prosperi 2018). GIF is an effective micro-remix: it does not create new content, but it decontextualizes it, reduces it to gesture or emotion, and reinserts it into a shared communicative circuit. Their spread has normalized an informal form of appropriation in which no one claims authorship, yet everyone recognizes communicative efficacy. In this sense, GIFs prefigure how generative AI operates: creative acts built on invisible archives, reuse without traceability, loops that perform meaning.

The emergence of AI-generated images marks a new phase of fragmentation and recombination, rooted in the longstanding practice of decomposing and reassembling pre-existing elements. The logic of cut and remix is pushed to its extreme: AI, trained on vast datasets, recombines established visual patterns and existing aesthetic techniques to produce “new” content that remains statistically derivative. This phenomenon deeply resonates with the social use of GIFs, transforming them into cultural and digital fragments capable of re-signifying existing meanings through immediate and creative reuse. Yet while GIFs redefined the relationship between image and creativity through emotional, participatory reorganization of fragments, generative AI goes further, challenging notions of uniqueness and representation by producing content through interpolation within a “latent space” (Manovich 2024) of learned cultural and visual patterns.

What was once ironic, subversive, or affective now multiplies through generative models, where creativity emerges from fragmentation – but at the risk of dissolving the uniqueness of experience. The debate around authenticity and human specificity thus becomes essential in maintaining a balance between technological innovation and cultural rootedness. The trajectory linking piracy to GIFs, and GIFs to AI-generated imagery, illustrates how creative reuse remains a contested terrain between algorithmic control, expressive freedom, and cultural fragmentation.

“Piracy is a cultural form of consumption, (re)appropriation, and production, of remix, of reading and rereading” (Brembilla 2024: 221): we are witnessing a semantic shift that repositions piracy as an active, not merely subtractive, phenomenon. It is a way to produce meaning, respond to regulated abundance, and build new imaginaries from existing materials. In this light, practices involving AI are not so much radical innovation as they are continuations and accelerations of longstanding informal practices. As Brøvig (2023) suggests, mashups and appropriative practices are not merely technical operations, but complex entanglements of cultural references and creative reworking, where parody, reuse, and remix constitute legitimate modes of artistic production and cultural critique.

Yet, while parody, remix, *détournement*, and GIFs all maintain a visible link to authorship – manipulators sign, expose themselves, and claim credit – automated generation radically complicates this relationship. AI does not explicitly rework; it statistically predicts. The output is the result of predictive models that neither cite nor subvert the original, but dissolve it entirely into a style, a probability, a median. The result is not a visible collage, but a plausible simulation. A fan-edit of *Alien* (1979) knowingly displays its derivative nature; an image generated by Midjourney in the style of Hans Ruedi Giger (who designed the xenomorph for *Alien*) does not. In historical practices, distance from the original was part of the meaning; in AI generation, it becomes opacity. Where *détournement* exposes the mechanism, AI conceals it. Where remix plays with authorship, AI neutralizes it.

And yet, continuities persist. Even within generative culture, a form of editorial creativity emerges: writing an effective prompt, selecting outputs, regenerating, refining. This is indirect creativity, based on instruction rather than execution. Some call it prompt design; others – authors (Zylinska 2020; Manovich 2020) or artists (Mario Klingemann, Refik Anadol, Sasha Stiles) – compare it to directing, curating or collaborating. Here emerges a new figure: the synthetic content producer, operating at the intersection of programming, aesthetics, and performance. In this sense, AI does not abolish the artistic gesture; it redistributes it. But unlike traditional remixing – where origin is still recognizable, even if transgressed – in the AI context, origin dissolves. What results is a paradox of invisible appropriation, in which content is not copied but absorbed.

In the past, a mashup could be accused of infringement, but rarely was it perceived as an ontological threat. Today, an AI-generated image mimicking a style may seem more authentic, more coherent, more “perfect” than

the original. Appropriation becomes a critical and affective rewriting of the world – one all the more relevant in a context where production tools are automated, but the questions remain deeply human. Generative culture pushes the logic of appropriation to its limits: where *détournement* sought to dismantle dominant meaning, we now see a multiplication of possible meanings – but this plurality, if left unchecked, risks erasing the distinction between creative act and industrial reproduction. Historical appropriation practices demanded visibility; generative practices often avoid it. And it is precisely this asymmetry that demands a renewed reflection – not on creativity itself, but on who holds the power to define its contours.

6. The Posthuman Pirate as Epistemic Agent

Piracy has often been understood as a form of opposition – a resistance against the industry, a necessary transgression, a gesture of sabotage. Today, however, we are witnessing a quieter, deeper shift: the silent exit from the system, and the autonomous construction of new spaces (Mastodon, IPFS), archive (UbuWeb, Library Genesis), technologies (ChatGPT, Hugging Face), and languages (GIF, prompt-based aesthetics). The aim is no longer (just) to break the rules, but to inhabit other regimes. The conflict with platforms – over access, production, and legitimacy – is no longer expressed in terms of rejection, but as a strategy of disconnection and reconstruction. This is evident in the proliferation of informal archives and independent networks: from long-standing hubs like UbuWeb and Internet Archive, to platforms such as Monoskop, AAAARG.ORG, Library Genesis, which offer out-of-print works, critical texts, academic material, and forgotten art. Real counter-institutions of culture: they function as alternative interfaces to cultural heritage, removing it from the logic of consumption and restoring it to the logic of knowledge.

Similarly, in the field of generative technologies, communities are emerging that promote ethical, transparent, and collective use of models: open-source repositories like Hugging Face, distributed datasets like OpenImages, initiatives for the decolonization of AI, and “safe” generators built around inclusive principles. Here, automated generation is not a shortcut to production, but a political tool of exploration – a potential laboratory of meaning, where a different conception of the cultural product, the author, memory, and use is being tested. In this space, the boundary between “piracy” and “creation” begins to lose its meaning.

And here, in this new chaos, piracy returns once again as a critical instrument – and also as a generative device. From being recognized as a disobedient gesture, it becomes (or re-emerges as) an operative model: a way to rethink the circulation of knowledge, cultural justice, and the sustainability of access. A form of piracy that reformats (rather than steals), reorganizes (rather than sabotages), and builds another way of producing and sharing culture. As platforms become more closed, opaque, and surveillant, and as generative automation risks standardizing aesthetics and languages, the construction of independent infrastructures – however precarious – becomes a form of positive dissent, a resistance that does not replicate the center, but bypasses it.

For decades, the conflict between users and the cultural industry played out on the terrain of distribution: delayed access, inaccessible prices, geographical barriers, release windows. Piracy emerged and evolved as a structural symptom of an inadequate offer – a reactive gesture of compensation. But today, that model is no longer sufficient. On the one hand, digital culture has multiplied opportunities for reappropriation and re-signification; on the other, it has transformed subversion into formula, critical action into aesthetic automatism. Practices such as remix, meme creation, GIFs, and informal distribution reflect an unprecedented proliferation of *détournement*-like gestures, yet their political effectiveness is often diluted by their integration into dominant circuits of communication and consumption. Platforms, once tools of democratization, have become new instruments of control. The cycle of friction repeats, but the terrain has radically shifted: we are thus witnessing a total recoding of the conflict, where the heart of the issue is no longer access to the product, but the legitimacy of its genesis. The opacity of generative algorithms, dispersed authorship, synthetic identities, and dissolution of origin all shift the terrain of copyright into new territory – where categories such as property, originality, and copy become inadequate. The friction around consumption becomes a struggle over productive capacity, the right to generate meaning, to act in the cultural field as an agent. What began with Betamax as a struggle over access returns today – amplified and reframed – as a struggle over generative agency. And if the system responds with restrictions, tracking, suspicion, and control, the answer is no longer (only) violation, but the creation of other environments, other regimes, and other rules.

In this new phase, piracy is no longer – if it ever was – an alternative mode of consumption. It becomes a form of practical epistemology: a way

to interrogate what counts as culture, what is considered legitimate, and what is included or excluded from the architecture of shared knowledge. It is no longer about defending viewing rights, but about affirming generation rights, and this transition unfolds as we begin to see diverging scenarios regarding the role of AI in creativity.

On one side, we find a vision of virtuous collaboration, where “augmented creativity” becomes possible through the hybridization of human and machine: “a real collaborative effort involving more or less equally the human and the generative AI, with recognition of the contributions of each party” (Vinchon et al. 2023: 476). On the other, deep concerns emerge – around identity, value, and even the survival of human creativity. The creative act now stands at the threshold between “*Co-Cre-AI-tion*” (as proposed by Vinchon et al.) and *subst-AI-tution* – between the expansion of expressive possibilities and the erasure of subjectivity.

Here re-emerges the *déjà vu* of the conflict between users and platforms. But this time it’s no longer just about the economy of vision; it’s about the possibility of meaning itself – in an ecosystem increasingly governed by algorithms and opaque infrastructures. The figure of the pirate, far from being a relic of the past, once again takes on a central role: not just to break the rules, but to redefine them, to build alternatives, and to insist – once again – that culture is not property, but participation.

In this scenario, the criminalization of user practices by streaming platforms no longer revolves around accessing protected content, as it may seem, but increasingly targets the very capacity to intervene in *cultural signification*. What is sanctioned is not merely – or not only – the act of viewing without permission, but the act of generating without authorization: of producing meaning outside recognized frameworks of authorship, visibility, and control.

As generative AI blurs the line between creation and replication, and as platforms dictate the conditions under which creative acts are considered legitimate, the pirate is recast once more – not as a thief of content, but as a trespasser on the terrain of sanctioned creativity and signification. What is at stake is not just access to culture, but the power to define its very terms. Platforms, once mediators of content, now act as arbiters of meaning, intervening in everyday life itself: when Netflix redefines a “household” as a cluster of IP-linked devices, it’s not simply enforcing a new rule – it is redrawing the social contract, transforming notions of home, kinship, and proximity into algorithmic categories.

In the *onlife* condition (Floridi 2015), where the real and the digital no longer operate in contrast but form an integrated continuum, identity and relationships emerge across both dimensions. Digital and real-world interactions intertwine in a shared framework of meaning (Boccia Artieri et al. 2017), and it is precisely this dual nature – as both governed spaces and creative fields – that makes platforms the new locus of epistemic conflict. The shift from controlling access to governing generation marks a transition from platform as distributor to platform as *definer of meaning*. Following content and authorship, the grammar of subjectivity itself becomes the new site of negotiation – encoded, filtered, and reassembled by opaque systems of rule. This corresponds to what Eugeni defines as the postmedia condition, characterized by the subjectivization of experience and, crucially, by socialization – understood as “the overcoming of the distinction between the individuality of the subject and the conventions of their social context” (Eugeni 2015: 84).

This shift – from the reclassification of access to the redefinition of generative legitimacy – marks the new frontier of *posthuman piracy*: not a crime against property, but an act of trespassing in the encoded grammar of contemporary cultural production. Piracy, in its new posthuman reconfiguration, persists as an enduring symptom of a system that fears the unpredictable – an epistemic fault line that reopens each time users refuse to be reduced to mere consumers, and instead reclaim their place as cultural agents.

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PIRACY DÉJÀ VU. THE REEMERGENCE OF THE CONFLICT
BETWEEN USERS AND PLATFORMS



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Fixing the Universe

Fan-Based Practices Between Narrative Ecosystems and Participatory Media

Pierandrea Villa

◀ ABSTRACT

Fan communities are groups of possessive spectators who, as Laura Mulvey (2006) states, can undermine the aesthetic integrity and narrative cohesion of media artefacts within the franchise of their choice, regardless of copyright regulations. In this context, user-generated content can be interpreted as a renegotiation of a power structure that can prompt a rediscussion of critical issues such as the representation of minority groups (Brembilla 2023). Furthermore, fans' intellectual capital, together with their emotional connection to the franchise (Jenkins 2006b), can lead the former to reject a particular segment of the latter, presenting a scenario in which fandom and anti-fandom coexist (Click 2019). Therefore, fans can interact with a franchise by modifying and remixing its content to “repair” elements that they perceive as inconsistent with the franchise's quality standards and values.

With these considerations in mind, this essay aims to analyse two specific fan-based practices within the context of the Marvel Cinematic Universe: *fanedits* – fan-made alternative montages of a particular film – and *fandom universes* – fan-made redefinitions of a narrative ecosystem as a whole. Following this analysis, it is possible to understand how current intellectual property management strategies can nourish new forms of copyright infringement.

KEYWORDS

Participatory culture; user-generated content; narrative ecosystems; Marvel Cinematic Universe; Fanfiction.

Introduction

Although bottom-up and top-down media practices correspond to two distinct models of content production and distribution, they tend to organically contaminate each other within the complexity of the contemporary cultural industry. This interaction is particularly evident in terms of derivation since, as noted by Ryan Milner (2016), many grassroots media practices originate from the re-appropriation of content fragments initially disseminated through broadcasting dynamics. As Milner highlights, for instance, the genesis of the *immaletyoufinish* meme would not have been possible if a group of spectators did not experience that a specific moment of the 2009 MVA resonated with them and consequently decided to sample, modulate, and spread it. Furthermore, the organic relationship between these content production models pertains to the creation processes themselves, as they mutually contaminate by adopting shared practices, strategies, and techniques.

With this in mind, this essay aims to describe and analyse the developments in user-generated content that arise from this synergy with the traditional cultural industry, with a specific focus on the ecosystemic narrative dynamics (Innocenti and Pescatore 2012; Bioni et al. 2013; De Pascalis and Pescatore 2018) of transmedia franchises and more specifically the Marvel Cinematic Universe (MCU from now on).

