

**Histories of user-generated content:  
Between formal and informal media economies**

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**Abstract**

*Debates about user-generated content (UGC) often depend on a contrast with its normative opposite, the professionally produced content that is supported and sustained by commercial media businesses or public organisations. UGC is seen to appear within or in opposition to professional media, often as a disruptive, creative, change-making force. Our suggestion is to position UGC not in opposition to professional or "producer media", or in hybridised forms of subjective combination with it (the so-called "prosumer" or "pro-am" system), but in relation to different criteria, namely the formal and informal elements in media industries. In this article, we set out a framework for the comparative and historical analysis of UGC systems and their relations with other formal and informal media activity, illustrated with examples ranging from games to talkback radio. We also consider the policy implications that emerge from a historicised reading of UGC as a recurring dynamic within media industries, rather than a manifestation of consumer agency specific to digital cultures.*

**Introduction**

Founded in 1665, the *Journal des sçavans* and the *Philosophical Transactions of the Royal Society* are early examples of what we would today call user-generated content (UGC). The articles published in these journals took the form of letters announcing a discovery or a scientific observation (Brown 1972). But although these journals are seminal examples of scientific UGC, processes of scholarly exchange existed much earlier, usually in the form of private correspondence between scientists (which is why scholarly journals to this day sometimes still have the word "Letters" in their name). Publication of these letters in a journal was, of course, a more efficient way of spreading the news of scientific discovery and delineating claims over first discovery, but initially it wasn't the invention of a new form; it was the evolution of older, less organised, practices of content creation. Other examples of this process are well known: newspapers and periodicals began printing letters to the editor as early as the 18th Century (Wahl-Jorgensen, 2007); more recently, the apparently casual observations that once would have passed as workplace gossip or dinner party conversation have migrated onto the internet in the form of blogs and short messages; amusing family moments are uploaded to YouTube; lullabies that once were passed down orally through generations are recorded and sold. The dynamic at work here is one of making small-scale cultural production more

visible, more regulated, more commercial, and more institutional. But although recent scholarship recognizes this dynamic, UGC remains a category typically defined in relation to its normative opposites, the professionally produced content that is supported and sustained by commercial media businesses or public organizations, and the purportedly docile and passive modes of consumption associated with mass analog media (Jenkins 2006; Lessig 2008). Contemporary UGC is often imagined as a disruptive, creative force, something spontaneously emerging from the creativity of individual users newly enabled as expressive agents by digital technologies. The analysis that derives from this is focused on the ostensibly revolutionary changes ushered in by UGC; putatively new forms of media subjectivity, such as the "pro-am" or "prosumer" (Leadbeater and Miller, 2004); or on how "old media" businesses respond to the UGC "challenge". Policy documents (OECD, 2007) examine how the threats and benefits of this purported explosion of user content can be efficiently managed.

In this article, we see UGC not in opposition to "producer media", or in hybridized forms of combination with it, but in relation to a concept that connects new media studies with wider social science: that of informality in media production, distribution and consumption. Following the anthropological and sociological literature on informal economies, we define informal media systems as those which fall largely or wholly outside the purview of state policy, regulation, taxation and measurement. The informal media economy encompasses an extremely diverse range of production activities — including DIY publishing, slash video and other forms of amateur production, as well as community and diasporic music and film production — and an equally large range of distribution activities, from disc piracy and peer-to-peer file-sharing through to second-hand markets and the parallel-importation of CDs, DVDs and games. Clearly, much UGC production and distribution occurs in the informal sector. However, as the example of the *Philosophical Transactions* reminds us, UGC appears also in formal media systems. But the historical migration of scientific writing from informal letters to formal published journals is not the whole story.

We describe in this paper how UGC moves back and forth between formality and informality over time, and how different components of particular UGC platforms and content exhibit differing degrees of formality at any one time. There are many forms of UGC, from political blogs to fansubbing networks, which exhibit high levels of tacit or extra-institutional coordination, rationalisation and professional scrutiny, all qualities which are not usually associated with amateur media. The field of UGC is therefore not only internally heterogeneous but also engaged with, and reliant on, a variety of industrial and institutional media systems and governmental forces.

The analytical framework outlined in this article provides a way to understand the inherent diversity of UGC and its historical and structural interfaces with other media systems. We begin with the broader frame of social science scholarship of informal economies. We then outline a conceptual schematic — the spectrum of formality — and illustrate it with examples of UGC, including games, talkback radio, and comics. The article concludes by considering the policy implications arising from a historically grounded understanding of UGC in relation to current debates over ownership, intellectual property, and the appropriateness of certain forms of regulation.

