

Journal of
• Virtual Worlds Research

ISSN: 1941-8477

Legal and Governance
Challenges



September, 2013
Volume 6, No. 3

Volume 6, Number 3

Legal and Governance Challenges

September 2013

Managing Editor

Yesha Sivan,
Metaverse Labs Ltd.
Tel Aviv-Yaffo Academic College, Israel

Guest Editors

Melissa de Zwart,
University of Adelaide, Australia

Dan Hunter,
QUT Law School, Australia

Greg Lastowka,
Rutgers University, USA

Coordinating Editor

Tzafnat Shpak



The JVWR is an academic journal. As such, it is dedicated to the open exchange of information. For this reason, JVWR is freely available to individuals and institutions. Copies of this journal or articles in this journal may be distributed for research or educational purposes only free of charge and without permission. However, the JVWR does not grant permission for use of any content in advertisements or advertising supplements or in any manner that would imply an endorsement of any product or service. All uses beyond research or educational purposes require the written permission of the JVWR. Authors who publish in the Journal of Virtual Worlds Research will release their articles under the Creative Commons Attribution No Derivative Works 3.0 United States (cc-by-nd) license. The Journal of Virtual Worlds Research is funded by its sponsors and contributions from readers.



Volume 6, Number 3
Legal and Governance Challenges
September, 2013

Magic Modders: Alter Art, Ambiguity, and the Ethics of Prosumption

Aaron Trammell

Rutgers University, NJ, USA
Department of Media Studies
School of Communication and Information

Abstract

This paper explores the perspectives of *Magic: The Gathering* (MTG) fans, as they interpret and parse intellectual property law regarding the alteration, and subsequent sale of artwork on *Magic: The Gathering* cards. MTG is a transmedia product that is supported by a fan base, which collects, plays, and discusses the game online in web forums and virtual game-spaces, and offline in hobby stores and community spaces across the world. This fan community is atypical because, for the most part, participants are highly concerned with the economic value of the MTG cards they own and trade. This paper draws attention to the complicated ethical landscape of intellectual property law as it pertains to artistic modification. The paper concludes that corporations should be legally required to set up a “safe haven” policy regarding the rights of consumers to produce derivative works, and, similar to creative commons licensing, to stipulate therein how issues of acknowledgement, reproduction, and sale of the product should be managed.

1. Introduction

The cultural practices of the *Magic: The Gathering* (MTG) community have produced a vibrant after-market. Cards are bought, sold and traded amongst participants, sometimes for as much as five-thousand dollars (such as the famed *Black Lotus* which sells for as much as \$4999). And, because these fans are economically engaged with this card aftermarket and it stands as an autonomously regulated space, it is interesting to explore the intersection between the card aftermarket, which is regulated by MTG fans, and the MTG brand, which is regulated by *Wizards of the Coast* (WoTC), who own the brand. In this context, alter art is a key site of conflict as it is produced, bought, sold, and traded by the fan communities engaged in the MTG aftermarket, while at the same time being a modification of the intellectual property owned by WoTC. Specifically, it is by looking at alter art that we can ascertain a better understanding of the prosumer community experience. What legal protections are afforded to those who occupy the grey area between consumption and production, and are the existing frameworks ethical?

This paper draws attention to the complicated ethical landscape of intellectual property law as it pertains to artistic modification. It will explore a case study where Ed Beard Jr., a contract artist for WoTC, requested that semi-anonymous alter artists like Billy Johnson, cease and desist. Although this case seems, at surface level, to be a conflict between a concerned artist and a productive community of fans, it has far reaching ethical implications which challenge WoTC to take on more corporate accountability regarding the aftermarket regulation of their product. In this age of mash-up culture and crowd labor, where it is difficult to disambiguate concepts like authorship, ownership, value, alteration, and reproduction from one another, it is important to explore the cultural ramifications of the legal ambiguities of prosumption and anticipate the most ethical ways to mediate future cases of fan production.

The work presented in this study represents some key findings in an ethnographic study, beginning January 2009 and ending September 2010. Until June 2009, I attended weekly MTG tournaments in the Binghamton, NY area and afterward, I attended tournaments in the New Brunswick, NJ area on a bi-weekly basis. At these events, I took the role of an active participant competing with other players. Though I had met Johnson in Binghamton, NY, it wasn't until 2010 that he began work as an alter artist. Keenly interested in his experience with censorship, this case study comprises an interview with Johnson, previously collected ethnographic data and topical accounts from various web forums. All quotations from participants have been left with mistakes in grammar and spelling to preserve the integrity of the source.

