

## **Histories of User-Generated Content: Between Formal and Informal Media Economies**

RAMON LOBATO

JULIAN THOMAS

Swinburne University of Technology

DAN HUNTER

New York Law School

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 organizations. 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 hybridized 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 historicized reading of UGC as a recurring dynamic within media industries, rather than as 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 organized practices of content creation. Other examples of this process are well

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Ramon Lobato: rlobato@swin.edu.au

Julian Thomas: jthomas@swin.edu.au

Dan Hunter: daniel.hunter@nyls.edu

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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 been workplace gossip or dinner party conversation have migrated onto the Internet in the form of blog posts 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; on putatively new forms of media subjectivity, such as the "pro-am" or "prosumer" (Leadbeater & 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 many other forms of amateur production—along with 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 article 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, ranging from political blogs to fansubbing networks, which exhibit high levels of tacit or extra-institutional coordination, rationalization, 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.

### 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 labor markets in Ghana by the anthropologist Keith Hart (1973). In different ways, and for different audiences, these papers proposed an alternative framework for analyzing urban economies in the third world, one which did not privilege formal salaried labor 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 labor markets were poorly suited to the implicitly ethnocentric idea of “unemployment,” and it 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 (see, for example, Guha-Khasnobis, Kanbur, & Ostrom, 2006; Hart, 2009; Rakowski, 1994; Roy & Alsayyad, 2004). 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; and 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 reorganize 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 labor, 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 that the music economy is not reducible to the record industry.

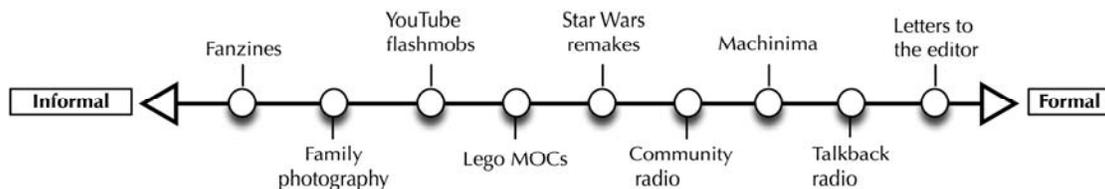
One way to represent “diverse economies” (Gibson-Graham, 1996) of media is to imagine a spectrum ranging from the formal to the informal. At one end of the spectrum are the consolidated and regulated industries scrutinized in political-economic and media policy analysis: entertainment conglomerates, 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 (Ginsburg, Abu-Lughod, & Larkin, 2002; Michaels, 1986), in Internet and convergence studies (Jenkins, 2006; Bruns, 2008), in studies of alternative media (Atton & Hamilton, 2008; Downing, 1984), 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 they have attempted to do justice to informal histories and 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 characterized by an intricate array of these cross-fertilizations 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, as 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 & Portes, 1989, p. 15). For this reason, informal media systems should not be analytically ghettoized, 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 schematic in three stages.

### UGC and The Spectrum of Formality

The first step in analyzing 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.