## 1. The informality model

Informal economic activity is typically defined as that which escapes the regulatory gaze of the state, occurring outside conventional forms of measurement, governance, and taxation. The concept came into widespread use after the publication of two papers in the early 1970s: an International Labour Organization report into unemployment in Kenya (ILO, 1972), and a study of urban labour markets in Ghana by the anthropologist Keith Hart (1973). In different ways, and for different audiences, these papers proposed an alternative framework for analysing urban economies in the third world, one which did not privilege formal salaried labour as the only meaningful form of productive work. The purpose of this intervention was to bring into view an array of informal activities – from hawking and street vending to urban agriculture and pawnbroking – and to understand them as income-generating activities at the core rather than the margins of the economy. The informality model subsequently gained momentum in other nations whose labour markets were poorly suited to the implicitly ethnocentric idea of “unemployment”, and has been particularly prominent in Latin American social science. Pioneering studies by Castells and Portes (1989) and Sassen (1988) extended the analysis to advanced economies, arguing that the informal economy is a constituent feature of neoliberal restructuring rather than the residue of a pre-industrial age.

Today, complex discussions about informality continue among anthropologists, sociologists, development economists and urbanists (for example, Rakowski, 1994; Roy & Alsayyad, 2004; Guha-Khasnobis, Kanbur & Ostrom, 2006; Hart 2009). There is ongoing debate about the size, nature, and scale of the informal economy; whether it is a sector, a dynamic, a process, or a mode of production; whether it is a problem to be addressed or a capacity to be harnessed. Although it is not possible to rehearse these arguments here, we feel that the utility of the informality approach for media and communications research lies in its ability to enlarge frames of reference and to reorganise existing categories of analysis. In the same way that the 1970s research demonstrated the shortcomings of a definition of “employment” that was blind to the diverse ways in which people make ends meet outside salaried labour, there is a need for accounts of media industries which do not ignore informal media simply because it is not captured in the data. In other words, we must avoid conflating *media economies* (ecologies of exchange and production encompassing the formal and the informal) with *industry sectors* (visible spheres of regulated and statistically enumerated media enterprise). The history of the book is not the same thing as the history of the publishing industry, in the same way that broadcasters constitute only one part of the story of radio, and the music economy is not reducible to the record industry.

One way to represent “diverse economies” (Gibson-Graham 1996) of media is to imagine a spectrum ranging from the formal to the informal. At one end of the spectrum are the consolidated and regulated industries scrutinised in political-economic and media policy analysis: entertainment conglomerates, satellite networks, publishing houses, public-service media, and so on. At the other end are innumerable small-scale, unmeasured and unevenly regulated media circuits which are barely captured in the statistics on industry output and trade

and which rarely figure in media industry analysis. This is not to say however that informal circuits have been absent from the broader field of media and communications research, as there is a body of work in media anthropology (Michaels, 1986; Ginsburg, Abu-Lughod and Larkin, 2002), in internet and convergence studies (Jenkins, 2006; Bruns, 2008), in studies of alternative media (Downing, 1984; Atton and Hamilton, 2008), in diasporic media studies (Cunningham & Sinclair, 1999), and elsewhere, which takes the informal mediascape seriously as a site for exchange and meaning-making. Studies such as these have revealed a great deal about the contours of informal circuits and production infrastructures and have attempted to do justice to their histories and to their cultural contexts.

The approach we propose in the next section builds on this work by exploring the interrelations *between* the formal and informal media sectors. As most accounts of the informal economy stress, there is a great deal of traffic between the formal and the informal. Economies, including media economies, are characterised by an intricate array of these cross-fertilisations and mutual dependencies. It is not always appropriate to view informal media as an exception, a novelty, a resistance, or a leftover from a preindustrial age, when it is in fact integrated into the mainstream in various ways. Perhaps the most important lesson of the 1970s research was that the informal economy “is not a marginal phenomenon for charitable social research, but a fundamental politico-economic process at the core of many societies” (Castells and Portes, 1989: 15). For this reason, informal media systems should not be analytically ghettoised but brought into the mainstream of media and communications research as objects for comparative analysis. In the following section we take the example of UGC and tease out some of these interdependencies, tracking its oscillation between the formal and the informal via a conceptual model in three stages.