1. What Is a Fan? Between Fandom and Anti-Fandom

Before addressing the topic at the heart of this essay, it is important to review some definitions of fandom that are particularly pertinent to the subject. Firstly, it is crucial to consider the relationship between fans and Laura Mulvey's (2006) definition of possessive spectators. Indeed, like the

spectator described by Mulvey, fans are characterised by the desire to possess the content or a fragment thereof, and are also capable of undermining the aesthetic integrity and narrative cohesion of media artefacts, regardless of copyright laws and the original authors' will. This description is very close to Jenkin's definition of fandom in his seminal work *Fans, Bloggers, and Gamers*, where he writes: "Fandom is a way of appropriating media texts and rereading them in a fashion that serves different interests" (Jenkins 2006b: 22). The interests addressed by Jenkins cover a wide spectrum and embrace both intimate and personal issues as well as collective and political concerns. In this sense, user-generated content can always be understood as a renegotiation of power that can lead to the re-discussion of critical issues, such as the representation of minorities through media (Jenkins 2006b; Brembilla 2023). An illustrative example of this phenomenon is the ship fanfiction: a particular type of fan-created content that involves the authors imagining, telling, and describing a romantic – often explicitly sexual – relationship between two or more characters who are not romantically involved in the official canon established by franchise owners and their creative teams. Given its distinctive features it is unsurprising that this type of user-generated content is often used to express the desire of a minority group to be represented within a franchise. Examining the relationship between the MCU and the LGBTQ+ community from this perspective, the political and social implications of participatory culture and fan-based reuse practices appear evident. In this sense, when creating and sharing lesbian, bisexual, or gay fanfiction, fans use characters from the MCU not only to express their own sexuality but also as an act of resistance against queer-baiting practices within the franchise itself. An illustrative example of this phenomenon is Brembilla's consideration about the third episode of the series *Loki* (2021-2023) in which the protagonist suggests his bisexuality, answering "a bit of both" to the question "is there a prince or princess at home waiting for you?" Nonetheless it is crucial to highlight that from that moment on Loki never romantically interacts with other men in the series. As Brembilla suggests, this, among other episodes and characters within the franchise, is part of a strategy that aims to gather the LGBTQIA+ community's attention while simultaneously avoiding the alienation of more conservative audiences (Brembilla 2023). It is, therefore, unsurprising that websites dedicated to the publication of fanfiction, as well as the broader internet, are teeming with stories in which Loki's homoerotic interactions are made explicit, with "bisexual Loki" and "gender fluid Loki" being dis-

tinct tags on archiveofourown.org¹. In this context, through the processes of appropriation and manipulation described by Mulvey, the fan is able to “seize” not only a fragment of content – the character – but also a fraction of power, thereby reacting to under-representation with self-representation.

Another pivotal element in defining a fan is its relationship with the franchise of choice and content that gravitates around it. Kholi, Yen, Alwi and Gupta’s definition of “film-brand” is particularly useful in describing this scenario, since the authors identify a relationship between content – in this case, a film – and audience that involves the same dynamics underlying the identification and choice mechanisms that characterise the consumer/brand relationship (Kholi et al. 2021). In other words, the franchise not only expresses a story, a world, and a set of characters, but also embodies an array of values associated with a specific brand image. Furthermore, as Jenkins emphasises, the fan/franchise relationship is often rooted in deep emotional and sentimental bonds, to the extent that “fans would reject such a clear separation between feelings and thoughts: their favored texts are both tools for thought and spaces for emotional exploration” (Jenkins 2006b: 9). This statement underscores the notion that fans are, above all, experts, since this indissoluble link between thoughts and emotions enables them to explore the franchise to an extent unattainable by casual spectators. In this sense, fans possess extensive knowledge of their favourite franchise and are therefore positive about being able to evaluate its quality and fully understand its core values. Therefore, they perceive themselves as capable of identifying all the elements that are not consistent with this set of values and quality standards. Accordingly, fans identify themselves as guardians of the franchise and may feel the need, if not the duty, to protect it from a series of intellectual property management operations that they consider inappropriate.

An illustrative example of this phenomenon is the controversy that emerged upon the release of the film *Sonic the Hedgehog* (2020). Shortly after the trailer was released, fans of the SEGA franchise began flooding the comment sections of websites and webpages promoting the film with expressions of disappointment with the character design. The outrage eventually led producers to rework the film and revise the designs, which in the final version were completely different from how they appeared in the first trailer. It is crucial to acknowledge that while this attitude may serve as a mechanism for quality control against speculative operations, it may

¹ A popular fan-fiction online archive.

also lead to resistance to change, as evidenced by the reaction of the most conservative segments of the audience to Disney's recent approach to minority representation². In both cases, this demonstrates that fans, despite being deeply attached to their favourite franchise – and indeed for this very reason – are far from blindly accepting every new installment of a narrative ecosystem. Instead, they are always extremely careful and cautious about it, demonstrating their willingness to engage in real struggles with those who hold intellectual property whenever they deem it necessary.

Drawing an analogy to a character from a well-known franchise, the fans' ability and willingness to identify elements that are inconsistent with the perceived values and quality standards of the franchise may be defined as "the worst episode ever phenomenon". This concept derives from the catchphrase of Comic Book Guy, a character from *The Simpsons* (1989-), who is an explicit parody of the typical fan/nerd and that is often used in the series to mock their habits. This character often labels something as "the worst [...] ever", commonly expressing this judgment on franchises' elements and even bringing this attitude to a metalinguistic level, breaking the fourth wall and addressing *The Simpsons* franchise itself. This happens, for instance, in the episode "Saddlesore Galactica" (13.11) where he wears a shirt saying: "worst episode ever" or in the episode "Worst Episode Ever" (11.12) whose plot is mainly centred on him.

The attitude of the Comic Book Guy faithfully describes the dynamics between fans and their favourite franchise, a relationship in which acceptance and rejection, as well as hate and love, are far from being at opposite poles. In fact, the convergence of fans' comprehensive knowledge of the franchise with the inalienable emotional bond described by Jenkins creates a context in which fandom is inherently nourished by its opposite.

This cultural space has been effectively described by Mellissa Click, who has already emphasised its proximity to the fandom area. According to the author, anti-fandom can be described as follows:

What is the opposite of fandom? Disinterest. Dislike. Disgust. Hate. Anti-fandom. It is visible in many of the same spaces where you see fandoms [...] This is where fans and fandoms debate and discipline. This is where we love to hate (Click 2019: 1).

² For instance, with the introduction of people of colour as protagonists in the live action remakes of classic animation movies such as *The Little Mermaid* or *Snow White*.

It is crucial to emphasise the word “debate” in Click’s definition, as it highlights the participatory nature of all the phenomena described so far. Indeed, fans do not achieve this knowledge on their own but by sharing information, opinions, and feelings. Furthermore, there is no unanimous agreement on what is “worth” belonging to the franchise, which explains why fandom and anti-fandom always share the same virtual and cultural spaces. In this sense, perfectly consistent with a space where people love to hate, fandom and anti-fandom appear to be linked by a Mobius strip in which anti-fan discussion connects with and echoes fan discussion as the two share not only the same spaces but also “significant attributes, behaviours, and performances” (Gray 2005: 855).

A vivid example of this faculty of discernment combined with the need to express one’s judgement can be observed in an online, photo-based memetic process commonly known as *flaming horse*. This meme can be described as an image-based version of the “worst episode ever phenomenon”, in which the distinctive unit is no longer a single episode but an entire season of the franchise. This series of images (Shifman 2014) is based on the juxtaposition of fragments of different drawings of a horse with a specific season of a franchise. Visually, the upper part of the image displays the promotional posters for each season, whereas the lower part, corresponding to each season, features a segment of a horse drawing. The semantic effect of the meme is due to the fact that each segment of the horse – the tail, torso, and head – comes from a different drawing, with a clear difference in terms of definition and quality of execution. As a result, the pencil drawing of a horse that looks like it was done by a primary school child will be associated with the less appreciated seasons, while the best ones will be associated with a high-definition, colour drawing of a flaming horse – hence the name of the meme. Additionally, there is an intermediate level identified with a realistic and well-executed pencil drawing of a horse.

With these considerations in mind, it is possible to summarise the main characteristics of fans, identifying them as a particular type of possessive spectator who perceives themselves as experts and guardians of the values and quality standards of their favourite franchise. Nonetheless, their relationship with the latter is characterised not only by their knowledge but also by an emotional bond that, by virtue of their self-assigned role as guardians, leads them to hate and publicly despise the installments that fail to meet their expectations. Although this definition may be considered exhaustive, it lacks another element: the relationship between fandom practices and

technological innovations, which introduces the possibility of altering content and consequently “fix” the franchise.

2. Evolution of a fan. Fandom and Technology

While the fundamental desires of sharing, exploring, and learning about the franchise, along with the emotional attachment to it, can be considered consistent elements in the history of fandom, the experience of being a fan has undergone significant evolution over time. It is, indeed, evident that fandom and its practices have been shaped by the possibilities that have gradually become available with the progress of technology. It is also clear that fans’ desire to translate their viewing experience into a cultural activity by sharing feelings and thoughts about their favourite show with a community (Jenkins 2006b) found a privileged space for activity within the web, especially after its evolution into Web 2.0. These innovations have facilitated the improvement of pre-existing strategies and practices, primarily by enabling the creation of new and more accessible shared spaces designed for the exchange of information and opinions. Moreover, the evolution of the media environment in which fans operate has elevated fandom-related practices to a significantly advanced level that, although not completely new, was inconceivable offline. Specifically, the advent of Web 2.0 allowed the convergence of fandom, which was already a collective cultural form, with participatory culture. In this context, the creation of original content by fans, derived from the reworking of iconographic and narrative material from their favourite franchises, has reached unprecedented extents. However, this does not imply that analogous experiences did not exist before the advent of the web. Indeed, evidence of unauthorised adaptations of copyrighted stories and characters can be traced back to the early 20th century³ (Dew 2014, Glosson 2020), while their first contact with a proper franchise dates back to the late 60s with the publication of fan-created stories in fanzines (Jenkins 2019; Verba 1996)⁴. Nevertheless, the transition to

³ The source texts included both stand-alone books, as in the case of *Old Friends and New Fancies: An Imaginary Sequel to the Novels of Jane Austen* by Sybil G. Brinton – an unauthorised sequel to Jane Austen’s *Pride and Prejudice* –, and serial characters, such as Sherlock Holmes (Greene 2016).

⁴ As the one that closed the only published issue of “Spockanalia”, published by Devra Langsam and Sherna Comerford (Verba 1996).

online environments marked a significant shift, primarily characterised by the increased possibility of publishing and spreading content. In this sense, fan-based activities have transitioned from a context in which fanzines were produced by a small group of authors and typically released as one-shots – i.e., intended for a single publication – to a dynamic environment characterised by a buzzing and constantly interconnected community. Moreover, with the advent of the web, the possibilities for publication have grown exponentially, since printing costs have been completely eliminated and editors have partially lost their role as gatekeepers.

While the evolution of the fan experience concerning text-based content mainly involves publishing opportunities and community interactions – which is a significant change in any case – this evolution is considerably more drastic and substantial when it comes to image production. However, similarly to fanfiction, it is evident that there has been fanarts since fans were able to draw. Nevertheless, the lowering of access barriers to image production devices and techniques has introduced new possibilities for sampling and manipulating source content. In this context, fans were able to interact directly with the images coming from the narrative ecosystem with which they habitually engaged. In other words, as techniques became more accessible, fans were able to fully realise their desires as possessive spectators, while the redistribution of power between the media and audiences observed by Jenkins (2006a) took place, at least on a potential and partial level. In this sense, the audience and the cultural industry – at least on a technical level – began to share similar tools, thus rendering the power dynamics between these two entities progressively more balanced. Nevertheless, this does not imply that the enhanced accessibility of devices and technologies has allowed every fan to produce content with the same quality and distributive results as a production company or a broadcaster. However, there are specific instances, notably in video editing, where the distinction between amateur and professional content is currently more dependent on the ability to use editing software – and perhaps on the possibility of counting on a support team – than on the physical equipment available. Furthermore, the convergence of the democratisation of techniques and access to technology with the cultural logic developed within the Web 2.0 media environments has led to the merging of image manipulation and participatory culture, resulting in the circulation of photographic-based memes.

This form of user-generated content is particularly interesting in the context of the relationship between fans and franchises, especially in light of

Wiggins and Bowers’ theoretical proposition of applying Giddens’ structuralist categories of agency and structure (1984) to the genesis of a memetic process (Wiggins and Bowers, 2014). According to the authors, the “structure” is a fragment of content that tends to repeat itself identically so that the meme is recognisable as such, whereas “agency” refers to the user’s act of manipulation, which semantically recontextualises the image with each iteration.

In the previously mentioned *flaming horse* meme, for instance, the structure corresponds to the three different versions of the horse drawing that make the meme recognisable as *flaming horse*. On the other hand, the agency corresponds both to the series selected for comments—resulting in variations in the images of the posters from one instance to another—and the arrangement of the sections of the horse’s drawing, which will also vary depending on the user’s opinion on each season.

Wiggins and Bowers’ arguments become particularly relevant when applied to fandom, since this perspective strongly echoes the sociological origins of the categories used by the two scholars. Notably, it is precisely through their agency that fans are able to “react” to the structure imposed by those who hold intellectual property by voicing and giving shape to their expressive needs, not only in terms of creativity but also in social terms. A clear example of this can be observed in the aforementioned ship fanfiction and its use by the LGBTQIA+ community to turn under-representation into self-representation.

With these considerations in mind, the following paragraphs will address some examples that feature all the aspects discussed so far: fans’ self-perception as the custodian of the franchise, their need for appropriation and manipulation, and the expressive possibilities offered both by technology and the media environment.

3 Expansions of Text-Based Fanfiction: Crossovers, Timelines, Universes

The technological developments and the cultural logic that emerges therein are not the only factors that shape, and had shaped, fans’ experiences. In fact, many manifestations of fan-generated content are strongly influenced by the new ecosystemic narrative structures and the associated intellectual property management strategies. Among the narrative devices that underlie this synergy, one of the most established is crossover, which involves the

convergence of characters from different series within a single story-world and narrative arc. In this context, intellectual property is either managed by the same company – as exemplified by Marvel’s Avengers – or by different companies – as it happens with the crossover story involving Marvel’s Avengers and DC’s Justice League, published in the *DC vs. Marvel* miniseries in 1996.