**Figure 1. UGC Across the Spectrum of Formality**

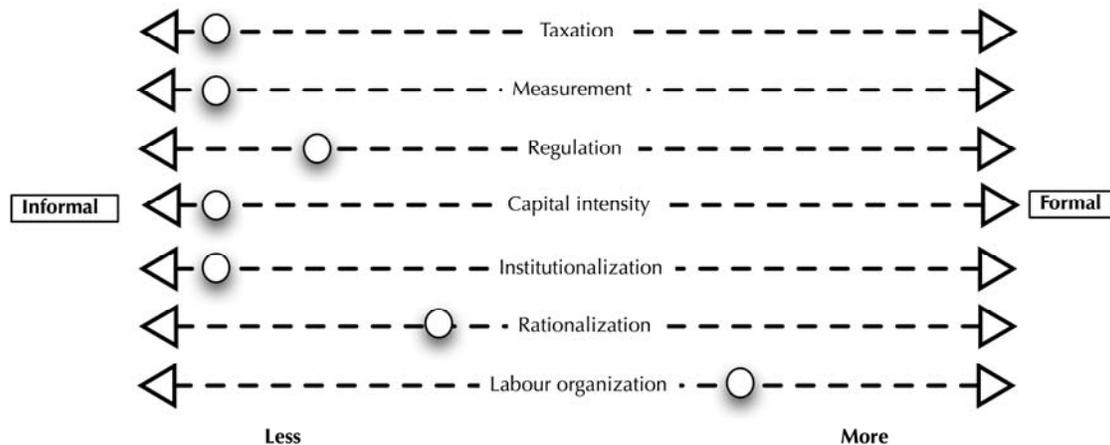
Figure 1 illustrates the degrees of formality and informality associated with various kinds of UGC. UGC appears at different places along this continuum, not only at the informal end. For example, UGC has a venerable, if delimited, presence in mainstream newspapers as published letters to the editor. While clearly a form of UGC, letters to the editor are typically professionally edited; are 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 19th-century magazines, *The Bulletin*, cherished for many years the tagline, "half Australia writes it, all Australia reads it" (Lawson, 1983). UGC also has an important role in highly regulated 20th-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 toward 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 license 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 toward the informal end of the spectrum, but it may nevertheless be governed as derivative work 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 small-gauge film cameras, 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, it 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, which also appears at both ends of the spectrum of formality. It circulates through social networks in unregulated, unmeasured flows, as well as in controlled markets; and of course, not all such circuits infringe upon 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 (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 favorite TV shows and films, and then 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; as well as political-economic attributes, such as capital intensity and level of institutionalization. They refer to *organizational logics* which structure media production and distribution activities, as opposed to participants' motivations or desires. We emphasise that this is not an exhaustive or definitive list of variables, but rather, a sample of possible criteria for gauging the formality or informality of media. Note also that any one of these variables could be disaggregated further. For example, the category of regulation comprises a number of overlapping subcategories: the regulation of content (classification, censorship), regulation of carriage (state licensing), labor regulation (unionization of workforce), positive cultural policy (subsidy for cultural producers), negative cultural policy (public education and media literacy campaigns), self-regulation (professional organizations and associations), and so on. Our aim here is to provide a framework for comparative UGC analysis, one that can be refined and adapted to suit a variety of tasks and inputs.