## 2. UGC and the spectrum of formality

The first step in analysing UGC through an informal economies framework is to develop a simple schematic which can represent the range of UGC in all its diversity, while also illuminating its interfaces with other media ecologies.

**Figure 1: UGC across the spectrum of formality**

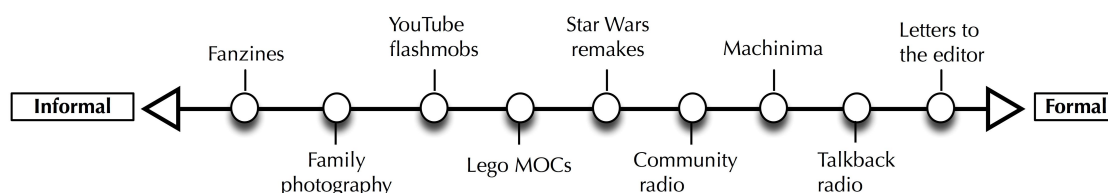


Figure 1 illustrates the different degrees of formality and informality associated with different kinds of UGC. UGC appears at different places along this continuum, not only at the informal end. For example, UGC has a venerable if delimited presence in mainstream newspapers as published letters to the editor. While clearly a form of UGC, letters to the editor are typically professionally edited, framed by expensive display advertisements, conform to a strict set of

guidelines regarding length, content, and style, and bear many other hallmarks of formal media. Popular magazines too have long understood the value of reader contributions: one of Australia's culturally and politically formative nineteenth-century magazines, the *Bulletin*, cherished for many years the tag line "half Australia writes it, all Australia reads it" (Lawson, 1983). UGC also has an important role in highly regulated twentieth century electronic media, notably in programming formats such as talk-back radio (Griffen-Foley, 2009) as well as in open-access and community radio and television channels (Lashley, 1992). More recently, websites seeking user content for the purposes of a commercial promotion—"Invent our new flavor!", "Caption this photo/cartoon", and so on—generate carefully managed, legally-controlled transactions soliciting user involvement in highly formalized environments.

Of course UGC also appears further towards the informal end of the spectrum, in forms that include amateur family photography, blogs and wikis. The most informal examples are produced by amateurs who produce for pleasure and allow permissive use of their content by others, typically through Creative Commons licenses (Hunter & Lastowka, 2004). But even here we can see that many of these forms come with various attributes of formality, most evidently some kind of contracted licence that derives from the mode of production or the host of the content. Thus machinima—animated movies produced by users through manipulation of a commercially-produced videogame—sits towards the informal end of the spectrum, but may nevertheless be governed as derivative works based on commercial intellectual property, which is often contractually excused by the videogame developer in an effort to generate sales (Freedman, 2005). Amateur film—made possible first by Super 8, then by new videotape formats in the 1970s, and in the new millennium by the proliferation of cheap digital video hardware and software—may be almost entirely informal but, when distributed on services such as YouTube or Vimeo, becomes subject to formal legal governance through end-user agreements, as are blogs on commercial hosting services like Typepad or Blogger (owned by Google).

So, although we may often associate UGC with informality, UGC is not entirely at the informal end of the spectrum: historically, it appears right across the range. Of course, the same point can be made about professionally produced media: it also appears at both ends of the spectrum of formality. It also circulates through social networks in unregulated, unmetered flows, as well as in controlled markets; and of course not all such circuits infringe legal rights. However an analysis of professionally produced content is beyond the scope of our discussion. The point we wish to foreground here is that approaching UGC economies through the lens of formality and informality renders claims about UGC's antipathy to professionalism and its "disruptive" nature problematic (Gervais 2009, George & Scerri 2007).

Our next step is to show how the spectrum of formality can be disaggregated into a series of constituent variables.