2. Money and Magic: Meta-Markets

Magic: The Gathering is a collectible card game owned by *Wizards of the Coast*, who began as basement game publisher in 1990, distributing small runs of self-published role-playing supplements. Enjoying some limited success with their early products, WoTC began to branch out in 1992, seeking a market niche. It was at this point that the company met with Richard Garfield, an aspiring game developer, and coaxed him into developing what would become *Magic: The Gathering*, a customizable and portable card game that targeted gamers who meet annually at large national gaming conventions like *GenCon* (Appelcline, 2006). Upon its release in 1993, MTG was met with adamant consumer enthusiasm and in seven years it gained an international audience of over six million followers and established a new genre of trading card games which would overtake everything beside “toy cars and crayons,” in annual toy sales (Martin, 2004, p. 139). In September 1999, *Hasbro* acquired WoTC

because of their strong foothold in the trading card game market, (New York Times, 1999) and in this acquisition they gained rights to the MTG brand.

Ideally, WoTC's distribution model works like this: When WoTC designs a card an artist is contracted for full rights to their art. After the card itself is designed, it is put to press, released with a good deal of publicity and shipped. Players will then purchase these cards from a vendor and it is at this point where the game's aftermarket takes root. In the aftermarket, there are two key factors in play. There is a sense of artificial scarcity in the aftermarket as WoTC very deliberately releases fewer copies of certain rare, powerful, cards. These cards are listed as "rare," or "mythic rare," and there is only one rare card included in every "booster pack" of fifteen cards. One rare card is packed in seven out of every eight boosters, and mythic rare cards occur once in every eight boosters. Additionally, not all rare cards are created equal, and it is normal for a set to include a handful of rare cards with higher strategic worth than the other cards in the set. WoTC publishes about three advanced sets of MTG cards, and one basic set of MTG cards a year. These cards will often be traded and sold on the aftermarket for up to ten times the value of a less strategic, but equivalently rare card. This sense of artificial scarcity is what helps the aftermarket to thrive, and cards which are both rare and strategically useful can fetch between twenty and thirty dollars from interested buyers.

Although WoTC's dictates the artificial scarcity of cards circulating within the aftermarket, it is the player community, which regulates the prices of these cards. And, while these values used to be published in print magazines like *The Duelist* and *Scrye*, now there are many fansites online where players can refer to the market values of magic cards. Websites like *MTG Salvation*, *ManaNation*, and *Star City Games* all serve as public forums of MTG related conversations and news. Importantly, these sites of fan community do not rely on WoTC to operate; they have their own unique business structures and are moderated, somewhat autonomously, by an independent collective of fans.

The shift toward web forum based community marks a qualitative change in the relationship MTG fans hold to corporate power. The somewhat autonomous nature of these fan forums allows for new spaces of discussion, which were previously prohibited by the political and economic scaffolding of the hobby. Although, to be very clear, game hobbyists have been proactively involved in amateur print publishing and distribution endeavors which hold some parallels to these web communities since the early 1960s (Peterson, 2012). But even though these fan networks have a historical precedent one important difference between the two is the lack of gatekeepers limiting the access to online hobby publications today, as the prior model used to operate as somewhat of a close-knit network of engaged hobbyists. Inextricably, these spaces of discussion and discourse are sites of reciprocity between the companies who produce the brand and the fans who use it (Jenkins, 2008). WoTC relies on these communities to maintain a vibrant aftermarket, while these communities rely on WoTC to produce an exciting and balanced game. But, along with this reciprocity comes an increased sense of intervention. Whilst at one point companies were able to turn a blind eye to underground fan practices such as card alteration, they are now forced to recognize the practices of fan communities in their totality.

3. Buy Low, Sell High!: Cards as Stock

For many, the meta-game of *Magic: The Gathering* is all about money. Because new cards are released (approximately) every three months, and with these cards come new and different strategies, the game has a very healthy second-hand market. Some older discontinued cards like the "Black Lotus" have been appraised by sites like *Star City Games* at a retail value of \$4999. Although prices that high are generally reserved for an elite set of cards from the early 1990s, new cards have been known to retail

for anything between fifty and one hundred dollars. In an interview, one participant, Brian, noted the game's similarities to a stock market:

I trade to try to get more valuable cards, number one, increase the value of my collection, number two, try to build the constructed decks that I need to play, sometimes even help out my friends and trade for extra cards that they could play as well. Having a trading network is also good. I go to the big tournaments, I talk to the people I know trade a lot. What should I pick up, what's going up. I'm trying to get stock market tips in essence...I'm like what should I get rid of and at what price and stuff. There's also all these dealers at these events – constantly buy and sell cards on the spot, and they make money, but you can make money off of them, too, by buying low. (Taken from an Interview 9/3/2010)

Players who participate in the tournament scene are keenly aware of the value of the cards in their collection. Much of their time is spent hustling, buying and trading cards in order to make a profit.