Before examining how this practice intersects fans generated content, it is essential to trace its historical development and main characteristics. This narrative device, not only is a consolidated feature of narrative ecosystems, but can also be listed among the practices that ensure their resilience, which is one of their key characteristics (Bisoni et al. 2013). In other words, crossover has always been one of the strategies employed by franchises to maintain their vitality and longevity, which is a primary objective for those who manage their intellectual property (Johnson 2013, Mittel 2015).

One of the earliest instances of a crossover can be traced back to 1940 with the third issue of “All Star Comics”, in which several superheroes, previously featured in standalone stories within the same series, face a common enemy within the same narrative arc. The introduction of this device in cinema occurred during the same period when Universal, which owned the intellectual property of iconic movie monsters such as Dracula, The Mummy, and The Invisible Man, released films in which these monsters shared the same narrative arc, such as *Frankenstein Meets the Wolf Man* (1943) and *House of Frankenstein* (1944). Four years later, the same company proposed a further development of this trend introducing what may be defined as “impossible crossovers”, in which the same monsters meet the comedy duo Abbott and Costello in films such as *Abbott and Costello Meet Frankenstein* (1948), *Abbott and Costello Meet the Invisible Man* (1951), and *Abbott and Costello Meet the Mummy* (1955). This same device has lasted essentially unchanged until the present day, with examples such as *Freddy vs. Jason* (2003)⁵, *Alien vs. Predator* (2004)⁶, *Batman v Superman: Dawn of Justice* (2016)⁷, and *Godzilla vs. Kong* (2021). Within this framework, there is also a sub-category characterised by the coexistence of characters managed by the same company, yet coming from distinct narrative universes. Illustrative examples of this include the crossover between *Family Guy* (1999-) and *The*

⁵ Where both characters’ intellectual property is managed by Warner Bros.

⁶ Where both characters’ intellectual property is managed by 20th Century Studios.

⁷ Where both characters’ intellectual property is managed by DC.

Simpsons (1989-) in the episode “The Simpsons Guy” (*Family Guy*, 13.1), as well as in “Adoption” (21.15), which also features characters from the *Bob’s Burgers* (2011-) universe. Conversely, the crossover between characters whose intellectual property is managed by different companies emerged in 1971 with the issue *Superman vs. The Amazing Spider-Man*. For obvious reasons, such occurrences are much rarer, with only sporadic instances, such as the previously mentioned Justice League/Avengers crossover (which can be considered a crossover of a crossover, as both the involved ensembles of superheroes already fit this definition).

As the examples listed above demonstrate, it is noteworthy that crossovers typically revolve around two opposite poles: the ensemble (for example Avengers, Justice League, but also the alliance between Godzilla, Mothra and Rodan against Ghidorah⁸) and the clash (the various aforementioned films identified by the abbreviation “VS.”). Specifically, this latter trend has led to the detachment of the crossover from its specific purpose of merging two intellectual properties. This is the case with the film *Cowboys & Aliens* (2011)⁹, in which the crossover mechanism is employed to create a hybridisation of genres and imaginaries, namely the Western and a particular branch of science fiction.

When fans create original stories, they use the crossover narrative device in all the aforementioned forms. In this context, as far as crossovers involving characters from the same narrative universe are concerned, the fanfiction story *Unforeseen Consequences*, for instance, features a collaboration between the Avengers and the Guardians of the Galaxy, an event that also frequently occurs within the canonical storyline¹⁰. Similarly, *Celestial Navigation* depicts the alliance between the X-Men and the Avengers, a collaboration that is also found in the canonical story “Bloodties”. However, the most interesting examples are those in which fans merge universes and characters that are fundamentally distinct, not only because they come from different narrative universes, but also because their intellectual properties are managed by separate entities. This happens, for example, in the fanfiction story *Project Awkward Silence*, where Bruce Banner from the Avengers

⁸ In the movie *Ghidorah, the Three-Headed Monster* (1964).

⁹ In which the aliens have nothing to do with the franchise that originated from the 1979 film by Ridley Scott.

¹⁰ Examples include “The Korvac Saga” (*Avengers* 167-177) and the “Infinity War” saga (*The Infinity War* 1-6) that led to the movie adaptation *Avengers: Infinity War* (2018).

and Hermione Granger from the Wizarding World coexist in a setting in which they “work fifty feet apart and share a mutual interest... and have zero ability to speak to each other. Stark’s solution: forcible email introduction”¹¹. Another notable example is *What Makes a Hero* where the Avengers find themselves in the *Game of Thrones* (2011-2019) universe. These cases are particularly interesting because they demonstrate that fans are not necessarily acolytes who dedicate themselves to a single franchise, but can distribute their enthusiasm and emotional investment across multiple narrative ecosystems. Furthermore, these cases effectively display the relationship between the audience/cultural industry’s power struggle and the issues related to copyright infringement. Indeed, acting as proper possessive spectators, fans freely combine the worlds and characters to which they are somehow emotionally attached, fulfilling their desires without caring about either intellectual property or those who manage it.

Another instance in which the dynamics of intellectual property management, which are specific to narrative ecosystems, intersect with fan production is the creation of a fan-made narrative universe.

To comprehensively understand this approach to content creation, however, it is beneficial to examine the structure of a narrative universe such as the MCU: a serial narrative structure subdivided into different “narrative degrees” (or levels) that participate in the construction of the overall macrotext.

The first degree corresponds to the MCU narrative arc as a whole, a macrotext that is constituted by film series, TV shows, tie-in comics series, and other web specific media such as the mock up newscast *WHIH World News*, published on YouTube. Each of the aforementioned series, considered in its integrity, is a second-degree item belonging to a system in which there is a macroserial text (first degree) composed of a transmedia constellation of serial narratives (second degree).

Finally, the third degree corresponds to instalments in which a story arc is closed within the instalment itself, which in turn constitute the aforementioned second-level items. Therefore, this level includes the single movies of the film series but not the single episodes of a TV show, as they do not lead to a narrative finale within their own duration.

¹¹ <https://www.fanfiction.net/s/14454770/1/project-awkward-silence> (last accessed 07-05-25).

To summarise:

- the first level corresponds to the macro-serial text as a whole (the MCU in its integrity);
- the second level corresponds to each series that constitutes the first-level macroserial text. In other words, these can be described as the sub-franchises that constitute the MCU franchise as a whole (for example, Thor film series, Iron Man film series, *Wandavision* (2021), and *Falcon and the Winter Soldier* (2021));
- the third level corresponds to single instalments that reach a finale as autonomous narrative units and constitute some of the second-level items (such as *Thor: Ragnarock* (2017), *Thor: Love and Thunder* (2022), *Iron Man* (2008), *Iron Man 2* (2021), etc.).

The authors of these fan-generated universes invent or reimagine individual second- and third-level elements to shape and modify the first-level narrative framework. This process can involve the creation of secondary and tertiary items from scratch, the modification of existing items, or the alteration of their sequence within the primary macrotext. Additionally, a comprehensive approach integrates all the three strategies.

From a formal perspective, these media artefacts – specifically sets of media artefacts – can be categorised into two major groups. The first is a mere evolution of text-based fanfiction consisting in a series of fan-generated plots of imaginary movies, organised into chapters and sub-chapters. Among the plethora of examples available, the case of *Marvel Cinematic Universe Phase Ideas* by FPSGamer48 on the [fanfiction.net](https://www.fanfiction.net) website presents some interesting features. Firstly, it is a version of the narrative universe that includes future developments of the MCU. Notably, while the franchise was still in the third phase, the fan outlined the story arc and its second-level narrative items up to the nineteenth phase, introducing characters that were not yet included in the Disney franchise at that time. Another interesting feature can be found within the individual plots – in this case sub-chapters corresponding to third-level narrative items – specifically in the post-credit scenes at the end of each one. This aspect is noteworthy, as it illustrates the precision and imitative spirit characterising this creative process, while simultaneously showing the user's profound understanding of the narrative strategies that underpin the MCU.

The second category of user-generated universes employs similar manipulation techniques on the first-, second-, and third-level narrative ele-

ments but adopts a radically different format. Specifically, this content adheres to the architecture of a Wikifandom webpage, akin to a Wikipedia page, thus shifting from a textual to a hypertextual structure. As with the Wikipedia page of an official franchise, users can navigate among various second- and third-level items connected through hyperlinks. This structure allows for a higher degree of sophistication compared to conventional fan-fiction, as fans can not only reimagine the plot of second- and third-level elements, but also display various iconic information – often through photomontage techniques –, such as recasting proposals, settings, and posters. This is exactly the case with Fancaster’s version of the movie *X-Men: First Class* within the fan-created narrative universe *Marvel Cinematic Universe: Reborn*, in which the author imagines Stanley Tucci as Doctor Xavier and Emma Watson as Jean Grey, also providing photomontage evidence of this recasting choice. Moreover, the fact that in this example the fan speculated that X-Men would be integrated into the MCU before Disney secured the necessary copyrights perfectly illustrates how, in this kind of content, creativity is strongly linked to the bypassing of copyright and intellectual property management. Another noteworthy example in this sense is Uncanny X-Factor’s *Earth-419* universe, in which the fan imagines a version of the Avengers that includes Luke Cage as Captain America, Danny Rand as Iron Man, alongside Photon, Falcon, Storm, and the Thing, thus inventing an ensemble featuring a distinct majority of black characters. Accordingly, this fan-made universe demonstrates how these complex and expanded versions of fan-generated content reflect the same logic of redistribution of power in the media and convey the same need for the representation of under-represented categories.

4 Fanedits. Fixing the universe

The last category of content under analysis most strongly reflects, on the one hand, the relationship between the democratisation of technology and the evolution of fan reuse practices, and on the other hand, the self-perception of the fan as the guardian of the quality standards and values of their favourite franchise or franchises. These media artefacts are known as “fanedits” and consist of the re-editing of entire films or multiple films by a fan, who, just like a possessive spectator, takes possession of copyrighted video material to bend it to a different expressive purpose. This kind of user-generated con-

tent shows a significant balance between the audience and the cultural industry in terms of potential and resources, as the faneditor employs editing software and techniques that are very similar, if not identical, to those used by the original video footage editor. Moreover, this typology of fan-made content displays the highest degree of realisation of the fan's vision. Indeed, when comparing these contents with those previously discussed, it becomes evident that while the fanfiction extensions are mostly a blueprint of something yet to be realised, the fanedit represents the complete realisation of the fan's visual idea.

To fully understand this type of fan-generated content, it is beneficial to carry out a walk-through analysis¹² of fanedit.org, a website which aggregates these edits and the community that creates, reviews, and engages with them. In the website, the menu bar at the top of the home page features drop-down boxes that, in addition to the sections found on most websites – such as “about”, “register”, “login”, etc. – include some interesting items. Firstly, the “resources” section offers a list of useful software for creating a fanedit, each accompanied by a description. This list includes software for DVD ripping, audio extraction, and editing tools. Within the same section, there is a subsection titled “tutorials” which contains videos that illustrate how the aforementioned software works. Additionally, as on any community-based website, there is a section dedicated to forums and discussions, with a subsection devoted specifically to fanedit reviews. This review system, in turn, leads to the monthly selection of works that stand out for their quality and are therefore featured in the “fan edits of the month” section of the website. The other discussion sections are dedicated to the different types of fanedits – which will be addressed in more detail shortly – to works that are still in progress – with the “Fanedits IN-THE-WORKS”, “Unapproved Fanedits”, and “fanedits ideas” sub-sections – and to the exchange and finding of film clips – in the “Trades and Requests” sub-section. Additionally, there is a section dedicated to technical discussions, divided into the “Fanediting Software”, “File Conversion”, “DVD/Blu-ray Authoring & Burning”, “Audio Editing”, “Other Technical Help”, and “Mac Guides” subsections.

¹² Walkthrough analysis is a method that follows the user's experience in a digital environment (for example a platform or a videogame), examining all the menus and their sections (Light et al. 2018).

The section containing the actual fanedits is the Internet Fanedit Database (IFDB), which is clearly inspired by the Internet Movie Database (IMDb) and imitates its record template and rating system. In the IFDB, each record provides traditional information – such as title, genre, running time, and year of release – for both the official source movie and the fan edit. Additionally, there are sections specific to fanedits, such as the type of fanedit and the amount of time added to or cut from the official source movie. Within the IFDB, fan edits are categorised according to the following criteria:

- the franchise from which the source material comes from;
- the genre the fanedit belongs to. Although this is a rare occurrence, the genre of the fan edit does not necessarily correspond to that of the official source movie. Indeed, by changing rhythm, music, and colour grading, the fan editor can diverge from the “original” genre to some extent;
- a section dedicated to fanedit authors (faneditors);
- a search section leading to a search bar;
- a classification of fanedits by type.