**Figure 2: Variables of formality: the example of Fansubbers**

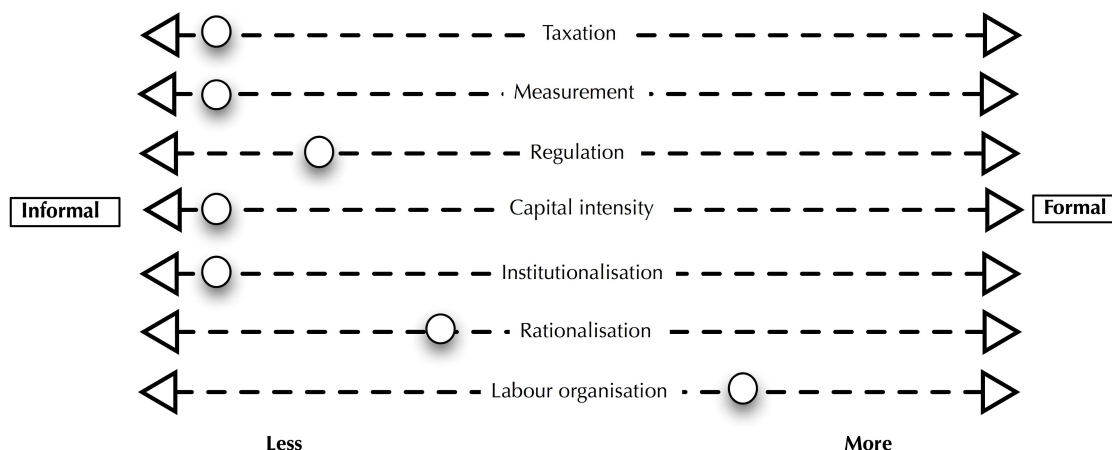


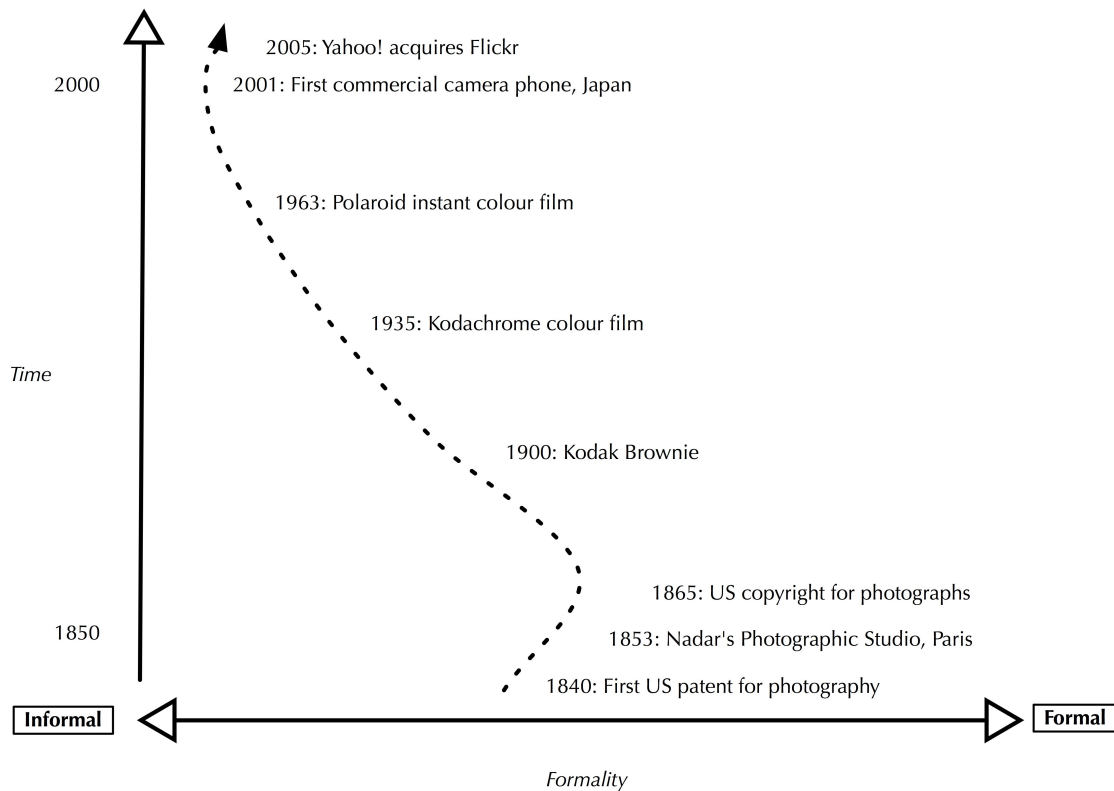
Figure 2 illustrates such a disaggregation, using the example of fansubbers (fans who create subtitles for their favourite TV shows and films and distribute them freely online). The elements of formality include various forms of state governance, which we can divide further into governmental technologies, such as taxation, measurement, and regulation; and political-economic attributes, such as labour organisation, capital intensity, and level of institutionalisation. Note that any one of these variables could be disaggregated further. For example, the category of regulation comprises a number of overlapping sub-categories: the regulation of content (classification, censorship), regulation of carriage (state licensing), labour regulation (unionisation of workforce), positive cultural policy (subsidy for cultural producers), negative cultural policy (public education and media literacy campaigns), self-regulation (professional organisations and associations), and so on. As we break the spectrum down into these component categories, any given media system or artefact will begin to take up different positions along the spectrum simultaneously. This move allows us to see similarities between what would otherwise appear to be disparate media systems. For example, the amateur subtitlers may appear at first glance to have little in common with journalists. But while fansubbers operate in an unregulated and unmonitored space, and are not paid for their labour, both groups are subject to sophisticated forms of self-management and regulation. In the field of journalism, this is realised through professional associations and vehicles for collegial recognition (ethical guidelines, prizes for outstanding practice, internal reviews) while for fansubbers the stringent eligibility criteria of the most prestigious fansub collectives perform similar gatekeeping and esteem-building functions, ensuring that subtitles are accurate and delivered in a timely fashion (Hu, forthcoming). These systems appear similar in kind to those operating over the internet for many years in areas such as open source software and the distributed translation of technical texts. An informal economies framework can therefore help us to further advance the project begun by UGC discourse – that is, complicating existing notions of what counts as media production – by exposing structural analogues across otherwise disparate forms of media activity.