Brian self-identifies as a *Magic* fan. For him the economic aspects of trading are an integrated part of the game itself. In fact, they are a large motivation for Brian to play: he has won \$3500 in tournament prizes between 2007 and 2009. MTG tournaments, locally, are often offered within a game shop that has been sanctioned by WoTC. In order to qualify as an official location, brick-and-mortar stores must distribute WoTC products and apply to be a member of the *Wizards Play Network*. Though some sanctioned locations have turned up in local schools and churches, the majority of local communities are hosted in local hobby stores (Wizards, 2010). On a regional level, tournaments are often hosted in local recreation halls or churches; public, rentable forums which can easily accommodate anywhere between 200 and 500 players. Around the perimeter of these locales card vendors are allowed to pedal their wares, usually rare and popular cards, but sometimes card sleeves or dice (essential ephemera for most players). These vendors rarely participate in the tournament itself, instead lingering on the outskirts and participating in the commercial meta-game. But, while WoTC is a clear supporter of MTG's economic meta-game, their corporate stance on alter art, which is a small but important part of the meta-game, is much less clear.

4. Creativity, Censorship and Consumption

The creative censorship that alter artists like Billy Johnson are up against has been theorized as a conservative practice in today's knowledge economy by Lawrence Lessig (2009). In other words, it is assumed that restrictive copyright laws exist to protect the profitability of media owners. This drive has been subsequently noted by Sinnreich (2013) who frames it, instead, an obsolete policing of creative expression: "In an era such as ours, in which our lives are so thoroughly mediated by communication technologies, the line separating copying from expression can't even be defined, much less policed." (Sinnreich, Introduction, Paragraph 42). Websites like *MTG Salvation*, which facilitate the rapid and horizontal production of all news, trivia, and information pertaining to MTG challenge the traditional economic foundations that had previously grounded the traditional dissemination information about MTG cards. Alter art, which at one point had languished in social and legal obscurity is discussed, shared, and celebrated by the users of *MTG Salvation*. And, unlike many other cases of fan art, Johnson demanded more than just affective compensation for his efforts.

When discussing the economics of Harry Potter fan fiction Jenkins (2008) writes, "For many fans, the noncommercial nature of fan culture is one of its most important characteristics. These stories are a labor of love; they operate in a gift economy and are freely given to other fans who share their passion for these characters" (pp. 180-181). This point is reinforced by Derecho (2009) who contends that in fan fiction communities the labor of fans is regarded as a craft, and therefore expected to be given away –

free of charge (p. 218). Fanfic authors know the dangers of meddling with the murky waters of intellectual property. But, is the status quo of intellectual property, the exploitation of fan labor in the service of branded community, ethical?

Derecho questions why fan fiction authors, unlike game modders, remix DJs and doujinshi (a type of fan-fiction manga, sold predominantly in Japan.) artists work without profit? She argues that pay, in these cases, is primarily a holdover from earlier iterations of the profession. Although it is affective bonds which structure the community, DJs (unlike fanfic authors) have always been paid, so therefore the idea of compensation is rarely challenged (Derecho, pp. 185, 193, 195). Players have always bought and sold cards in MTG, in this regard Johnson's behavior is not only a fannish activity, it is the fannish activity through which most players prefer to understand the game. One participant I interviewed, L0liser, joked that the secret to playing MTG was, "Having lots of money to spend on cards." (Taken from an Interview 12/1/2010) Although most MTG fans are apathetic toward the corporate politics of Wizards of the Coast, they are almost always interested in the market value of MTG cards. Given this interest, and economic barrier of entry for competitive play (in 2009, twelve dollars to buy into a three-hour draft, or to ante into the prize-pot), some of the more enterprising fans, like Johnson, have found participatory means with which to support themselves. WoTC had been comfortable with this practice at first, as alter art seemed only to improve MTG's brand value. It was not until it affected their contract artists' livelihood that they became interested in its regulation.