This last section is the most interesting because it is entirely specific to fanedits and classifies them into ten categories. The first category, labelled “fan-fix”, includes a type of fanedits that strongly embodies the notion of the fan as a guardian of the franchise, elevating this role to a new dimension. As the name implies, these edits aim to correct what the fan perceives as being inconsistent with the values and quality standards of the franchise. Therefore, through sampling, manipulation, and editing, the fan attempts to fix “the problem”, restoring the quality of the first-level narration through the re-editing of the third-level content that he perceives as inadequate¹³. In this sense, the previously described “worst episode ever phenomenon” is complemented by an operational dimension wherein the fan shifts from being a guardian to being a fixer. Within the MCU franchise, notable examples include *Avengers: Age of Ultron - The De-Whedoned Cut*, *Avengers Assembled*, and *Punisher: War Journal*. In the examples, the desire to fix “the episode” – here corresponding with a movie – as well as the techniques employed by the authors of these fanedits to fulfil it, clearly emerge from the two sections

¹³ We refer to the narrative levels that define the narrative ecosystems discussed in the preceding paragraphs.

of the IFDB records labelled “synopsis” and “intentions”: a space specifically dedicated to the explicit description of the faneditor purposes. In the case of *Avengers: Age Of Ultron - The De-Whedoned Cut*, the synopsis reads:

Avengers Age Of Ultron is a little more grown up than the first one, a little scarier, a little funkier.’ Joss Whedon. THAT WAS A LIE! The goal is to keep that original promise. Removing the worst of the humor, creating a threatening villain and tightening up the pace of the final act, transforming the movie from an underwhelming letdown into a worthwhile sequel to the original¹⁴.

Concerning their intentions, on the other hand, the author writes:

Joss Whedon’s writing can be funny, but too much of a good thing is a bad thing. It feels like he wrote potential jokes for every scene and then just put them all in. This left no room for us to get invested. Plus Ultron was not the villain we were shown in the trailers. My goal was to fix these flaws as well as remove and dumb or unnecessary moments in the film¹⁵.

It is therefore evident that the fan has identified both the problem and the main culprit with extreme precision: a director – Joss Whedon – who failed to manage this installment of the franchise.

Similarly, the *Avengers Assembled* author’s aims are also clearly expressed in the dedicated section, which reads: “The purpose of this edit is to combine the stories of Infinity War and Endgame in a one-part edit, while quickening the pace of both films, making for a more digestible and entertaining rewatch experience.”¹⁶ Notably, the author here did not limit themselves to adding or eliminating footage, but combined two different source films into a single edit, an operation that recalls another type of fanedit known as fanmix.

The last example, *Punisher: War Journal*, introduces another concept: the fidelity of the film’s adaptation to the original character. Here, the term “original” refers to the features of the character in the source text (Hutcheon 2006) from which the film adaptation is derived, which in turn corresponds to the movie from which the fanedit is produced. This is precisely the case with *Punisher: War Journal*, as the fan releases their frustration towards the

¹⁴ <https://fanedit.org/avengers-age-of-ultron-the-de-whedoned-cut/> (last accessed 07-04-25).

¹⁵ <https://fanedit.org/avengers-age-of-ultron-the-de-whedoned-cut/> (last accessed 07-04-25).

¹⁶ <https://fanedit.org/avengers-assembled/> (last accessed 07-04-25).

“worst adaptation ever” by retracing the character and his story through editing. As the “intentions” section reads with this edit the faneditor aims to create “a movie of The Punisher that feels more in line with the character and takes out the overindulgence the movie tends to have”¹⁷.

Although fanfixes are the category of fan edits that most explicitly embody the concept of the fan as the guardian and fixer of the franchise, other typologies such as “fanmixes” – in which the editor combines several films from the same franchise – can also fulfil this role. This is indeed the case with the author of the aforementioned *Avengers Assembled* who explicitly aims to provide “a more digestible and entertaining rewatch experience”¹⁸. Similarly, “extended versions” – a type of fanedit that involves the reintegration of deleted scenes or the addition of post-credit scenes to the source film – can also be rooted in analogous motivations, as exemplified by *Iron Man 3: Extremis Edition*, where the author reintegrates: “10 deleted, extended and alternate scenes into the film, with an all-new subplot and mid-credits scene. 8 minutes of footage are now back in the film, restoring more of Tony’s holiday adventure!”¹⁹

Conclusion: The Loop Between PI Management and Copyright Violation

The examples discussed so far show that fan-generated content is a complex issue for several reasons. Primarily, it arises from the convergence of a multitude of features and phenomena, including the need for expression, knowledge of the franchise, emotional bonds, the democratisation of technology and techniques, the development of participatory culture, the fandom/anti-fandom continuum, social and political needs, the urge for representation, and self-determination.

Furthermore, this content is the expression of a real power struggle between the audience and the cultural industry that involves technical skills, investment of free time, and copyright infringement. In this sense, the examples discussed so far demonstrate that fans, when creating content, assimilate and process the inputs coming from the latest trends within the cul-

¹⁷ <https://fanedit.org/punisher-war-journal/> (last accessed 07-04-25).

¹⁸ <https://fanedit.org/avengers-assembled/> (last accessed 07-04-25).

¹⁹ <https://fanedit.org/iron-man-3-extremis-edition/> (last accessed 07-04-25).

tural industry and narrative ecosystems. In other words, they acquire from the industry the techniques to (try to) bend its products to their expressive needs, thereby creating a loop in which the latest intellectual property management strategies produce new and more sophisticated ways of violating copyright regulations.

In conclusion, this study demonstrates that the world of fan-generated content is a complex and interwoven system characterised by hybridisation, convergence, overlap, and stratification in which love and hate are both valid impulses for creation. This cultural environment consists of a bottom-up production system based on the reuse of stories, images, and characters from the traditional media environment, which currently exhibits a level of sophistication that enables fans to create re-edited, full-length feature films and user-generated universes. Concerning the latter, the aforementioned fan-made universe *Marvel Cinematic Universe Reborn* shows another peculiar and interesting feature. On all the web pages dedicated to the description of the third-level elements that make up the universe, there is a statement that reads: “Credit goes to MarvelousParty for the image templates”, thus showing a collaboration between fans for the creation of different pieces of media within the same universe. Therefore, although current examples still mainly show a single author production process, this specific instance makes it possible to hypothesise a further development of these fan-based practices that will involve community-based co-creation, in which each fan will make their specific skills available to participate in the development of a transmedia fan-made universe.

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- Sonic the Hedgehog* (2020)
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- Thor: Ragnarok* (2017)

TV SHOWS

Bob's Burger (2011-)

Games of Thrones (2011-2019)

Falcon and the Winter Soldier (2021)

Family Guy (1999-)

Loki (2021-2023)

The Simpsons (1989-)

WandaVision (2021)

FIXING THE UNIVERSE. FAN-BASED PRACTICES BETWEEN
NARRATIVE ECOSYSTEMS AND PARTICIPATORY MEDIA



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Transnational Seriality

The Circulation of Italian Television Drama in Europe

Lorenzo Sascor

◀◀ ABSTRACT

Historically, Italian television seriality, like its European counterpart, has always been confined within national borders. Apart from a few rare exceptions, Italian television drama has seen limited circulation abroad, due to cultural, industrial, and economic reasons. However, over the past 15 years, increasing digitalization, the emergence of new distribution channels, and new industrial configurations have led to significant shifts in the circulation of national intellectual properties. In this context, pay TV's first, and later streaming platforms, have played a crucial role in pushing for a broader and more successful circulation of Italian serial narratives, often emphasizing their dual nature as both local and global works.

This essay aims to analyze the circulation of contemporary Italian television series in Europe, focusing on both the industrial and cultural dimensions involved. Combining a media industry studies approach with an analysis of audience reception, examples of contemporary Italian serial narratives distributed abroad will be discussed, considering how their European circulation highlights their simultaneous identity as both local intellectual properties and transnational media objects.

KEYWORDS

Circulation of media; television series; Italian seriality; European television drama.

Introduction

In the third episode of the Spanish television series *Los años nuevos* (2024), there is a scene in which the male protagonist Óscar (Francesco Carril) comes across the DVD version of the Italian 2003 mini-series *La meglio gioventù*. After spending the night together, Óscar and his girlfriend Ana (Iria del Río) talk about what to do next, and watching a movie is one of the options. However, *La meglio gioventù* appears to be too long – six hours in total. In fact, the four-part series was originally distributed in Italy and abroad as a feature film, first presented at the 56th Cannes Film Festival, where it was awarded the *Un Certain Regard* Award and received international praise.

The presence of *La meglio gioventù* in its DVD version in *Los años nuevos* witnesses the international successful circulation of this Italian mini-series, while also emphasizing several parallels between the two works. They are both “art-house” series, closely linked to film production and promoted in a way that underscores their cinematic nature. Both were first presented at international film festivals¹ and both were created by directors strongly associated with the film industry. Furthermore, both have circulated beyond national borders, reaching various niches of audiences, particularly composed of cinephiles and film enthusiasts across Europe.

This brief scene, along with the presence of an Italian art-house mini-series in a Spanish art-house series, not only highlights the cultural value of the circulation of Italian television drama, but also connects this phenomenon to the broader circulation of European television seriality. It is indeed impossible to consider the circulation of Italian seriality without involving the wider European context, especially when applying a media industry studies approach to the study of the phenomenon.

¹ *Los años nuevos* was presented at the 2024 edition of the Venice Film Festival.

Reflecting the overall situation of European television, throughout much of its history, Italian television drama did not circulate considerably abroad, except in rare cases – in addition to *La meglio gioventù*, another extensively debated case is *La piovra* (1984-2001), a well-known ten-season crime series that was widely distributed outside of Italy, reaching more than 100 foreign markets. However, over the past twenty years, the landscape has gradually changed and the circulation of European television series has grown significantly. The emergence of pay television and global streaming platforms based in Europe has expanded the circulation paths for European seriality, giving rise to a transnational production that offers an alternative to the American one. Streaming platforms, in particular, have fostered the growth of a transnational European television seriality capable of reaching audiences across multiple countries, occasionally producing hit series such as the German *Dark* (2017-2020), the Spanish *Élite* (2018-2024) and *La casa de papel* (2017-2020), and the Italian *Suburra – La serie* (2017-2020). These types of products help reduce the distance between European audiences and challenge the historical fragmentation of the European audiovisual industry, creating imagined communities (Anderson 1991) of pan-European spectatorship.

In this context, Italian seriality has become a new vector for the circulation of “Made in Italy”, playing the role of involuntary nation branding (Bolin and Miazhevich 2018), a role that was previously occupied by cinema, fashion, food, and music. In its recent circulation across Europe, Italian television drama has often stressed its dual nature as both a national expression and a global artifact, navigating the intersection between local identity and global ambitions. This has sparked emerging academic interest in the circulation of Italian television seriality, leading to various studies (Benvenuti et al. 2020, Scaglioni 2020a, Scaglioni 2020b) that consider the phenomenon from a broad perspective, paying attention to both the narratives and the technological dimension. It is indeed a contemporary approach, indebted to a new conception of distribution studies that emerged in the 2000s, alongside the rise of media industry studies and production studies (Brembilla 2020: 153). These studies analyze international circulation by considering related issues, such as conglomeration and globalization, giving unprecedented importance to the possibilities offered by digital technologies.

Building on this approach, this essay aims to analyze *how* contemporary Italian television seriality circulates in Europe, combining a media industry studies perspective with an analysis of international audience reception. In other words, the essay will identify the industrial forces that enable Italian

(and European) television drama to circulate abroad, while also examining how the international consumption of Italian series reveals the coexistence of local and global forces. Great attention will be given to the relationship between local identity and global storytelling that characterizes the circulation of Italian contemporary drama. To this end, we will focus on two case studies, *Il commissario Montalbano* (1999-) and *L'amica geniale* (2018-2024), analyzed in relation to their circulation in two European countries: the Netherlands and Germany.

Methodologically, the essay is divided into three parts. Given that our aim is to consider contemporary Italian seriality within the context of European production, we will first discuss the recent rise in the circulation of European television drama abroad, identifying the industrial, regulatory, and aesthetic factors behind this phenomenon. Secondly, we will examine contemporary trends in the international circulation of Italian seriality, analyzing how the production stage plays a crucial role in making the series exportable. Finally, we will turn our attention to the two selected case studies.

Methods

This essay builds on the existing literature on the circulation of European and Italian seriality, which integrates approaches from media industry studies, production studies, distribution studies, and audience studies. Our aim is to address the phenomenon considering its complexity, highlighting the various forces and dimensions that play a role in the circulation of European audiovisual media. As we will see in the following pages, these forces include industrial configurations, editorial strategies, media regulations, and technological infrastructures. We will analyze their intersection, focusing on contexts – the Netherlands and Germany – that have not yet been explored in existing studies.

First, we will examine how the selected case studies have circulated in these markets, tracing the various stages of this circulation and considering the institutions that have favored it. We will do this by using publicly available information and consulting with involved institutions, such as television networks. Secondly, in order to frame the relationship between local identities and global narratives, we will analyze the audience reception of the two series in the selected markets. To do this, I have applied methods similar to those used by other scholars studying the circulation of Italian se-

riality (Bisoni and Farinacci 2020, Fabris 2020), consisting of the analysis of audience reception based on online reactions and debates. I collected a substantial sample of online user-generated comments on these series from users in the Netherlands and Germany. These comments were gathered from various online sources, such as YouTube videos, television networks' official social media pages, and e-commerce websites. I analyzed them to identify recurring topics, keywords, and observations that characterize the reception of these series in the considered markets.

This approach undoubtedly has some limitations, as the results of this analysis cannot be generalized to the entire reception of these series in the Netherlands and Germany. Furthermore, considering solely online comments excludes demographic groups who may not be familiar with Internet tools. However, our aim is not to define the full scope of the reception of these series in the considered markets, but rather to identify the key elements that emerge from foreign audiences' consumption of these Italian television dramas.

1. The Conditions for a Greater Circulation of European Television Series

The circulation of European television series across Europe is a relatively recent phenomenon. Indeed, as mentioned before, for most of its history, European national drama did not circulate successfully in other European markets. Of course there are some exceptions, and not all European national productions have shared the same fate. British seriality, for example, has circulated abroad much more easily, thanks in part to its historical proximity to the US media industry.