A further case study demonstrates the utility of this analysis. If we consider "call back" or "talkback" radio, we find that it is highly formal when viewed from the perspective of state regulation of content and carriage. Almost all jurisdictions regulate broadcast radio stations heavily, granting and revoking licenses according to formal (often formalistic) criteria enshrined in media law and policy. Because of the scarcity of spectrum in the broadcast range, licenses are often auctioned, and they typically include a panoply of positive and negative regulatory obligations. The content of broadcast radio is particularly tightly regulated, and numerous examples exist of radio stations losing their licenses when objectionable content is broadcast. Broadcast delays and cutout switches are used to ensure that, in the event of a talkback caller using profane or objectionable language, the host can cut off the broadcast before transmission. According to these criteria, then, we can see that talkback radio is clearly at the formal end of the spectrum in Figure 1. Yet, if we take other criteria into account, the position of talkback changes. Talkback radio's callers are amateurs in at least two senses: they are unpaid, and they do not conform to the usual tenets of professionalism within radio announcing. Callers *umm*, they *ahh*, they ramble, they clear their throats. Their speaking voices and their language are demotic and unpolished. In this regard we can say that talkback is very informal. But looked at as a whole, talkback radio—like all forms of UGC—has certain characteristics of both formality and informality. Once we disaggregate the components of formality, as in Figure 2, we find that the medium is spread across the spectrum, although it clusters towards the formal end.

### 3. The historical dimension

The next stage in the analysis is to add a temporal dimension to the model. UGC platforms are not static over time, neither in their generalised location on the spectrum of formality (Figure 1) nor on any one of the component variables (Figure 2). Figure 3 illustrates this with the example of family photography.

**Figure 3: Family photography and formality, over time**



The popularity of domestic photography has boomed for over a century with every improvement in convenience, quality and cost. What was once an expensive, occasional, studio photograph — a transaction towards the formal end of our spectrum — has become a casual, inexpensive, and everyday activity, more so than ever with the extraordinary global popularity of the camera phone. The twentieth century history of photography reveals the extraordinary vitality and vigour of the informal sector. Informality, of course, has carried on into the age of the Internet. But with digital content creation and networked distribution, websites such as Flickr and Picasa are making a previously private form of expression rather more public, and entangling the informality of amateur digital photography with the formality of corporate media in hitherto unprecedented ways, leading to new kinds of legal dispute. The unauthorised use of personal Flickr photos in advertising campaigns is one instance (Cohen 2007). In other domains, new rules and ethical standards are considered necessary to govern where mobile phone cameras may now be used, and how mobile phone photography should be circulated. Facebook and sites like it take this evolution further, drawing on photography and other kinds of UGC to support and create social networks. Facebook seeks to formalise, on advantageous terms, a whole range of hitherto innocuous and obscure social transactions: users must agree to a complicated set of terms of use, and manage the famously complicated privacy and other settings (Hendry & Goodall 2010). A vast array of proliferating social networks rests on this formal structure.