5. Case Study: Legal Advice from a Partial Audience

Billy Johnson is a struggling artist; he uses acrylic paints to modify MTG, extending the artwork from their native frames to the entire card (Figure 1). Considered fan art at conventions, his work, and the work of similar artists represents an instance of craft modification that supports the brand reputation of MTG. A large part of the MTG tournament scene is the celebrity that comes from both skill (winning tournaments) and style. Professional players will often hire alter artists like Johnson to illustrate boutique decks of cards with the hope of developing some nice cache of cultural capital. In addition to selling his work to top rated professional players Johnson also teaches others how to produce alter art in a series of blog entries at the popular *Gathering Magic* site. Recently, Johnson has been confronted with a mandate to stop selling his alter art by MTG's owners, *Wizards of the Coast* (WoTC), because their contract artist Ed Beard Jr. complained that Johnson and other for-profit alter artists have violated his intellectual property rights and placed his reputation into jeopardy.



Figure 1: Bloodstained Mire, before modification.
Notice the original artist, Rob Alexander's credit (bottom-center).

5.1 The Aftermarket

Because of his expertise in understanding the visual culture of MTG fans, Johnson has been able to carve out an economic niche extending the illustrations on MTG cards with acrylic paint. This practice pays for Johnson's monthly expenses, at its best, and covers his weekly entry into MTG tournaments, at its worst. Henry Jenkins (2006) and Abigail Derecho (2009) have provided several examples of participatory culture, like fan fiction communities, where the affective community of fandom supersedes economic needs. Even though they possess many fannish attributes (like spending much of their earnings on more magic cards) Johnson and Galspanic (another alter artist on the MTG Salvation web forum) demand compensation for their labor. Johnson earns barely enough money through his craft to afford rent and utilities.

When discussing the underground sales of his card alters at shows, Johnson is quick to relate the economic and social risk of his actions. Not only are card alters his main source of income, they also provide him with a strong sense of identity in the community:

I think that cash is perhaps the ultimate validation of an artist. Art appreciation is all based on opinions, and confident/accomplished artists may or may not accept layman's (i.e. non-artists) opinions on their art. When one is not working necessarily for the approval of others, really the one significant validation is compensation. It's democratic, the more people pay you, the more your art can support you. This allows an artist to maybe do work to be compensated, and do other work purely for personal satisfaction, that may or may not be accepted. (Taken from an Interview 12/3/2010)

For Johnson, cash speaks to his cultural worth. Not only does it allot him the time to work on a set of alternate projects, it also provides him with a distinct sense of appreciation. Selling cards is fairly straightforward for Johnson when he sets up shop at his local game store; unfortunately sales there are fairly slow, arriving in fifty to sixty dollar clusters (Figure 2). In order to make ends meet, Johnson also sells his cards at local tournaments, where he earns upwards of five hundred dollars a weekend.



Figure 2: Bloodstained Mire, after Johnson’s modification.
Notice the price-tag (center, upper-right), and Johnson’s signature (bottom-left).

This practice of rogue alteration has recently been met with a previously absent resistance from WoTC : “Live painting (presumably for commission, although I don’t openly take compensation) is considered soliciting,” explained Johnson, “so if the event organizers deny affiliation with me that could get me into trouble with the events center. These have been problems lately, as it seems Wizards does not want to be seen as supporting card alterations.” (Taken from an Interview 12/3/2010) Predictably, WoTC has discouraged Johnson’s practice through a set of political and legal sanctions, he was told to leave tournaments, and any attempt to link his sales to *eBay* on major web boards has been curtailed.

5.2 Allegations from an Artist

On September 18, 2009, a thread was started by a *MTG Salvation* message board moderator, Hannes, comparing a recent article from an official MTG web magazine, *Daily MTG*, to a cease-and-desist order from WoTC’s contracted card artist Ed Beard Jr. (Hannes, 2009, p. 1). The article offered seemingly official advice as to what sorts of card alters were legally permissible for use in tournament play. For example, “Painting is the most widespread technique to alter and depending on the material used results may vary: while acrylics are fine enough, oil painting and gouache may be too thick”

(Dupre, 2009). This article, published in an official WoTC forum, suggested that WoTC institutionally justified card-altering practices. It was used by fans on the *MTG Salvation* site to challenge a letter received by Beard, where the point was raised:

You can also be held willfully liable for aiding and abetting the criminal activity of copyright infringement, from allowing the discussion and exchange of sale of pirated or infringed upon intellectual properties that have been conducted within the altered card thread of the mtgsalvation website, if you do not establish guidelines to prohibit the exchange, sale, or discussion of sale of said cards. This responsibility is mandated by US copyright law and upheld by international agreements for conduct within the World Wide Web.