On the other hand, American serial production has always been a constant presence on European national screens since the development of television in Europe. During the medium's early years, television series from the first Golden Age arrived on European screens, and various national audiences encountered classic titles such as *I Love Lucy* (1951-1957), *Perry Mason* (1957-1966), *The Twilight Zone* (1959-1964), and *Alfred Hitchcock Presents* (1955-1962). While, in this phase, the import of US television series was still part of the formation of national programming and therefore subordinate to national drama, things began to change irreversibly starting in the 1970s. New institutional and technological shifts led to the emergence of private

television networks, which established themselves as counterparts to national public broadcasters. The growing competition among networks resulted in an increasing import of international television series, especially from the United States. This massive import sparked internal competition between public and private television: for example, in Italy, the broadcast of the popular CBS soap opera *Dallas* (1978-1991) became a show of force between the public service Rai and the private network Fininvest (Buonanno 2012: 39-40).

This consistent presence of US television seriality in Europe is in continuity with the historical dominance of US serial narratives in general, which have always successfully circulated in Europe, from early twentieth-century film serials to contemporary Hollywood franchises. However, the circulation of European television series is a phenomenon that has increasingly solidified over the past twenty years, and today, various audience segments can access European seriality through multiple channels. As mentioned earlier, several factors first enabled and then favored the circulation of European seriality in recent decades, including industrial, production, technological, and creative aspects.

First of all, an important role has been played by supranational regulation, aimed at ensuring solid international circulation for European audiovisual culture. Given the cultural fragmentation of Europe and its repercussions on the circulation of audiovisual works (Higson 2018: 307), the European Union has been working since 1989 to promote the vibrant circulation of films and television series among its member countries. Among the tools implemented by the EU, the Audiovisual Media Services Directive (hereafter “AVMS Directive”) has attracted the interest of many scholars.

The AVMS Directive was first promulgated in 1989 under a different name, the Television Without Frontiers Directive. Among other provisions, it required both public and private European television broadcasters to invest a certain percentage of their annual income in European independent production, while at the same time reserving a specific portion of their programming schedule to European films and television series. Over the years, the directive has been revised and renamed the Audiovisual Media Services Directive. Video On Demand services were gradually included, leading to complex jurisdictional issues, which were later harmonized by the EU (Lobato 2019: 147). Today, the latest revision of the directive – dated 2018 – establishes that 30% of VOD catalogs must be reserved for European works. Since its introduction, this directive has ensured a consistent presence of European audiovisual works on national broadcasters and within

platform libraries. Although not all countries have managed to meet the prescribed quota every year (Crusafon 2015: 87), the directive has nonetheless contributed to a greater circulation of European television series across the European Union.

The second condition concerns the emergence of new players within the European television industry. First, pay TVs and later global streaming platforms arrived in Europe and began producing original national series. This original production, driven by both commercial strategies and the already discussed rules imposed by the AVMS Directive, was aimed at standing out in a competitive and increasingly crowded market. Therefore, production standards were increased, in order to produce series that could easily circulate abroad (Barra and Scaglioni 2021: 13-4). In doing so, both pay television and Over-The-Top services differentiated their production from the generalist one, often turning to professionals from the film industry rather than from traditional fiction. Among the new production modalities first introduced by pay TVs and later adopted by OTT services are the establishment of the writers' room, based on the American model, and the role of the showrunner (Barra and Scaglioni 2021: 19). Over the years, the showrunner has become a recognized figure within the European industry, to the point that institutional initiatives to train people for this role have been launched, such as the European Showrunner Programme, promoted by the International Film School in Cologne and directed by Danish showrunner Jeppe Gjervig Gram.

The European adoption of the showrunner has enabled greater narrative possibilities and increased complexity. It is important to note that not all European television industries have adopted these new creative modalities to the same extent or at the same time. For instance, the Danish industry was among the first to introduce production strategies typical of American television into a European context – not through the initiative of a pay TV, but rather that of the Danish public service, DR. As early as the mid-1990s, producers at DR began to identify American television series as potential models for a more ambitious national seriality. Later, they traveled to Hollywood to study American television production strategies and brought them back to Denmark (Redvall 2013: 158). This marked the first step of an aesthetic revolution that gradually impacted all the major European television markets, leading to ambitious and internationally successful series such as *Babylon Berlin* (2017-), *Romanzo Criminale – La serie* (2008-2010), *Le Bureau des légendes* (2015-2020), and *Borgen* (2010-2022).

At the industrial level, another key factor that has facilitated the contemporary circulation of European seriality is the rise of pan-European companies that operate as highly vertically and horizontally integrated entities (Meir 2019: 122-3). These companies, including StudioCanal, Wild Bunch, Fremantle, and EuropaCorp, function as complex systems made up of various subsidiaries involved in both film and television production and distribution. In addition to large companies operating on a pan-European level, there are also smaller companies whose scope of operation is limited to territories with shared cultural or linguistic ties, particularly in Scandinavia and German-speaking countries (Meir 2019: 126). This increasing integration at a transnational level makes the circulation of series between different markets easier and more immediate, while at the same time favoring another decisive impulse for the circulation of European series: television co-productions.

Of course, television co-productions are far from being a new phenomenon, and throughout the history of European television, they have always been characterized by high ambitions and complex distribution strategies. Nowadays, television co-productions are still an important part of annual programming and represent industrial strategies that not only support ambitious economic efforts and narrative possibilities, but also allow audiovisual works to reach more markets in a shorter time. As institutional initiatives like Eurimages have demonstrated, audiovisual co-productions are seen by European institutions as an opportunity for cooperation between member countries (Cucco 2020: 176). This is why television co-productions are also promoted by specific actions and programs, such as the recent initiative launched by the European Council, “Pilot Programme for Series Co-Productions”, a three-year project (2023-2025) that financially supports television series with a maximum of 10 episodes and 600 minutes in duration, co-produced by at least two independent companies in two different countries.² As evidence of the positive impact of co-productions on circulation, among the expressed aims of the program is also to “stimulate the circulation of culturally and linguistically diverse works across the member states” (Pilot Programme for Series Co-Productions Website).

² The countries participating in the project are Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Czechia, Estonia, Greece, Hungary, Ireland, Lithuania, Luxembourg, Netherlands, North Macedonia, Norway, Poland, Portugal, Serbia, Slovak Republic, Slovenia, and Spain. Further information regarding the program is available on the website: <https://www.coe.int/en/web/programme-for-series-co-productions/home> (last accessed 17-01-25).

Another important initiative is the so-called “European Alliance”, officially announced in 2018. This association, formed by three of the main European public broadcasters – the German ZDF, the French France Télévisions, and the Italian Rai – promotes financial and creative cooperation in television drama production. Over the years, several series have been co-produced within the project, often high-budget, high-end dramas, typically based on literary sources, including *Around the World in 80 Days* (2021), *Der Schwarm* (2023), and *The Count of Monte Cristo* (2024). On the occasion of the first anniversary of the alliance in 2019, Eleonora Andreatta, who was the director of Rai Fiction at the time, emphasized that the project’s goal was to offer a European alternative to the global US production while, simultaneously, respecting the duties of public service media, such as inclusion and the dissemination of culture (Rai Ufficio Stampa 2019).

2. Trajectories in the Circulation of Contemporary Italian Seriality in Europe

The features that facilitate the circulation of European television series can also be identified in the Italian industry. Since the 2010s an increasing number of Italian television series have circulated in Europe and beyond, reaching notable success even in markets that were historically overlooked by Italian production. This has led to a growing academic interest in the topic and the emergence of national and international research that has explored the phenomenon from a variety of perspectives. As mentioned in the introduction, these studies often draw on the academic tradition of media industry studies, considering the international circulation as a system that involves industrial, technological, and cultural aspects.

Massimo Scaglioni (2020b) discusses several elements that both support and distinguish the circulation of contemporary Italian television drama. Among the features characterizing the series that most successfully circulate abroad, Scaglioni acknowledges the tendency to exploit existing intellectual properties and transmedia brands to create works that can easily capture an audience of enthusiasts who are already familiar with and fond of the previous installments (Scaglioni 2020b: 22). In this regard, Angela Fabris (2020) discusses the case of *Gomorra – La serie* (2014–2021) and its circulation across German-speaking markets. *Gomorra* is indeed the most relevant example of exploitation of previous intellectual properties. The Sky original

series is part of a transmedia brand that successfully circulated abroad in its previous forms: the 2006 original novel by Roberto Saviano was translated into more than 50 foreign languages, and the 2008 feature film by Matteo Garrone successfully circulated in international film festivals, starting with Cannes, and garnered international awards and recognition. Although the series is not narratively bound to these previous media objects, it evokes the criminal imaginary from both the book and the movie. *Gomorra*, which further expanded its transmedia installments with the 2019 cinematic spin-off *L'immortale*, directed by Marco D'Amore, has circulated across Europe and even beyond, garnering international acclaim. In 2019, it was ranked fifth among the best television series of the 2010s by *The New York Times* (Hale 2019).

As Fabris remarks (2020: 62-3), the reasons behind *Gomorra's* international success lie in both its authentic portrayal of the Camorra and Italian criminality, and its high production values and refined aesthetic, comparable to those of the globally successful American complex seriality (Mittell 2015). Its innovative storytelling – particularly the focus on morally negative protagonists – echoes internationally acclaimed American series, such as *The Sopranos* (1999-2007) and *Breaking Bad* (2008-2013), further contributing to its widespread praise.

Among the other recurrent characteristics discussed by Scaglioni, there is also the growth of budgets (Scaglioni 2020b: 22), which aligns with the overall increase in budgets for the entire Italian audiovisual production – partly due to the current configuration of public funding for audiovisual works – thereby providing the series with more international and ambitious production values. It contributes to giving the series a more *glocal* flavor. This term, which arises from the fusion between “global” and “local”, refers to the hybridization of elements rooted in a local and national socio-cultural context with a global storytelling approach that draws on dynamics, genres, and structures typical of transnational narratives. The coexistence of these two aspects amplifies the series’ cultural proximity, allowing it to circulate in other markets and find an audience, even in culturally distant territories. This coexistence between local features and global elements is even more evident in streaming platforms original series, which can more easily circulate abroad thanks to the multinational presence of these companies. Netflix’s international series, despite their local nature, tend to build narratives according to structures and elements typical of American narratives, making them attractive to a transnational audience (Brembilla and Pescatore 2023:

290), thus satisfying the platform's need to be simultaneously local and global. This is why a popular genre within Italian Netflix originals is teen drama, a transnational television genre whose international recognition and popularity are undoubtedly shaped by American series.

As Luca Barra (2024: 259) explains, teen drama as a genre helps bridge the gap between local features and global objectives in the production of Italian Netflix originals, such as *Baby* (2018-2020) and *Summertime* (2020-2022). This is because teen drama is a genre that capitalizes on shared feelings among teenagers from all over the world, as well as on specific iconography typical of American high schools – an iconography made up of hallway lockers and cheerleaders, which is non-existent in Italian schools and whose absence could be justified setting the story in a private high school (Barra 2024: 260). At the same time, Netflix's cumbersome interference in the creative process encourages screenwriters to eliminate any moral ambiguity and gray areas in order to create stories that would be internationally comprehensible, “giving top priority to clarity and glosses over potential complexities and facilitating dialogue between an Italian scenario and a broader (even global) audience” (Barra 2024: 261). The production process is indeed a fundamental stage in giving the series the capacity to circulate abroad. The production can make the series “export-friendly”: in other words, the way the series is written, filmed, and even edited actively contributes to the broader strategy aimed at making it circulate internationally.

This approach to storytelling and aesthetics involves not only pay TV's or streaming services, but also generalist broadcasters, which, unlike in the past, now face the need to export series and properties. Consequently, international circulation is strategically planned through actions initiated by inherently transnational production modalities, often involving foreign partners – as will be discussed in the analysis of *L'amica geniale's* circulation. Production strategies must be combined with storytelling techniques that can make the series more exportable, focusing on transnational elements while maintaining a local identity. This is clearly demonstrated in Fabien Landron's analysis (2021) of the circulation of Rai 1's prime fiction *Doc – Nelle tue mani* (2020-).

Doc has successfully circulated across many foreign European territories, reaching a consistent international audience. For instance, in France, where it was acquired and broadcast in prime time by TF1, *Doc* attracted an average of more than 4 million viewers per night (Landron 2021: 98-9). While this success is partly due to the international popularity of medical dramas,

it is also linked to the glocal nature of the series itself. As Lux Vide's CEO Luca Bernabei affirms in an interview with *The Hollywood Reporter Roma*, *Doc* was produced to be internationally appealing, showcasing global production values and international storytelling (Sollazzo 2024). Indeed, the series is set in Milan, which is more European and international than other Italian cities and less associated with the Italian audiovisual tradition than Rome (Landron 2021: 96-7). At the same time, the series is very formulaic in following the typical structures of medical dramas. Finally, the use of English songs in the soundtrack and the inevitable cultural adaptation in foreign markets – for instance, some characters' names are translated into French and certain cultural references are adapted to the French context – favor the series' appreciation abroad.

3. International Distribution and Reception of *Il commissario Montalbano* and *L'amica geniale*

Among the Italian serial brands that have circulated abroad, *Il commissario Montalbano* and *L'amica geniale* are two interesting cases of national identity being redefined. While circulating internationally, their identities are reshaped through a blend of local ties and global recognition. Despite being both major successes in Rai 1 prime time and recognized as two of the most popular contemporary Italian television drama, their international circulation differs, reflecting, on the one hand, the differences in the media scenario in which they were produced, and, on the other hand, the differences in their production strategies.

When the production of *Il commissario Montalbano* began in the late 1990s, Rai had little confidence in the project. Montalbano was considered a controversial character, and his way of speaking, marked by the Sicilian dialect, was seen as a potential obstacle to reaching a national and diverse audience, which Rai, as a public service, aimed to engage. This is why the series was initially broadcast on Rai 2 (De Mola 2020: 26-7), but the unexpected success of the first two episodes – achieving around a 25% share – convinced the broadcaster to move it to Rai 1. Over the years, *Il commissario Montalbano* has solidified its national success, becoming one of the most popular Italian television series, partly due to Luca Zingaretti's convincing portrayal of the protagonist. Reflecting its strong reception in the domestic

market, *Il commissario Montalbano* has also gained traction across Europe, particularly winning over British audiences (Buonanno 2013: 180), and has established itself as an integral part of the transnational crime fiction tradition known as “Mediterranean Noir”, shaped by literature, film, and television.