So it is that family photography has shifted across the spectrum, beginning in the formal sector, moving towards informality, and then shifting back again. This



observation provides a new lens through which to view the argument between the UGC-idealists and their professional media counterparts, who use examples like Wikipedia or Linux on one side and established offline media on the other to demonstrate the primacy of amateur or of commercial production, depending on their viewpoint (e.g. Shirky, 2008; Keen, 2008). We can see from the brief account of family photography that various types of UGC will shift back and forth across the spectrum over time, and the same is true in many respects for professional media. We see that there is no *a priori* distinction between either form of media production: both mainstream media and UGC demonstrate various attributes of the formal and informal. In this way, the spectrum of formality model confirms that notions of professional/mainstream media and UGC are artefacts of analysis rather than clearly defined spheres of activity; but more than this, it helps to demonstrate that these two spheres have more in common than may at first be apparent.

Consider another example: comics and comic books. Although printed illustrations and illustrated volumes have existed since the beginning of the book era, the earliest comics emerged as graphic illustrated novels in the mid-19th Century. What we think of as comics—the modern superhero comic book and the syndicated comic strip—were institutionalized by the Second World War, reached an apotheosis by the 1970s, and then were re-invented and subverted in narrative and form from the 1980s onwards (Wright, 2001). During this period of mass production and distribution comics remained highly formalized. The format of multiple panels per page remained stable, as did the size of the pages and the nature of the publication process. As comics moved from being a mass medium to a niche commodity, the nature of its regulation and its structural contexts shifted. With the rise of the internet we saw the emergence of the webcomic, a classic informal media genre that is now increasingly situated in a grey zone between the formal and informal. One example is *Penny Arcade*, an online comic strip based around videogames ([www.penny-arcade.com](http://www.penny-arcade.com)). Its two creators, Jerry Holkins and Mike Krahulik, moved to a web-only format for their work when they found limited physical publication venues. As with much UGC, this appears to have been motivated by expressive reasons—lacking an outlet elsewhere, the web provided a forum for their work—and like other webcomics it has managed to maintain its output and its focus on a remarkably narrow niche interest. For an even more striking example of webcomic success with astonishingly narrow focus, consider xkcd ([www.xkcd.com](http://www.xkcd.com)), a “A Webcomic of Romance, Math, and Language” that is written, drawn and published by Randall Munroe, a physicist who was working at NASA's Langley Research Center, and who scanned and mounted some old sketches that he had done in his math books. A well-known blog liked them and linked to them, and now he makes his living from the work. As with family photography, Penny Arcade shows potential movement back towards a more formalized mode. Starting from the purely informal, the comic is now the centrepiece of a publishing mini-empire that encompasses merchandise, an annual tradeshow (Paxprime), and a charitable philanthropy (Child's Play). Evidently, this movement away from and then back towards formality cannot be adequately captured by rubrics of pro-am creativity or resistance to mainstream media. More accurately, it is a recursive trajectory along the spectrum of formality, one shared by many of the diverse activities currently glossed as UGC.

A slightly different trajectory emerges when we examine the evolution of games since the nineteenth century. Many games have moved from informal modes of development and delivery—initially developed and disseminated by word of mouth (for example, the rules of poker) or as informally circulated domestic parlour games—to highly formal consumer goods protected as intellectual property (*Monopoly*, *Risk*, *Trivial Pursuit*). In the videogame arena, the trajectory is different: because of the nature of the technology and the cost of development, videogames began as formally-structured pay-per-use attractions in commercial arcades, then moved to similarly formal licensed (and sometimes unlicensed) software for home or hand-held consoles. But now we see significant evidence of informality emerging within the videogame arena, a development that is viewed with suspicion by some professional developers and embraced by others. Examples of informal tendencies in game production and dissemination include high levels of pirated distribution (IIPA 2009); open-source game engines and emulators, such as MAME (Wen, 1999); and networked games driven by high degrees of sociality rather than centrally programmed game play narratives. Highly informal features are now found in both commercial, regulated online games, and in their less regulated counterparts at the informal end of the spectrum. Even the publishers of *Monopoly* are now looking for ways of bringing UGC into new versions of the game.

The popular building toy Lego exhibits a related trajectory, with the evolution of a mid twentieth-century, patented, free-form construction system, first into a series of trade mark-protected, franchised kits (1980s and later), and then into video games and movies (2000s and later). While Lego continues to successfully develop commercial digital media, the Internet has also encouraged and accelerated the development of informal, user-generated Lego practices, notably through the proliferation of unlicensed, Lego “MOC” (My Own Creation) websites. The recent launch of a Lego virtual world can be seen as a way of reconnecting the more formal Lego digital media with the enthusiasm and creative energy of the MOC communities.