Beard was responding to a massive 750 page thread, where pictures of altered card art were posted alongside tutorials and links to *eBay* pages where the cards could be purchased (Pringlesman, 2007). The fans were confused, if WoTC had published an article justifying the use of altered cards, was Beard justified in claiming that they were aiding and abetting in copyright infringement?

This controversy yielded a 25 page conversation amongst interested fans pertaining to the legitimacy of Beard's claims. Though at some points, it did resort to name-calling, "What an idiot. In fact, I hereby request that in lieu of his maturity, we stop referring to him as anything except "Lil' Eddie," wrote Brodie (Hannes, 2009, p. 4). Many others were legitimately interested in legal and social repercussions of the case. Everyone posting had an opinion. Some, like Galspanic, played the Devil's advocate, "The popularity of the artist is irrelevant in court though. If a violation is occurring then he has just as much standing as anyone else" (p. 3). While others, like Azerbaijan, responded with a more critical perspective, "True, but his popularity is *politically* relevant. He is trying to get WOTC to take his side in this debate, and a popular artist can exert much more pressure on WOTC than an unpopular artist could" (p.3) The aforementioned Brodie, made a point derivative of Fiske's (1991) study on the grassroots appropriation of Levis Jeans (p. 113), he suggested that Beard would have the modification of clothing prohibited: "Modify clothing. By tearing sleeves off of old shirts or patching up old pants you are violating the copyright of the fashion designer" (Hannes, p. 4). Still others opted for legal density and discussion, eventually beginning a second, distinct, thread, for the specific discussion of legal conflicts (FoxCircle, 2009). Although the fan community was critically engaged with the issue of intellectual property as it pertained to card alters, most of their angst was directed at Beard. But, did Beard deserve the curmudgeonly reputation that he gained in these threads?

5.3 Ed Beard's Community Reputation

There was a point when Beard was hot, voted a fan favorite in *Inquest Magazine*, and illustrator of over 120 MTG cards. When he was fired from WoTC in 2005, there were several fans who lamented this decision, starting forum threads, and even petitioning. Most comments posted to these forums were strongly critical of WoTC's policy. One supporter, Yoshar, wrote, "I think wizards has made a poor decision.... he is just one of the many who is producing high quality 'adult work' and being punished. I think wizards work on cards has been subpar at best and I think there trying to go more towards younger audience. I hope they do not continue this form of action" (Yoshar, p. 3). Another, Onderzeeboot compared Beard to the other artists on staff, "Hmm... I don't feel his artwork is sub-par at all, it's actually very decent. There's only one artist in current magic whose work I can't appreciate, and that's Ron Spencer. He has some decent art, but just look at Planar Chaos and you'll know what I mean" (p. 2). One fan, Meddling Mage, made a personal appeal:

Yes WOTC board moderators did threaten anyone who continues to post supportive "Grass roots" e-mails for ED Beard would eventually be removed. Pretty desperate I'd say when they have to close threads to stifle the masses because they can't stand the heat of their employees being flamed over bad moves. . .

I just feel bad for the dealers, players and fans who financially support the product. You'd think that WOTC would have a better handle on this team in R&D. This is what happens to a company who is left to run itself cart blanc as someone said. The Cat's away the mice will play.

No other company or genre could get away with this sort of bad PR move but this is Hasbro's money machine and until the money shows a drop know one at Hasbro will be any the wiser, well at least not until this fall anyway.

Keep up the good work I can't tell you how great it feels to have such dedicated fans and true support (DyannahtheUntouchable, 2005).

This example is interesting because of the ways in which it stands in such stark contrast to Beard's reputation among alter artists four years later. If, in 2005, Beard was the victim of a careless corporate merger, in 2009 Beard was redirecting this angst away from WoTC and toward the legally precarious alter art community.

5.4 Questioning Corporate Policy

Alter art exists in a legal grey area that enjoys neither producer nor consumer protections. Whether alter artists are guilty of copyright infringement is a legally ambiguous and justifiably contentious question. Unnamed artist, a card artist, revealed to the community some intricacies of their contract agreement with WoTC, "The artists get paid a flat rate for their Magic work, and we retain the rights to sell the original art and prints of the original (so long as the prints are not larger than the original). So it's not like we get royalties from Magic" (Hannes, p. 8). Because it is unknown the degree to which WoTC owns the rights to Beard's work, his threat to the community about copyright infringement is vexed. It is unclear who exactly owns the intellectual property in question. Furthermore, it is also unclear if alter art even constitutes a violation of intellectual property law.