Nevertheless, the international circulation of *Il commissario Montalbano* has differed from that of other brands, both in terms of the industrial strategies involved and the foreign reception. This becomes particularly evident when comparing its circulation to that of *L'amica geniale*, which was developed from the beginning to be a transnational success. In this research, we focus specifically on two territories: the Netherlands and Germany. This study does not aim to use these territories as a representative synecdoche for all of Europe, but rather to illustrate, through the analysis of these specific markets, how *Il commissario Montalbano* and *L'amica geniale* differ regarding how their local identity is perceived.

In the Netherlands, *Il commissario Montalbano* has been subject to an irregular distribution, reflecting the fragmented release of Camilleri's book series. Indeed, Montalbano's novels were published in the Dutch market without a solid and coherent editorial strategy. The majority of the novels were published by the independent Amsterdam-based publisher, Serena Libri, often in a different order from the Italian versions and omitting several installments. Although Montalbano's novels have never become best-sellers in the Dutch market, critics have praised the overall quality of the stories, the humor, and the unique personality of the protagonist (Menkveld 2017: 32). The fate of the television series also followed an irregular path. *Il commissario Montalbano* has never been broadcast on Dutch television³; however, this does not mean that the Dutch audience has not encountered it. In fact, *Il commissario Montalbano* is broadcast on BBC Four, part of the British public service, which can be accessed by Dutch viewers through the platform NLZIET. Additionally, the majority of the episodes were released on Netflix in 2021, while, over the years, the Belgian distribution company Lumière has made available the series on DVD.

In Germany, the series' circulation has been discontinuous as well, though more consistent. The first two seasons, including the first four episodes, were broadcast by ZDF in 2001, albeit in a different order from

³ The lack of broadcast of the series was also confirmed by the Netherlands Institute for Sound & Vision and by a representative of NPO, the Dutch public television, through a private email exchange.

the original release. However, the following episodes had to wait a decade before being aired. In 2011, the German audience encountered the series once again – this time not on a German broadcaster, but on ServusTV, an Austrian channel available in Germany since 2009. In 2015, after the ninth season, ServusTV stopped airing the show, and the following two seasons were released in Germany on DVD. At the time of writing, seasons 12, 13, 14, and 15 have still not been released. While it is impossible to pinpoint the exact reasons for the series' discontinuous distribution in Germany, it is possible to identify why the order of the episodes was altered from the original Italian distribution. For example, the first two seasons – namely, the first four episodes – were broadcast in an inverted order, probably to align with the sequence of the novels. Indeed, episodes 1.01 (“Il ladro di merendine”) and 1.02 (“La voce del violino”) of the series correspond to the third and fourth novels, while episodes 2.01 (“La forma dell’acqua”) and 2.02 (“Il cane di terracotta”) are based on the first and second novels. Moreover, since *Il commissario Montalbano* is primarily characterized by vertical storylines, it is relatively easy to rearrange the episodes without disrupting the overall narrative flow.

Unlike in the Netherlands, in Germany the series underwent another significant change: the adaptation of the dialogues into German. Similar to the adaptation of the novels, the television series was translated using colloquial German (*Umgangssprache*), which is geographically neutral and “neutralizes” the typical Camilleri dialect and the overall multilingualism that characterizes the series (Alfieri and Rapisarda 2007, Calvo Rigual 2020). Research conducted by linguistic scholar Ulriche Kaunzner shows that the German dubbing, combined with the Italian acting and gestures, appears unnatural, forced, and stereotypical to German viewers. At the same time, the original version is perceived as more spontaneous and is thus more appreciated (Kaunzner 2020: 504). This issue is reiterated by some online comments collected for this research, which criticize the limitations of the German dubbing while praising the original Italian version as more natural, amusing, and engaging. This sentiment is expressed in the comment below, an excerpt from a review of the series' DVD:

GER: Einziges Manko: Ich finde es sehr schade, dass auf den Staffeln nur der deutsche Ton zu finden ist und nicht die italienische Originalfassung. In Italienisch ist Montalbano um ein Vielfaches besser, bei der Synchronisation geht viel zu viel Witz und Originalität verloren!

ENG: The only lack: I think it's a shame that the seasons only have the German audio and not the original Italian version. Montalbano is much better in Italian, too much humor and originality get lost in the dubbing!

The sense of locality that emerges from the perception of the dubbing is even more evident when considering the overall reception of the series among Dutch and German audiences. According to the online comments collected, the interpretation of the series seems to particularly stress its local features. While some viewers mention appreciating the ironic tone and the storylines, the most recurrent topics are the visual representation of Sicilian landscapes and the authenticity of the portrayal of the Italian lifestyle. Many comments emphasize that the series has “a typically Italian atmosphere”, with “beautiful Sicilian images”. Often, these two directions converge, displaying a relationship between Italian authenticity and Sicilian insularity. Of course, the beauty of landscapes is an important part of *Il commissario Montalbano*'s visual identity, enhanced by specific film techniques – for instance, the aerial shoots during the title credits –, which also contributed to a massive phenomenon of film-induced tourism in Sicily.

However, it is telling that the exaltation of landscapes, as well as the insular dimension, characterized the promotion of the series for both the Dutch and the German markets, as shown by the prominence of Sicilian landscapes on the various covers of the Lumière DVD series distributed in the Netherlands. Each cover follows the same structure: a close-up of Montalbano's face at the top, with a typical Sicilian landscape or characteristic baroque architecture in the background (Figure 1). Similarly, trailers promoting the German DVD of the series feature an interlude between scenes, showcasing a map-like representation of Sicily that emphasizes the centrality of the insular nature of the stories.

FIGURE 1

Cover of one of the DVDs distributed by Lumière. In the background, the sunny Sicilian sea is visible.



The audiences' reception, thus, reflects the modalities through which the series was initially promoted in the considered markets – modalities that especially reinforce and highlight the local and exotic elements of the work.

Different considerations can be made regarding the international circulation of *L'amica geniale*, starting with the industrial and editorial strategies employed since its pre-production. Indeed, *L'amica geniale* was produced in the contemporary media era, in which increasing competition within the European television industry has driven producers and networks to develop series that can easily circulate abroad, as discussed in the first paragraph. Moreover, *L'amica geniale* is based on a literary saga that achieved global success, generating widespread enthusiasm and a strong fan base, particularly in the United States, as clearly depicted by the 2017 documentary film *Ferrante Fever* by Giacomo Durzi. The popularity of the four-part saga preceded that of the television series. *L'amica geniale*, consisting of four seasons aired between 2018 and 2024, is an unprecedented co-production between Rai and HBO, highlighting the challenges that public services face in this phase of intense media competition.

This collaboration had significant consequences on both the storytelling and the aesthetics of the series. Indeed, HBO has built its reputation on its distinction from traditional American free-to-air networks, crafting stories that are complex, challenging, and tackle controversial topics. HBO television series have contributed to the legitimacy of television seriality, leading to academic interest in television series also from scholars in the fields of film studies and literary studies. Therefore, a co-production between Rai and HBO needs to be distinct from generalist Rai production – something more ambitious, with a more complex aesthetic. Moreover, *L'amica geniale* is a project that perfectly aligns with both Rai's and HBO's goals. On the one hand, *L'amica geniale* is a historical drama, a genre that has characterized Italian television since its origins (Buonanno 2012: 18-9), while also addressing social issues that are relevant to a public service's reputation. On the other hand, it is an ideal project for HBO due to its literary origins, broad scope, and the potential for spectacular *mise-en-scène*, given its historical setting.

This productive context steers the production towards a typical prestige television creative approach, involving professionals from the film industry, such as Saverio Costanzo, both the director of the first two seasons and showrunner of the overall series. Costanzo often describes the cinematic approach to the making of *L'amica geniale* as an aesthetic heritage from Italian

Neorealism (Dunleavy 2020: 350). Although the reference to Neorealism is primarily promotional, since the colossal and expensive mise-en-scène has little in common with the typical Neorealist production practices⁴, it still highlights how *L'amica geniale* is conceived as something different from generalist Rai production.

This preamble on the genesis of *L'amica geniale* is fundamental to understanding the reasons behind its international success and global appreciation. *L'amica geniale* was produced with an emphasis on its glocal nature, combining a local Italian story with international production values, while also blending serial mechanisms with art-house cinema values. At the same time, *L'amica geniale's* global appreciation is linked to the themes explored in the series, which critically reconstruct the difficult condition of women in post-war Italy, from an intersectional perspective that also considers the social inequalities typical of the second half of the twentieth century. As some authors have observed (De Rogatis 2023, Turchetta 2020), these social inequalities are not only typical of Italy; rather, they reflect shifts that are characteristic of the contemporary, globalized world, where suburbs have gained new importance and the gap between social classes is increasingly wide. These themes resonate with international audiences and contribute to the international success of the series.

In the Netherlands and Germany, *L'amica geniale* arrived a few months after its Italian release in 2018. In both markets, the series' circulation reflected and reinforced its cultural status. In the Netherlands, for instance, it was first presented during the 2019 edition of the International Film Festival Rotterdam, and a few months later, it was broadcast by VPRO. This channel, owned by the Dutch public service, specializes in cultural programs, documentaries, and experimental films. The series is also part of Max's library. Max is HBO's streaming platform, available in the Netherlands, but not in Germany, where the series was first released on the VOD service MagentaTV, before being distributed on DVD by Arthaus, a company owned by StudioCanal that specializes in art-house cinema.

The series was highly praised by Dutch and German critics, as clearly shown by popular articles appearing in both generalist and specialized

⁴ However, the reference to Neorealism is reinforced in the episode "I soldì" (1.02) through a scene that explicitly references the well-known death scene of Anna Magnani in *Roma città aperta* (1945).

journals. *L'amica geniale* was lauded for its social relevance, connected to its realistic and critical portrayal of the condition of women (Lutz 2019, Zeckau 2022). These eulogies were linked to praise for the protagonists' performances and the overall casting process (Branbergen 2018, Ehlers 2019, Zeckau 2022), which was long and complex, involving more than 9,000 non-professional actresses in Naples (Renga 2020: 82-3). Other articles praised the cinematic aesthetic of the series, while at the same time identifying it as a legitimate example of contemporary complex television (Zwart 2019).

The series' success highlights the elements that make it an example of glocal narratives, such as the themes it addresses and its high production values. This glocal dimension is palpable even in the online audiences' reactions, especially when compared to those for *Il commissario Montalbano*. *L'amica geniale* is appreciated by audiences for its fidelity to Elena Ferrante's novels, the quality of its plot, and the intensity of its story. The careful representation of gender inequalities in a post-war patriarchal society is a recurrent theme in online reactions, often linked to praise for the main actresses' performances. At the same time, some negative reactions mention the controversial and occasionally toxic relationship between the two protagonists. Many viewers admit to having difficulty empathizing with such characters, who often make questionable decisions and reveal themselves to be selfish and envious. This reflects one of the central features of the series: the complex characterization of the protagonists, who are far from being entirely positive figures and align with the recurrent character types of contemporary Italian television seriality.

Conclusions

The analysis of the different international circulation and reception of *Il commissario Montalbano* and *L'amica geniale* allows us to understand how the circulation of intellectual properties, such as television series, can differ based on their relationship with identity elements. On the one hand, there are national dramas that circulate and achieve international success by virtue of their local identity. On the other hand, there are television series recognized as examples of transnational narratives, resonating global issues and social debates.

As the case of *L'amica geniale* perfectly illustrates, these glocal series are often created with the involvement of American conglomerates. Such trans-

national media companies favor the successful presence of these brands in the international market, while simultaneously gaining cultural and economic influence within the global media industry.

This is the first element that the contemporary circulation of Italian – and European – seriality allows us to identify. The successful circulation of Italian brands often highlights the power dynamics between the European and American media industries, with the latter playing an increasingly significant economic and financial role in the former. The production policies of global streaming platforms are particularly illustrative. Original series made by Netflix or Amazon Prime Video grant international visibility to Italian narratives and professionals, while simultaneously supporting the international economic expansion of American streaming services.

Another fundamental element concerns the audience and critical reception of contemporary Italian seriality. As discussed, the need to reach crowded international markets has driven an increase in production values and the adoption of production modalities typical of American complex television. This has led to a greater legitimization of Italian television drama among both viewers and critics. Series such as *Gomorra* and *L'amica geniale* began to be discussed by critics as examples of a wave of Italian quality television, and audiences, in turn, stopped associating Italian television drama exclusively with the generalist Rai and Mediaset fiction. As a repercussion, social debates surrounding contemporary Italian seriality continue to reinforce a presumed qualitative hierarchy between cinema and television, placing greater emphasis on television dramas that showcase particular cinematic aesthetics and values. These are the types of series selected for this essay, and those that circulate most successfully abroad.

This presumed dominance of cinema over television seriality reflects the historical resistance within both Italian academia and industry to recognizing the economic value of television seriality, particularly long-running seriality (Cardini 2004: 153, Cardini 2016: 51), while prioritizing aesthetic qualities. This paradox – between the increasing legitimization of television seriality and the perpetuation of hierarchies – forms an integral part of the contemporary production and circulation of European and Italian television drama. In light of the growing competition and the increasing concentration of properties among conglomerates and platforms, it is an issue that will undoubtedly require further discussion.