Across the spectrum of formality, then, the story of photography, comics and games is a story of "there and back again", of recursive movements between the formal and informal. Similar trajectories may be plotted for cinema, or literature, or news media. The general trend clearly involves a disembedding of cultural practice from formal institutions, as has been made very clear in the UGC literature; but this is only part of the story. There are also partial forms of re-embedding in the spaces of formality through highly differentiated forms of control, governance and regulation.

#### **4. Implications**

We began with a reference to Keith Hart’s early work on Ghana. Hart has recently reviewed the intellectual history of informality, highlighting a conceptual adaptation which we feel has some relevance here (Hart, 2009). When development economists first began looking at informal trade, informality was seen as a form of backwardness which would and

should be overcome. Interventions were designed around bringing informal activity into the regulated sector, establishing control over labour markets, building tax revenue to support new states, and creating the knowledge base for government through statistics. Without all this, it was thought, developing countries with young, urbanising populations would face a social disaster. The disaster did not happen, and not because formalising strategies were entirely successful. At a certain point in the 1970s, it became clear that the informal was not disappearing. Rather, the relations between the formal and the informal turned out to be more complex and dynamic than had been realised.

The histories of UGC suggests that we may need a similar double-take in the field of media. Here as well, informal media may not be a prototypical stage of formal media: there appears to be no *necessary* evolution into the formal sector. Far from being a stage of transition, informality appears to be a historical norm, if not a constant. One way of understanding the implications of this is to look at our schematic spectrum of formality in a slightly different way. Instead of imagining UGC as moving across a fixed spectrum over time, we can see certain forms of UGC as demarcating the changing boundaries of the formal and informal sectors. At different times and in different places, the informal media sector is actually larger or smaller than the formal one, and the boundary between the two may be defined by a particular media form, whether it be telegraphy in the mid-nineteenth century or email in the 1990s. In these cases the UGC can be seen as an especially generative “boundary object” (Strathern, 2004) with far-reaching consequences for media economies and with continuing influence over legal and policy analysis. Boundary objects are not enclosed within either the formal or informal sectors: they occupy territory between the two, exposing points of tension, sparking frontier conflicts, and becoming, in some cases, sites for accommodation and negotiation.

Take, for example, the song “Happy Birthday”, the copyright in which will subsist in the United States until 2030. Originally written by Mildred and Patty Hill in the early 1900s, the rights were eventually acquired by a division of Time-Warner. Under copyright law any public performance is subject to clearance and the payment of royalties to the rights holder, and thus the participants at millions of birthday parties are copyright infringers because they have not paid Summy-Birchard Music the appropriate royalties. Of course the song has been used informally for years without any concern on the part of the copyright holders, except where use is high-profile or commercial: singing “Happy Birthday” in a movie will inevitably be licensed. But with the advent of UGC platforms like YouTube, informal uses (and users) of the song become more visible, and a new site of tension appears at the edge of the formalized economy. UGC therefore silhouettes legal IP trade, but is at the same time produced and rendered visible by the same techno-industrial advances driving the formal media sector (see Hart, 2009).

The response by copyright holders is variable. Some issue notice-and-takedown actions against the individual boundary object. In the YouTube case, rights holders may use the website’s own Audio ID and Video ID tracking systems to track the use of the contested content, engage with users, and insert advertising

wherever the contested content appears. Others may seek to assert control over the entire platform as a way of regaining control over the boundary object, as the recent Viacom vs YouTube case illustrates.

In analyzing media and communications policy, governments and industry often presume that informal activity reflects the absence or ineffectiveness of regulatory, economic and political infrastructures. Since these players operate within formal institutions and typically maintain a deep commitment to them, the existence of the informal is seen as profoundly challenging for a host of reasons: it may represent “market bypass;” it may affront ingrained intuitions of the legal and moral order of society; and it may flout administrative and legal authority. Standard responses are to advocate increasingly draconian law and policing, stronger international obligations, and to co-opt civil institutions to reassert moral probity (Hunter 2005; Miller et al 2005; Patry 2009).