The doctrine of first-sale under US copyright law suggests that after a work has been initially sold, the original copyright holder's interest in the material object is exhausted (US Copyright Law, Section 109). In other words, once a magic card is sold, neither WoTC nor Beard holds any legal dominion over that particular card. So, it is legal for Johnson to alter and sell cards, because after the original point of sale, he has become owner of that particular card and is free to modify it as he deems necessary.

First-sale, however, was not addressed in the fan communities which discussed the case in the *MTG Salvation* forums. Instead, a plurality of defenses were mounted, none verifiable. If anything was produced in these conversations, as a matter of fact, it was an atmosphere of confusion and ambiguity. These affective motifs then served to camouflage some of the more problematic factors of the situation. For instance, even though Beard took an antagonistic stance toward MTG fans, he is also a victim. The weak legal arguments that Beard makes can be read as tactical feints in the face of his contractual obligations to WoTC.

Beard's tactical maneuvers reflect Michel de Certeau's (1984) theories of lived experience – the everyday feints people use to evade the marginalizing power of complex institutional structures (p. 37).

In other words, the economic and legal capital of WoTC is so vast and pervasive that Beard has had no recourse but to stretch the protections of law in an attempt to scare off those who might modify his art. After all, outside of his contract, WoTC has few obligations to Beard, and the legal ambiguity of alter art makes the possibility of a lawsuit (against either Wizards or an alter artist) a risky venture for someone of Beard's income.

The logic of capital is both common sense and invisible. McChesney (1999) has argued that “[Concentration and conglomeration] also result from changes in laws and regulations that now permit greater concentration in media ownership. But the bottom line, so to speak, is that concentrated media markets tend to be vastly less risky and more profitable for the firms that dominate them” (p. 16). In this regard, the acquisition of WoTC by *Hasbro*, may indicate a bottom line, which has in fact superseded the affective interests of their fans.

These tendencies have been brought into legal focus by Cohen (2012) who argues that information policy needs better metrics for understanding the value of information in order to smooth the uneven power relationships between corporations and key semi-affiliated actors (such as Beard and Johnson). But, the problem itself cuts deeper, as McChesney points out. The very political and economic makeup of our legal system allows for corporations to lobby for laws that encourage conglomeration and concentration, and in doing so maintain a legal system that often perpetuates the status quo.

MTG is just a product to *Hasbro*. Johnson relates several recent changes in corporate policy: “I think Hasbro/Wizards has proven exactly whose side their officially on recently with their changes to the Wizards Play Network qualifications (only ‘brick and mortar’ stores are allowed to participate, this excludes student groups and other non-commercial collectives) and their cancellation of the Player Rewards program.” As WoTC merges and alters its policy to conform better to the bottom line set by Hasbro, it becomes more difficult for fans to situate themselves as loyal to the company or brand. Ultimately, the stifling top-down legal environment of WoTC has caused Johnson and other for-profit alter artists to simply opt out of the alter art business entirely.

5.5 An Uneasy Resolution

Despite the conservative and hegemonic logic that reinforces and celebrates the centralized accumulation of capital, fans are notoriously loyal to the products they support. When intellectual property rights were being contested on the *MTG Salvation* message board the authority of WoTC was never questioned. This displacement of power occurred even though the online fan community collectively constructed an amazingly thorough legal reading of Beard's claims, one that often pointed out the many ways in which they were false and contradictory. And while Beard was put to trial as the main antagonist in this controversy by the fans, WoTC made a series of discreet decisions. Johnson reports:

I received an email from the publisher who handles my articles that an employee of Wizards contacted him or possibly his boss over the phone and mentioned that an eBay auction of a card that I had altered for an article had been reported directly to Wizards. The legal department of Wizards maintains that they are under obligation to upon notification of such an auction, take action to have that auction cancelled. The Wizards employee went on to say that they enjoyed the article itself, and altered cards in general, but were once again under the aforementioned legal obligation. This employee advised that future eBay auctions not be linked to the actual article, making them more difficult to report. (Taken from an Interview 12/3/2010)

Though this is an example of top-down institutional power policing established community forums (Johnson's article), Johnson has also reported being removed from competitive spaces like regional tournaments. Because corporations such as *Hasbro* have become more and more reliant on the labor of fans in knowledge economy, they hold an economic mandate to avoid legal conflicts at all costs. WoTC's support for the aftermarket, however, has been challenged by their apparent contractual obligations to Beard. Sadly, the end result is one which pits both for-profit alter artists like Johnson and for-hire artists like Beard against one another, while Hasbro collects revenue contingent on their social and intellectual labor.