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FILMS

Ferrante Fever (2017)
Gomorra (2008)
L'immortale (2019)
Roma città aperta (1945)

TV SHOWS

Alfred Hitchcock Presents (1955-1962)
Around the World in 80 Days (2021)
Baby (2018-2020)
Babylon Berlin (2017-)
Borgen (2010-2022)
Breaking Bad (2008-2013)
Dallas (1978-1991)
Dark (2017-2020)
Der Schwarm (2023)
Doc – Nelle tue mani (2020-)
Élite (2018-2024)
Gomorra – La serie (2014-2021)
Il commissario Montalbano (1999-)
I Love Lucy (1951-1957)
L'amica geniale (2018-2024)
La casa de papel (2017-2020)
La meglio gioventù (2003)
La piovra (1984-2001)
Le Bureau des légendes (2015-2020)
Los años nuevos (2024)
Suburra – La serie (2017-2020)
Perry Mason (1957-1966)
Romanzo Criminale – La serie (2008-2010)
Summertime (2020-2022)
The Count of Monte Cristo (2024)
The Sopranos (1999-2007)
The Twilight Zone (1959-1964)

**TRANSNATIONAL SERIALITY. THE CIRCULATION
 OF ITALIAN TELEVISION DRAMA IN EUROPE**


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Enforcing Morals Clauses in the Digital Age

Balancing the Protection of Talent, Public Image,
and Intellectual Property

Inkyu Kang

◀ ABSTRACT

This chapter critically examines the role of morals clauses within the South Korean entertainment industry, exploring the tensions between corporate image management, digital surveillance of public figures, and the protection of individual rights. By tracing the historical evolution of morals clauses – from their origins in early Hollywood to their modern-day applications – this study highlights how these clauses have become mechanisms of control, disproportionately impacting entertainers, particularly young trainees. Through case studies, the chapter demonstrates how public scandals can lead to punitive actions against individuals, even in the absence of substantiated allegations, leaving entertainers vulnerable to circumstances beyond their control. The chapter argues that South Korea's idol training system, with its emphasis on image management and strict regulations, amplifies entertainers' vulnerability by enforcing rigid behavioral standards. In response, the chapter proposes several reforms, including unionization and the introduction of reverse morals clauses, to address the power imbalance between entertainment corporations and talent. Ultimately, this work advocates for a more equitable and sustainable framework within the entertainment industry, which safeguards the personal rights and dignity of entertainers while promoting artistic freedom.

KEYWORDS

Morals clause; intellectual property; South Korea; cultural industry; social media.

Introduction

The tragic death of a South Korean movie star shocked his global fans at the end of 2023. Lee Sun-kyun, the renowned *Parasite* (2019) actor, took his own life two days after Christmas amid intense scrutiny from a police investigation. Over the course of the three-month-long probe, every unverified detail of his alleged drug use was dissected by the media. In addition to blanket news coverage and relentless gossip on social platforms, breaches of advertising and film contracts – triggered by morals clauses – carried the potential for substantial financial penalties, reaching into the millions of U.S. dollars, and cast a long shadow over his future career. There was no direct evidence linking Lee’s death to the financial burden resulting from the contractual breach. However, the incident sparked growing concerns over the vague standards for determining liability, as well as the power imbalance between contracted talent and major industry players such as studios and advertisers.

In South Korea, it is common practice for contracted talent to be held responsible for legal violations or social scandals, with penalties amounting to two to three times the value of the contract (Ahn 2025). In Lee’s case, however, he had neither been proven guilty nor formally charged—he was still in the early stages of police questioning regarding allegations of drug use. Some even expected that the unfortunate talent might soon be cleared, as he had undergone multiple rounds of detailed drug testing, all of which returned negative. Nevertheless, film studios and advertisers moved to penalize him, either directly or indirectly. Following the allegations and police investigation, his appearances in ongoing projects were cancelled, and the release of completed films was indefinitely postponed. Advertisements featuring him were either hidden or taken down.

Just a year after Lee’s death, another promising young talent took her own life in February 2025. She was 24-year-old Kim Sae-ron, who was on the verge of a comeback after struggling to land roles for a few years. The

reason for her career slump was a drunk driving incident in 2022, which caused delays for several television dramas and films either in production or about to be released, and in some cases, led to her role being replaced by someone else. What may have tormented her even more were the YouTube celebrity gossip channels and other social media platforms, which relentlessly tracked and criticized her every move. After her death, it was revealed that she had been under pressure to quickly pay 700 million Korean won (approximately USD 500,000) due to a breach of contract related to her driving under the influence, proving that the aforementioned Lee case was not an isolated one.

This chapter critically examines the morals clause within the context of a digital media environment, with particular attention to South Korea's cultural industry. The choice of this country is deliberate: since the 1990s, its popular culture has achieved significant global popularity, inspiring the development of highly rationalized systems in other nations. Rooted in a systematized mode of production, South Korea's cultural industry has relied heavily on strategies aimed at maximizing predictability – through calculation, manualization, and a rigorously controlled training system. As a means of minimizing risk, the inclusion of morals clauses in contracts has become commonplace (Kang 2014).

Morals clauses have become a crucial element in talent agreements across the global entertainment and advertising industries. This trend has been amplified by the contemporary media landscape, particularly the rise of social media, which increasingly exposes the private lives of public figures. To manage reputational risks and reduce uncertainty, contractual provisions aimed at protecting public image are expected to grow even more common (Sullivan 2020). South Korea – one of the most digitally connected societies in the world, with a whopping 99.97% household internet access – offers a unique case study in how hyperconnectivity intensifies public scrutiny of celebrities, accelerating the adoption of morals clauses in talent contracts (IITP 2025, Lee 2024).

The morals clause was devised in a vastly different temporal, geographical, cultural, and technological context. Nonetheless, this legal measure has been widely adopted and continues to expand its influence. The rapid evolution of technology and culture has introduced new complexities to this long-established practice. This study also considers the impact of the hyperconnected media environment, where unofficial news spreads instantly, potentially damaging contracted talent's image irrevocably. It also

addresses the challenges posed by morals clauses, focusing on their inherent ambiguity and the potential cultural subjectivity in defining “immoral” or “controversial” behavior. The study aims to explore the implications of this legal tool in today’s context, suggesting potential approaches to mitigate the imbalance between contractual parties.

The Morals Clause: Historical Origin and Development

The morals clause serves as a safeguard for the rights of the intellectual property owner, addressing potential dangers and uncertainties linked to the behavior of contractual parties. The inclusion of morals clauses in talent contracts is far from new. As early as 1921, *The New York Times* reported, “Actors and actresses employed by the Universal Film Company hereafter will be bound by a ‘morality clause’ in their contracts, permitting the company to discontinue their salaries if they forfeit the respect of the public.” (The New York Times 1921)

The formalization of the morals clause followed one of early Hollywood’s most infamous scandals and evolved into a media event. Journalism at that time was predominantly print journalism; radio broadcasting had begun in 1920, including KDKA in Pittsburgh, but only a fraction of American households had radios, and television was still in its experimental stages. Nonetheless, it was a period when sensationalism was rampant in journalism. Known as the Roaring Twenties, a new style of reporting called “Jazz Journalism” was on the rise, focusing on scandal, crime, and celebrity gossip (Bessie 1938, Thomas 2023).

In the summer of 1921, Roscoe “Fatty” Arbuckle, a beloved comedic superstar, was at the height of his career. Paramount Pictures had offered him an unprecedented \$3 million for a three-year contract to star in 18 silent films, and he had just signed another million-dollar deal with the studio. His latest film, *Crazy to Marry* (1921), was showing in theaters nationwide. To celebrate, his friend Fred Fischbach organized a lavish three-day party. This supposedly happy event turned the comic actor’s life into a tragedy. By the end of the week, he was arrested for the death of 25-year-old actress Virginia Rappe. He was practically tried, convicted, and even punished repeatedly by the press, which competed for sensational headlines ranging from “ARBUCKLE, THE BEAST” to “ARBUCKLE FACES GALLOWS” (Merritt 2013).

The Hearst newspapers capitalized on the scandal, with the publisher later claiming that the Arbuckle case sold more papers than the sinking of the *Lusitania*. The papers speculated that while assaulting Virginia Rappe, the 266-pound actor had caused her bladder to rupture. The *San Francisco Examiner* ran an editorial cartoon titled “They Walked Into His Parlor,” depicting Arbuckle at the center of a giant spider’s web, holding two liquor bottles, with seven women trapped in the web. As the media frenzy grew, rumors of sexual depravity surrounding Arbuckle began to circulate. However, Arbuckle’s defense presented medical evidence showing Rappe had a pre-existing bladder condition, and an autopsy revealed no signs of violence (King 2011).

Arbuckle was acquitted of manslaughter on April 12, 1922, with the jury declaring him completely innocent. At the close of the final trial, the jury even issued a rare public apology: “Acquittal is not enough for Roscoe Arbuckle. We feel that a great injustice has been done to him... there was not the slightest proof adduced to connect him in any way with the commission of a crime” (Chamings 2020). But it was too late. His films had already been pulled, and Hollywood had severed ties with him. Although Arbuckle was officially acquitted, in the public’s memory, he remained guilty.

In addition, the incident brought about a lasting transformation in the dynamics between studios and talent in the entertainment industry. In response to public outcry, Hollywood introduced the Hays Code, a censorship system designed to establish moral guidelines and standards for films, dictating what could and could not be shown on screen. Furthermore, morals clauses that emerged in the aftermath of the incident have since given the industry leverage to control the off-screen words and behaviors of contracted talent. Today, morals clauses are routinely inserted into contracts between talent and advertisers, film studios, and entertainment agencies to protect against legal and ethical liabilities. These clauses, which can hold talent accountable for their behavior both on and off the job, have become a standard tool for safeguarding the interests of corporations in the entertainment industry across many parts of the world, including South Korea. However, the ethical implications of such clauses – particularly their potential to limit personal freedoms and create unequal power dynamics – are worth examining.

Over time, the morals clause has expanded beyond film and entertainment stars to encompass athletes, musicians, and other public figures. High-profile cases, such as Tiger Woods’ infidelity scandal and Kanye West’s

controversial remarks, have highlighted the widespread application of these clauses across various industries. A particularly notable case involved NFL player Rashard Mendenhall, whose comments about the death of Osama bin Laden sparked public outrage. Mendenhall's case underscores the tension between free speech and corporate interests in the context of morals clauses in endorsement contracts. This example illustrates how companies can distance themselves from individuals whose actions or statements they perceive as damaging to their brand, even when those actions are related to personal beliefs or political opinions.

In 2011, Mendenhall, then a running back for the Pittsburgh Steelers, posted a message on Twitter (now X) after the announcement of Osama bin Laden's death following a U.S. Navy SEAL operation: "What kind of person celebrates death? It's amazing how people can HATE a man they have never even heard speak. We've only heard one side..." Given the highly charged political and emotional climate surrounding bin Laden's death, Mendenhall's post sparked significant backlash. Mendenhall had an endorsement deal with Hanesbrands, a major American apparel company. Shortly after his tweet, the company announced it was terminating his endorsement contract. The company's response underscored the growing use of morals clauses, which grant companies the authority to cut ties with endorsers whose actions are deemed harmful to the brand's reputation. Hanesbrands also issued a public statement affirming that the company is "a strong supporter of the government's efforts to fight terrorism and is very appreciative of the dedication and commitment of the U.S. Armed Forces" (Edelman 2013).

In response to the termination of his contract, Mendenhall filed a lawsuit against Hanesbrands, arguing that his freedom of speech had been violated. He contended that the loss of his endorsement deal was unjust because the post reflected his personal opinion, which should have been protected. Although his contract with Hanesbrands included a morals clause, he believed it was applied in an unjust or overly broad manner (Gardner 2012). Mendenhall's case stirred a public debate about the balance between an individual's right to express personal opinions, even controversial ones, and the corporate need to protect its public image. The lawsuit was eventually settled out of court, and details of the settlement were not disclosed. However, the incident brought attention to how morals clauses in endorsement contracts could be used to control what public figures say and do in their personal lives.

The Erosion of Privacy: Public Figures in the Digital Spotlight

The widespread inclusion of morals clauses stems from the unique characteristics of the entertainment industry. Cultural products such as films, television shows, music, and live performances are distinctive forms of intellectual property, typically created through the collaboration of artists, writers, directors, and producers. Unlike other types of intellectual property, these works are deeply influenced by the public's perception of the talent involved. The behavior of actors, musicians, and athletes can directly affect the value, reception, and commercial success of a cultural product.

Talent, as the public face of cultural products, is subject to intense scrutiny, as their personal behavior is closely intertwined with their public persona. A scandal or moral lapse can quickly provoke public backlash, damaging not only the individual's reputation but also the works they are associated with. As a result, companies are inclined to include morals clauses in contracts to mitigate such risks. This inherent vulnerability of cultural works as intellectual property has been further amplified by the dynamics of the new media environment. Consequently, restrictions related to social media activity are likely to become an increasingly common feature of morals clauses (Epstein 2015).

The ubiquity of camera-enabled smartphones makes it easy to capture high-resolution images or videos of public figures at any moment. These affordable yet powerful devices, coupled with constant connectivity to social media platforms, allow fans and the public to monitor celebrities in real time. Platforms like Facebook, TikTok, Instagram, and X not only facilitate the instant sharing of reactions but also enable the digital archiving of entertainers' remarks and behavior. This creates a vast, searchable record that can be unearthed at any time, often reigniting scandals from past actions, including those that occurred before a contract was signed. Talent's behavior is now subject to immediate and often unforgiving public judgment, with millions of online observers weighing in – often without full context or regard for fairness.

Technological transformations have broadly increased the vulnerability of cultural products and public figures to reputational damage, but some cultures enforce especially stringent expectations regarding the private conduct of public figures. South Korea, in particular, holds celebrities to high ethical standards. For instance, actress Kim Sae-ron, following a driving

under the influence charge, faced intense scrutiny during her hiatus. Her private life was closely examined, with some criticizing her for hosting a birthday party at a bar shortly after the incident. When she posted about working part-time at a café while struggling to find acting roles, critics accused her of fabricating the story, claiming that someone as wealthy as her wouldn't need such a job. She even faced backlash for seemingly touching her hair in a kitchen, with some calling it unhygienic.