While these responses are understandable, they may also fail or over-reach. The absence of formal economies does not mean that there is no economy at all; it just means that the mechanisms of exchange lie outside the formal. Moreover, and perhaps more importantly for the analysis of media systems, the informal needs to be distinguished from the criminal. As Centeno and Portes explain, the informal and criminal spheres are connected through relationships involving cheap labour, demand for illicit goods, and so on; but they should not be conflated. Grey markets are not black markets. There exist numerous examples of informal exchange that have no illicit character whatsoever; and the conflation of the criminal with the informal merely allows us to dismiss the significance of the latter, as well as making its measurement difficult and “irrelevant” (since, in the eyes of the formal actors, once we have “proper” laws, this sector of the economy will be no more). We have seen this play out in numerous arenas of media and communications policy-making, and the absence of appropriate recognition of the non-criminal informal economy is implicated in the emergence of so much heated rhetoric from civil society groups who campaign against intellectual property regimes (Electronic Frontier Foundation, 2010). Focusing policy-makers on the informal media economies of UGC, *inter alia*, may lead to greater understanding of this part of the economy, and different types of policy responses in recognition of the significance and potential efficiency of this form of production and exchange.

Recognizing that the formal and the informal media economies co-exist and overlap, and interact in diverse ways, generates new perspectives on other long-standing arguments. Consider debates about the appropriate scope of intellectual property rights. These debates increasingly resemble the set pieces of mediaeval battles, with the forces of copyright holders arrayed on one side of the field seeking greater protection against piracy, and the copyleftists on the other side of the field arguing for user rights or decreases in statutory damages. We can describe and contextualize that tension somewhat more clearly, if not resolve it, by recognizing how the internet exposes boundary objects (like “Happy Birthday”) to greater regulatory scrutiny as it enlarges the reach and scope of the informal media economy in areas like files-sharing and UGC generation and distribution, and also multiplies sites of formal-informal interface and tension.

Further, understanding these debates as frontier conflicts between the informal and the formal allows us to spot some of the traps awaiting all parties in today's copyright battles. If we see intellectual property law as one avenue among others for formal regulation, it follows that legal solutions built upon extending the scope of intellectual property are more likely to have local effects in the formal sector rather than delivering systemic solutions to the challenges of informal use. Changes to the law may modify the regulation of formal territory without expanding that territory. Consider the fair use provisions of the US Copyright Act. These provisions provide for exceptions to copyright infringement based upon an assessment of four factors, including extent and nature of the taking, the character of the copied work, the intent of the defendant in appropriating the material, and the effect of the taking on the market for the copied work. The apparent breadth of the fair use defense is often seen by copyright skeptics outside the US as one possible countervailing reform to copyright's expansion over the last 100 years. In the context of our argument, however, it is clear that the application of the fair use defense will rarely extend to the informal sector. The defense is used mostly by those within the formal economy to prevent other formal actors from restricting re-use of their work (for instance in the areas of formally-published satires or parodies). With the possible exception of the factors addressing the purpose for which the copy was made, none of the fair use factors addresses issues within the informal media economy.

One current proposal aims directly to enlarge the territory of formal media, by compensating rights holders through a statutory royalty on internet access fees or digital media devices. An example is the Copyright Board of Canada's 29 cent levy on blank CDs, the proceeds of which are distributed to songwriters and artists through collecting societies. The idea is to make digital media goods and services subject to a new, hypothecated form of taxation. Clearly taxes of this kind do have the potential to provide a new source of revenue for content industries. But their consequences for other, established business models in the formal space are unknown, and the price of achieving some return from the informal sector may be a recognition that the Internet has substantially and irreversibly diluted rights holders' capacity to control the distribution of their content.

## **Conclusion**

Economic formality is a contingent and highly variable feature of UGC media. Innovations in technology, in business models, in policy frameworks, and changing social circumstances, influence rapid movements across the formal and informal sectors. Formal industries can be informalised as a result of disruptive technologies (as when the rise of blogs appears to threaten professional journalism), or changes in legislation and enforcement (as when forms of content, such as pornography, are criminalised and driven underground), or even through deregulatory processes (as when privatization or downsizing of broadcasters drives media professionals into informal labour markets). Informality then is just as much a feature of highly developed cultural economies as of emerging ones, and just as much a feature of established media industries as players within the UGC arena. Informal exchange occurs in

weakly regulated states as well as highly regulated media environments, such as those in Australia, Europe, and the United States. There is, therefore, no straightforward correlation between governance and informality in media circuits, but there are complex and often counter-intuitive relations of mutual influence that call for further analysis. We hope that the framework outlined here, which enables the comparative study of media systems in various states of formality and informality, may be of some use in this larger project.

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