Fortunately this case was never taken to court. And, although this case would have set an important legal precedent for future instances of for-profit alteration and modification, it would have come at an important cost. WoTC could certainly afford a legal advocate, but it is unlikely that either Johnson or Beard could afford to be on the losing side of this issue.

One interesting facet of this case is the way in which Beard's offensive against craft production struck a chord, and "activated" the fan audience. Their defense of the alter art community, showcased an interesting contour regarding the craft production of altered cards. It is, however, disappointing to note that even though the activated audience sprung to defend the grassroots, their perception of an antagonism was misplaced. Instead of constructing Beard as a struggling artist, they configured him as a villain – while the real malfeasance, WoTC's alter art policy, was ultimately unquestioned.

6. Conclusion: Prosumer Protection Rights

If the conflict between Ed Beard, alter artists like Billy Johnson, WoTC and the fan community at *MTG Salvation* demonstrates anything, it is that there is far too much uncertainty relating to the regulation of craft art and virtual economies. And although this case study suggests that these economies should be legally regulated (in order to protect the participants), the question of how to regulate them remains.

Legal scholar, Jack Balkin (2006) has suggested that in instances of virtual commodification it is necessary for the state to regulate on some level. And, although he discusses virtual economies in his essay, there are few relevant differences between MTG cards and valuable sword or suit of armor in *World of Warcraft* or *Diablo III*. As a matter of fact, Balkin uses the casino as an example of a space which ought to be regulated equivalently both online and off. "Virtual spaces that are designed to be shopping malls and emporia for the purchase and sale of real and virtual goods should be treated as such," Balkin writes, "and should not be able to avoid consumer protection regulation by hiding behind the First Amendment" (pg. 97). MTG, and all other collectable card games, are clear examples of a game space which should be regulated by consumer protection laws because of the ways in which they have clear and healthy secondary-market economies. But, even though consumer protection laws might intervene in a case where WoTC decided to suddenly cancel a key tournament (that players had spent a good deal of money purchasing cards for), they certainly would not intervene to protect an alter artist like Johnson from a lawsuit.

But why, in contemporary United States governance, when so many corporations rely on affective and immaterial labor to develop and produce content for their products and websites (made famous in Terranova's (2000) discussion of AOL and immaterial labor), is there no institutional momentum to construct bureaus for the protection of prosumer labor? Even though the fan community at *MTG Salvation* constructed Ed Beard Jr. as the antagonist, I am skeptical about this conclusion. If Beard legitimately feels that his livelihood and reputation are threatened by alter artists, then his intellectual

property should be afforded a greater degree of protection. Similarly, if alter art is recognized within the tournament rules of MTG, then alter artists like Billy Johnson should be given the opportunity to make a livelihood producing alter art. The problem with this case is its inherent legal ambiguity, which allows WoTC (who occupy a position of power) to have their cake and eat it too. On the one hand, they hold an ambiguous set of contractual obligations to Beard; on the other hand the community related to alter art strengthens their brand and in doing so provides an ambiguous sense of profit. It is in WoTC's best interests to keep the nature of their contract with Beard secret, and to allow fans to worry about the legal ramifications of their actions so as to deflect the blame from themselves so that they can continue to profit off of the positive vibes the fans generate around the brand.

Because no two instances of fan production are the same, there is no one-size-fits all type of legislation which can encompass its scope, and hence, mend the ambiguous core of the problem. This case suggests that in all instances of commodification, corporations should be legally required to set up a "safe haven" policy regarding the rights of consumers to produce derivative works, and, similar to creative commons licensing, to stipulate therein how issues of acknowledgement, reproduction, and sale of the product should be managed. Furthermore, this policy should also be explained to content producers such as Beard within their initial contracts. Although it could be said that this "safe haven" is redundant to the present state of intellectual property which assumes no derivatives can be constructed unless explicit permission is given by the owner, as affective and immaterial labor become more commonplace within American society, it is important to consider the ways that concrete regulatory policy such as this might prevent corporations like WoTC from taking an ambivalent stance toward both intellectual property and fan labor, and thus prevent the exploitation of both their contracted artisans and fans.