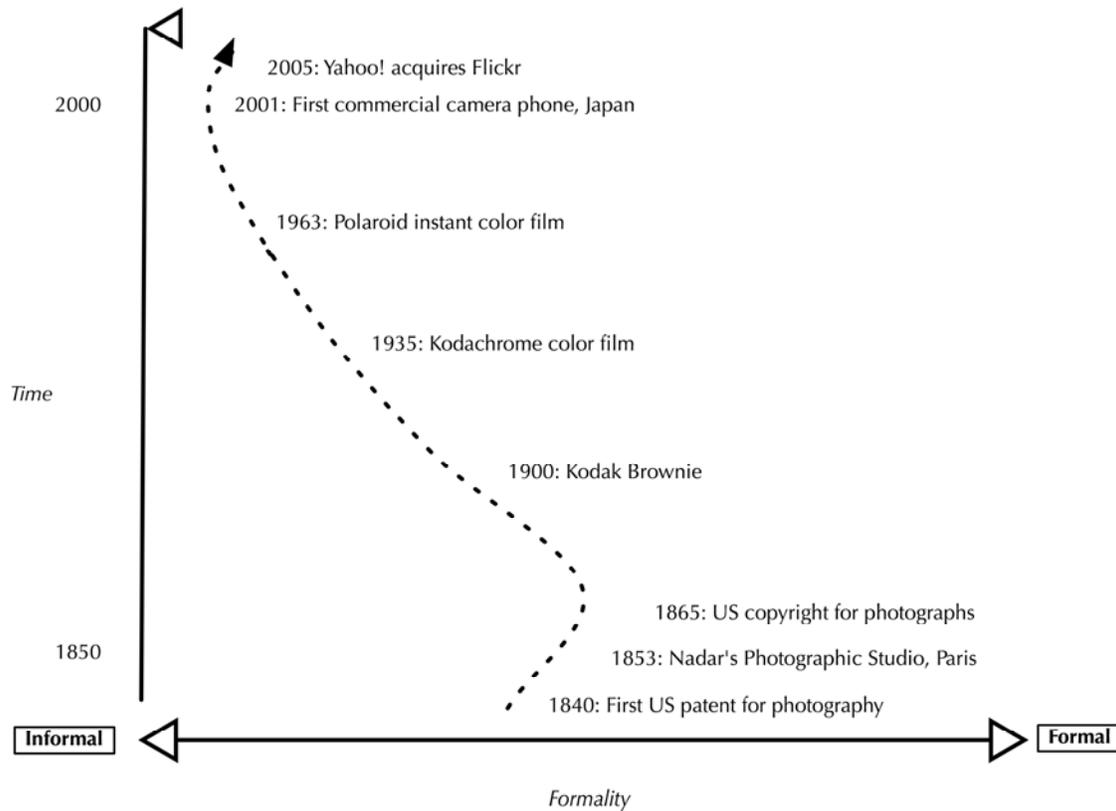
As we break the spectrum down into these component categories, any given media system or artifact will begin to take up different positions along the spectrum simultaneously. This move allows us to see similarities between what would otherwise appear to be disparate media systems. For example, the amateur 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 labor, both groups are subject to sophisticated forms of self-management and self-regulation. In the field of journalism, this is realized 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 informality framework can therefore help us to further advance the project begun by UGC discourse—that is, to complicate 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 approach. If we consider "call-in" 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 having lost their licenses when objectionable content has been 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 toward the formal end.

### The Historical Dimension

The next stage in the analysis is to add a temporal dimension to the schematic. UGC platforms are not static over time, neither in their generalized location on the spectrum of formality (Figure 1), nor in 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 toward 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 20th-century history of photography reveals the extraordinary vitality and vigor 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, entangling the informality of amateur digital photography with the formality of corporate media in hitherto unprecedented ways and leading to new kinds of legal dispute. The unauthorized 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 formalize, on advantageous terms, a whole range of hitherto innocuous and obscure social transactions: Users must both 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 toward 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 either amateur or commercial production, depending on their viewpoint (e.g., Keen, 2008; Shirky, 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 artifacts 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 be apparent at first.

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 both narrative and form from the 1980s onward (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 the genre's 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 gray 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 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 toward 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 toward 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 19th 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; open-source game engines and emulators, such as MAME (Wen, 1999); and networked games driven by high degrees of sociality, rather than by 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-20th-century, patented, free-form construction system, first into a series of trademark-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 is also a partial re-embedding in the spaces of formality through highly differentiated modes of control, governance, and regulation.

### **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 to look 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 labor 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, urbanizing populations would face a social disaster. The disaster did not happen, and not because formalizing 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 realized.

The histories of UGC suggest the need for 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-19th 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 for 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 it 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 Content ID system to track the use of the contested material, engage with users, and insert advertising wherever the contested material 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 v. YouTube* litigation 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 important for the analysis of media systems, the informal needs to be distinguished from the criminal. As Centeno and Portes (1989) explain, the informal and criminal spheres are connected through relationships involving cheap labor, demand for illicit goods, and so on, but they should not be conflated. Gray 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 and make 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 noncriminal 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, as well as to 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, 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 medieval 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 file-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 U.S. copyright law. 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 United States 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, business models, and policy frameworks influence rapid movements across the formal and informal sectors, as do changing social circumstances. Formal industries can be informalized 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 criminalized and driven underground), or even through deregulatory processes (as when privatization or downsizing of broadcasters drives media professionals into informal labor 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 in 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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