In 2024, Jennie of Blackpink faced controversy after a video clip surfaced showing her allegedly smoking an e-cigarette while getting her hair and makeup done in Italy. The video, originally part of a vlog, was later deleted, but copies quickly circulated online, showing her seemingly exhaling vapor with her stylist nearby. As criticism arose over her behavior, Jennie's agency issued a timely apology, and she also personally apologized to the staff. When asked about the incident in an interview with *Harper's Bazaar*, Jennie responded, "What can I do? If Korean people think it's wrong, I've got to make up for it." She later added, summarizing the diverse and often conflicting expectations placed on her: "I don't want to lose their trust. It is so important for me to have my culture, and everyone around the world, love me" (Patel 2024). As Korean entertainment globalizes and involves a diverse range of personnel – from artists to producers and staff from various backgrounds and countries – these issues become more complex and far-reaching.

In November 2015, a flag held up by a K-pop group member during a broadcast caused a huge stir. It had become common for K-pop groups to include members from countries outside Korea, so when the members of the group Twice held their respective national flags during a live variety show to showcase their origins, it seemed routine. A Japanese member displayed the Japanese flag, a Korean member showed the Korean flag, and Taiwanese member Chou Tzuyu held both the Taiwanese flag and the Korean flag. However, this gesture soon escalated into a major international controversy. Although the scene was deleted from the broadcast, Taiwanese media reported on it in two months, casting Tzuyu as a patriotic symbol. In response, Chinese internet users accused her of supporting Taiwanese independence, which sparked a strong backlash in China (Kuhn 2016). Twice's performances were canceled, calls for a boycott of JYP Entertainment followed, and Chinese telecommunications company Huawei ended Tzuyu's endorsement deal.

The incident quickly became a major political issue ahead of Taiwan's 2016 presidential election. Both major political parties expressed support

for Tzuyu, with the pro-independence Democratic Progressive Party (DPP) benefiting from the public reaction. In an attempt to ease tensions, JYP issued an apology and suspended Twice’s activities in Chinese-speaking regions. Tzuyu later appeared in a video expressing her pride in being Chinese and stating, “There is only one China.” This sparked another round of controversy in both Taiwan and South Korea, where many perceived her apology as forced (Fawcett 2016).

Recently, K-pop group BTS faced a similar backlash in China. In October 2020, leader RM made a statement about the Korean War while accepting a U.S.-Korea friendship award. He emphasized the “shared history of pain” between South Korea and the U.S., who fought together during the 1950-1953 conflict. Some Chinese social media users found the comment insensitive, as their country had supported North Korea during the war. As a result, BTS-related ads were pulled from Chinese websites and platforms, potentially jeopardizing partnerships with companies like Samsung, Hyundai, and Fila. Critics in China accused BTS of disregarding China’s sacrifices during the war and catering to U.S. audiences (BBC News 2020).

Policing Ethics and Image: Morals Clauses in South Korean Entertainment

From their inception to their current form, morals clauses have consistently been structured to favor the protection of the industry over the rights of individual talent. When studios began inserting morals clauses into contracts in the early 20th century, the underlying justification was protection—specifically, to safeguard the investment and reputation of intellectual property owners from risks associated with public opinion. Despite changes in the entertainment landscape, this power imbalance still remains. Pinguelo and Cedrone (2009) define the morals clause, or morality clause, as a “contractual provision that gives one contracting party (usually a company) the unilateral right to terminate the agreement, or take punitive action against the other party (usually an individual whose endorsement or image is sought) in the event that such other party engages in reprehensible behavior or conduct that may negatively impact his or her public image and, by association, the public image of the contracting company.”

As discussed previously, the morality clause, introduced amidst the Arbuckle case, ended up reinforcing self-censorship in the form of the Hays

Code. A scandal or a ban on their movies could result in massive financial losses. The code was designed to control content in order to protect reputation and profits, not artistic freedom. If a movie was deemed “immoral,” it could be boycotted or banned, hurting ticket sales. As a result, studios ensured their products made safe choices. Filmmakers and actors had very little power under this system. Similar things happened during the Red Scare in the 1940s and 1950s. Morals clauses were weaponized to terminate contracts of suspected communists or “un-American” figures – again, to shield studios and investors from political backlash, not to protect the individuals (Carty 2022).

Fast forward to 21st-century South Korea, where the morality clause continues to create and sustain unequal power relations between contractual parties. Of course, some talents have accumulated significant financial and social power, allowing them to leverage more favorable contractual terms, including rejecting morality clauses, which is a universal phenomenon. Davidson (2020) points out that some talents can negotiate away morals clauses by “leveraging extraordinary industry standing and unequal bargaining power.” The majority, however, still find themselves forced to accept an unequal footing when signing contracts. Part of what contributes to this unequal setting in South Korea is its unique mode of cultural production.

The rise of Korean entertainment, especially K-pop groups, reflects the neoliberal restructuring of South Korea’s cultural industry, a trend that has intensified since the 1997-1998 financial crisis. Idol groups began to be produced through increasingly systematized and rationalized processes. For instance, Blackpink’s Jennie has stated, “What makes K-pop K-pop is the time that we spend as trainees.” Similarly, Bang Shi-hyuk, founder of Big Hit Entertainment (now Hybe), emphasized that “K-pop artists, by average artists’ standards, have to show acrobatic-level skills in their performances” (Bruner 2019). The combination of singing and intricate choreography expected from idols demands years of disciplined training, often starting in early adolescence.

The idol training system in South Korea mirrors the principles of “McDonaldization,” a logic George Ritzer (2001) describes as a mode of production based on efficiency, calculability, predictability, and control. This highly rationalized approach governs nearly every aspect of an idol’s life, from personal behavior to public image. Entertainment agencies often impose strict rules on trainees and idols, such as prohibiting alcohol, smoking, and romantic relationships. Trainees are typically housed in shared

dormitories to ensure they adhere to the carefully crafted public persona the agency has built. Although some of these restrictions have loosened in recent years, controlling an idol's image remains central to the industry.

In the K-pop world, idols' identities are not organically developed; instead, they are meticulously pre-assigned. As Kang (2014) suggests, an image is determined first, and then members are selected like actors playing a character – idols are not born but made through a sophisticated and controlled system. This process goes beyond training in music and dance; it involves careful image crafting. The evolution of BTS offers a prime example: initially introduced as a tough hip-hop group, BTS was later rebranded into a more delicate, approachable “flower boy” group. This ability to shift and adapt illustrates how the industry molds idols to fit ever-changing market demands. These transformations involve not only new looks and music but also behavioral coaching to maintain a consistent public persona.

Because idols' images are carefully constructed rather than evolving organically, they are especially vulnerable to disruption by scandals. Unlike personal identities, which develop over time and are more resilient, these manufactured images lack the depth and complexities to withstand public controversies. To maintain this level of control, entertainment agencies enforce the training process with strict contractual clauses. These clauses, present from the trainee stage throughout an idol's career, give agencies the power to penalize idols for violating set standards. Penalties may include fines or demands for repayment of training and promotional costs, routinely two to three times the investment. While framed as necessary to protect corporate interest, these clauses also enforce conformity, ensuring that idols remain appealing to both domestic and international fans.

A 2019 legal ruling illustrates how these principles are enforced in practice. Two trainees were ordered to compensate their agency for damages after violating their contracts, which the agency claimed had led to the cancellation of their planned debut. The violations included drinking alcohol, leaving their dormitory without permission, and ultimately terminating their contracts. The court sided with the agency, ordering the trainees to pay 65 million won (approximately USD 55,000) and 30 million won (approximately USD 25,000), respectively.

The trainees had been preparing for their debut as part of a five-member girl group. Their contract included several clauses, such as prohibiting alcohol and smoking for underage members and banning dating unless approved by the agency after the age of 23. Despite recording tracks for their debut

album, the trainees stopped participating in rehearsals, left their dormitory, and complained to their families about the agency's unfair treatment. Their families visited the agency and notified them of the contract termination.

While a total ban on smoking, drinking, and dating for adult trainees may infringe on their personal rights, these clauses were put in place considering the presence of minors in the group. These restrictions were meant to be temporary until the minors reached adulthood. The dating ban was also limited and allowed exceptions after the age of 23 with the agency's consent. Given the agency's responsibility for overseeing the group's image, these restrictions cannot be seen as a violation of public morals or social order (Park 2019).

The court's decision in this case highlights a critical gap in the protection of young trainees within South Korea's idol training system. The rigorous and often invasive control over trainees' personal lives can be emotionally taxing, especially for individuals still developing both personally and professionally. However, by reducing the compensation amount, the court did acknowledge the disproportionate nature of the penalties imposed on the trainees, signaling a recognition of the need for a more balanced and fair approach. While this decision is limited, it represents an important step toward addressing the industry's exploitative practices and provides a foundation for further reform to protect the rights of trainees.

Victimhood, Reputation, and Liability: Lessons from Ivy and Seo Yea-ji

In 2008, singer Ivy found herself at the center of a scandal that led to a significant legal dispute with the cosmetics brand Missha. The controversy arose from an incident in which Ivy's ex-boyfriend blackmailed her by threatening to release a compromising video. This incident resulted in the termination of Ivy's one-year advertising contract with Missha, which in turn prompted the company to sue her agency for 500 million won (approximately USD 365,000) in damages. The court acknowledged that Ivy was a victim of her ex-boyfriend's actions and that the controversy was beyond her control. However, it also determined that the scandal had caused significant harm to Missha's brand image, highlighting the delicate nature of advertising contracts that heavily rely on the public image of the model.

While the court ultimately ruled in favor of Missha, it reduced the penalty from the original 500 million won to 125 million won (approximately USD 91,250), recognizing Ivy's victim status. Despite this adjustment, the decision raises critical questions about the fairness of holding individuals accountable for situations they did not create – especially when they themselves are victims. This case illustrates the complex balancing act between corporate interests and personal victimization, and it highlights the challenges of navigating moral clauses in entertainment contracts.

The case of *Yuhan Care Corp. v. Seo Yea-ji* is a landmark decision that addresses the balance between advertising contracts and the protection of individual rights. In July 2020, actress Seo Yea-ji signed an advertising contract with Yuhan Care Corp., receiving 450 million KRW (approximately USD 340,000) as a model fee. However, in April 2021, allegations emerged accusing Seo of past school violence, emotionally abusing a former partner, and falsifying her academic credentials. In response, Yuhan Care Corp. invoked a morality clause and terminated the contract, demanding repayment of the model fee and additional damages totaling approximately USD 960,000.

The court ruled that the allegations alone were not sufficient grounds for terminating the contract. It emphasized the need to protect constitutional rights, particularly privacy, and found that the alleged misconduct, occurring before the contract period, did not constitute a breach of the morality clause. The court reasoned that accepting Yuhan Care Corp.'s interpretation would require individuals to disclose all past misdeeds during contract negotiations, violating fundamental constitutional rights.

Although the court ruled that the allegations were not grounds for termination, it acknowledged that Seo Yea-ji's public image had been harmed. Since advertising contracts depend heavily on a model's image, the court upheld the termination of the advertisement. It ordered Seo's agency, Gold Medalist, to return half of the model fee – 225 million KRW (approximately USD 170,000) – but denied further damages or penalties.

This ruling sets an important precedent by distinguishing between unproven allegations and actual misconduct, protecting public figures from disproportionate contractual liability. Notably, it reaffirms the importance of privacy protection in commercial contracts, particularly in its ruling that actions prior to the contract period cannot be held against talents.

Conclusion: Safeguarding the Future of Cultural Labor

The evolution of the morals clause has been shaped by technological and cultural changes. Since its inception, this legal tool has been marked by unequal power dynamics, with corporations exerting considerable control over the careers and personal lives of entertainers. As the industry has developed, the mechanisms of control embedded in these clauses have evolved as well. In today's digital age, the public's ability to quickly disseminate information has significantly increased the risk that entertainers may suffer negative consequences from unsubstantiated allegations or past misconduct.

Moreover, the entertainment industry increasingly depends on young trainees who see participation as a rare opportunity for social and economic mobility in the highly competitive global labor market. As a result, there is an urgent need for more equitable protective systems to safeguard these individuals. One potential solution is unionization, which would enable entertainers to engage in collective bargaining, negotiate fairer terms, and access crucial support services such as legal aid and counseling. In addition, insurance policies offered through unions could provide financial protection for entertainers facing personal scandals or controversies, helping to secure their careers against unforeseen events. Government intervention, in the form of standardized contracts and regulations, could also help address issues caused by morals clauses. Efforts to reduce exploitative "slave contracts" have already been made, and further steps could include standardizing penalty amounts for breach of contract, ensuring greater transparency and fairness in the enforcement of morals clauses.

Another important reform is the introduction of reverse morals clauses. These clauses would hold employers accountable for actions or business practices that damage the reputations of entertainers. Just as entertainers' social controversies can harm the companies they represent, employers' unethical conduct should also be subject to scrutiny. However, since employees often lack the bargaining power to demand reverse morals clauses, measures such as negotiations through labor unions and legal protections should also be implemented alongside this reform.

These changes – unionization, government regulation, and the inclusion of reverse morals clauses – would go a long way toward rectifying the power imbalances that currently exist in the entertainment industry. Ultimately, the law must serve as a safeguard for all individuals involved in the enter-

tainment industry, not just for the corporations that control it. Laws should protect the basic rights of entertainers, especially those who are young, vulnerable, and without the bargaining power to defend themselves. Since these entertainers are the faces of the cultural industry's future, taking care of them means taking care of the industry in the long run.

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ENFORCING MORALS CLAUSES IN THE DIGITAL AGE.
BALANCING THE PROTECTION OF TALENT, PUBLIC IMAGE,
AND INTELLECTUAL PROPERTY



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