References

- Appelcline, S. (2006). A brief history of game #1: Wizards of the Coast: 1990-Present. RPNNet. Retrieved from <http://www.rp.net/columns/briefhistory/briefhistory1.phtml>
- Arvidsson, A. (2008). The ethical economy of customer coproduction. *Journal of Macromarketing*, 28(4), 326-338.
- Banks, J., & Humphreys, S. (2008). The labour of user co-creators: emergent social network markets? *Convergence: The International Journal of Research into New Media Technologies*, 14(4), 401-418.
- Balkin, J. (2006). Law and liberty in virtual worlds. *The state of play: law games and virtual worlds*. New York: NYU Press.
- Beard, E. (n.d.). Ed Beard Jr. copyright restrictions and allowable uses. Retrieved November 28, 2010, from <http://www.edbeardjr.com/ed-beard-jr-legaluseofart.html>
- Cohen, J. (2012). Configuring the networked self: law, code, and the play of everyday practice. Hartford, Connecticut: Yale University Press.
- Company news; Hasbro agrees to buy maker of role-playing games. (1999, September 10). *The New York Times*. Retrieved from <http://www.nytimes.com/1999/09/10/business/company-news-hasbro-agrees-to-buy-maker-of-role-playing-games.html>
- Darnton, R. (1990). *The kiss of Lamourette: reflections in cultural history* (1st ed.). New York: Norton.
- Derecho, A. (2009, June). *Illegitimate media: race, gender and censorship in digital remix culture* (Dissertation, Comparative Media Studies). Northwestern University.
- Dupre, C. (2009, April 14). A practical approach to handling altered cards. *Daily MTG; Wizards of the Coast: Magic The Gathering*. Retrieved November 28, 2010, from <http://www.wizards.com/Magic/Magazine/Article.aspx?x=judge/article/20090414a>
- DyannahtheUntouchable. (2005, April 30). sacrilegious!!!! *TheManaDrain*. Retrieved December 15, 2010, from <http://www.themanadrain.com/index.php?topic=22915.0>
- Fine, G. (2002). *Shared fantasy : role-playing games as social worlds* (Paperback ed.). Chicago: University of Chicago Press.
- Fiske, J. (1991). *Understanding popular culture*. New York: Routledge.
- FoxCircle. (2009, September 14). Card Alters - The Legal Debate. *MTG Salvation Forums*. Retrieved December 12, 2010, from <http://forums.mtgsalvation.com/showthread.php?t=184077>
- Garfield, R. (2006). The design evolution of Magic: The Gathering. *The game design reader: a rules of play anthology*. Eds. Katie Salen and Eric Zimmerman. Cambridge MA: MIT Press.
- Hannes. (n.d.). Altered cards / email by Ed Beard Jr. *MTG Salvation Forums*. Retrieved November 28, 2010, from <http://forums.mtgsalvation.com/showthread.php?t=185014>
- Jenkins, H. (2008). *Convergence culture: where old and new media collide*. New York: NYU Press.
- Jenkins, H. (1992). *Textual poachers: television fans and participatory culture*. New York: Routledge.

- Kinkade, P. T., & Katovich, M. A. (2009). Beyond place: on being a regular in an ethereal culture. *Journal of Contemporary Ethnography*, 38(1), 3-24.
- Lessig, L. (2009). *Remix: making art and commerce thrive in the hybrid economy*. New York: Penguin Press.
- Martin, B. A. (2004). Using the imagination: consumer evoking and thematizing of the fantastic imaginary. *Journal of Consumer Research*, 31(1), 136–149.
- Meehan, E. (1986). Conceptualizing culture as commodity. *Critical Studies in Media Communication*, 3(1), 448-457.
- Milliot, J. (1997, June 23) Wizards, new TSR owner, will make good on debts. *Publishers Weekly*.
- Milner, R. (2009) Working for the text: fan labor and the new organization. *International Journal of Cultural Studies*, 12(5), 491-508.
- Peterson, J. (2012) *Playing at the world*. San Diego, California: Unreason Press.
- Pringlesman. (2007) [Official] altered art thread (56k beware) *MTG Salvation Forums*. Retrieved December 12, 2010, from <http://forums.mtgsalvation.com/showthread.php?t=93474>
- Sinnreich, A. (2013, In press) *The piracy crusade: how the music industry's war on sharing destroys markets and erodes civil liberties*. Retrieved January 1, 2013. <http://mediacommons.futureofthebook.org/mcpress/piracycrusade/introduction-piracy-crusades-old-and-new/>
- Terranova, T. (2000) Free labor: producing culture for the digital economy. *Social Text*, 18(2), 33-58.
- Wizards of the Coast. (2010). FAQ - common magic event questions. *Wizards Play Network*. Retrieved December 14, 2010, from <http://www.wizards.com/WPN/FAQ.aspx?x=CommonMagicEventQuestions#12>
- Yosha (2005, May 23) Edward P. Beard, Jr. dropped as an artist for Magic. *MTG Salvation Forums*. Retrieved December 15, 2010, from <http://forums.mtgsalvation.com/showthread.php?t=10664>