AMATEUR MEDIA

SOCIAL, CULTURAL AND LEGAL PERSPECTIVES

EDITED BY DAN HUNTER, RAMON LOBATO,
MEGAN RICHARDSON AND JULIAN THOMAS

Amateur Media

The rise of Web 2.0 has pushed the amateur to the forefront of public discourse, public policy and media scholarship. Typically non-salaried, non-specialist and untrained in media production, amateur producers are now seen as key drivers of the creative economy. But how do the activities of citizen journalists, fan fiction writers and bedroom musicians connect with longer traditions of extra-institutional media production?

This edited collection provides a much-needed interdisciplinary contextualisation of amateur media before and after Web 2.0. Surveying the institutional, economic and legal construction of the amateur media producer via a series of case studies, it features contributions from experts in the fields of law, economics and media studies. Each section of the book contains a detailed case study on a selected topic, followed by two further pieces providing additional analysis and commentary. Using an extraordinary array of case studies and examples, from YouTube to online games, from subtitling communities to reality TV, the book is neither a celebration of amateur production nor a denunciation of the demise of professional media industries. Rather, this book presents a critical dialogue across law and the humanities, exploring the dynamic tensions and interdependencies between amateur and professional creative production. This book will appeal to both academics and students of intellectual property and media law, as well as to scholars and students of economics, media, cultural and internet studies.

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Contents

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Preface

Amateur [a. Fr. *Amateur* ad. L. amātōr-em, n. of agent f. amā-re to love]

1. One who loves or is fond *of*; one who has a taste for anything.
2. One who cultivates anything as a pastime, as distinguished from one who prose-cutes it professionally; hence, sometimes used disparagingly, as = dabbler, or superficial student or worker.
3. Hence *attrib.* almost *adj.* Done by amateurs.

A New English Dictionary on Historical Principles, 1888[1]

Here, in the *New English Dictionary*, is a familiar division in our thinking about the amateur and their ethos. First, there is the positive sense of an attachment or commitment to a pastime of some kind, without a commercial motivation. Then there is the negative sense of a lack of skill or knowledge. The preparation of the dictionary itself casts another light on the problem. A much-celebrated product of epic scholarship, the *Oxford English Dictionary*, as it became known, was based on the contributions of many thousands of amateur 'readers', who sent in millions of quotations in response to adver-tisements in libraries and newspapers.[2] Without those amateur contributions, the dictionary would not have been possible. The *OED*, both in its content and in its remarkable production process, introduces some of the themes we explore in this book about amateur media. It illustrates the 'double language' of the amateur – a persistent ambivalence that permeates contemporary media and the scholarship around it. It reminds us how important amateur labour may be in certain creative enterprises and industries; how closely connected the worlds of the amateur and the professional often are; and it suggests how amateur activity can be encouraged and cultivated by professionals through institutional channels.

In the case of the dictionary, the work of the amateur readers was highly organised, structurally separated from the editorial process, and closely con-trolled: *OED* histories make a clear division between the editorial heroics of the professional lexicographers, and the almost excessive enthusiasm of the amateurs. The status of the professionals and the amateurs seem to be partly defined by the roles of their counterparts on the other side of the divide. In all these things, the *OED* is an instance of a larger pattern, a proximate, unequal

and mutually reinforcing relation between the amateur and the professional. Marjorie Garber, a distinguished sociologist of the amateur, wrote that the amateur and the professional 'are always in each other's pockets', and described their endemic rivalry.[3]

Amateur activity, understood as such, has a long history and has stimulated a substantial literature. The work of sociologists such as Garber and Robart Stebbins[4] remains illuminating in helping to define and specify the distinctive features of amateur work, and the reasons why people in market economies are motivated to undertake it. In the field of communications, amateur production has generated attention and interest for many years: in television, with 'funniest home video' programmes; in cinema, with a long tradition of amateur film-making; in publishing, with self-publishing and the disparaged institution of the 'vanity press'.

The spark for this book is a recent phenomenon: the extraordinary profusion and proliferation of amateur media content made possible by the internet. From online video to reference works; from photography to commentary; and from the blogosphere to social media, the domain of what we often now call 'user-generated content' has dramatically expanded in the two decades since the opening of the internet to public use. Alexa's well-known ranking of the world's ten most popular websites does not include any traditional media businesses.[5] It lists the dominant English and Chinese language search engines and web service portals, as we would expect. Alongside those we find YouTube, Wikipedia and Blogspot, and the social media behemoths Facebook and Twitter. These sites are quite different, more so in fact than the search and services portals, but they all incorporate and depend upon amateur content – posts, text entries, photographs, videos, links and comments – to attract their remarkable volumes of user traffic.

Our frameworks for understanding contemporary amateur media and their consequences remain far less well developed than the objects of our interest. This book, therefore, is exploratory. It is not a critique (or a celebration) of amateur media, and it does not denounce the dumbing down of formerly professional domains. We are interested in how we can better understand the remarkable proliferation of amateur producers, both online and in more established media contexts. We wish to contribute to knowledge of the fluid and diverse contemporary relations between amateur media and their commercial and professional contexts and rivals. Because the amateur and professional continue to be in 'each other's pockets', the book is particularly concerned with the volatile and demonstrably productive relationships between amateur work and the commercial and professional internet and media industries. This involves not only mapping points of friction, but also looking more closely at how amateur media are defined and constituted, through law, through cultural practices, and through underlying economic and social relations. We see amateur media as a relational category, shaped through interactions with its various others.

We are interested in experimenting with useful concepts and intriguing problems. The chapters here look at many different examples and kinds of

amateur media: online video, reality television, games, music journalism, subtitling communities and bloggers. These instances help us raise larger questions: What historical frameworks are useful for tracing the dynamic interfaces between amateur and professional media? How is amateur content legally, culturally and economically intertwined with the commercial and the institutional? What are the implications of the participatory web ('Web 2.0'), and its burgeoning commercial platforms, for the amateur producers who provide most of their content? How important are ideas of anonymity and privacy in amateur production? Engaging with these questions requires ideas and critique from many disciplines.

The organisation of the book follows from this logic of inquiry and exploration. Each part consists of a longer chapter setting out a particular approach to a problem or a concept. There are then two shorter chapters in response. Some of the responses engage with the longer pieces directly, some by way of an alternative example or perspective.

The chapters grew out of a workshop held at the University of Melbourne in November 2010. We wish to thank all those who took part for their questions and their comments. The project's origins lie in a research project on amateur media funded by the Australian Research Council, and we would like to thank the ARC for making this possible. We wish to acknowledge also the support of the Law School at the University of Melbourne and its Centre for Media and Communications Law, the Swinburne Institute for Social Research and the ARC Centre of Excellence for Creative Industries and Innovation, which supported and encouraged our work in this area. We are also grateful to Katie Carpenter, Commissioning Editor – Law at Routledge, who encouraged us in our plan to produce an experimental book on amateur media, as well as Stephen Gutuirrez who shepherded us through the editing process at Routledge. Finally we thank Alex Heller-Nicholas and Oscar O'Bryan for their dedicated research support and assistance in the preparation of the manuscript.

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Notes

1 James A. Murray (ed), *A New English Dictionary on Historical Principles: Founded Mainly on the Materials Collected by the Philological Society*, with the assistance of many scholars and men of science, Volume 1: A and B, Oxford at the Clarendon Press, 1888.

2 See Simon Winchester, *The Meaning of Everything: The Story of the Oxford English Dictionary*, Oxford: Oxford University Press, 2003.

3 Marjorie Garber, 'The Amateur Professional and the Professional Amateur' in *Academic Instincts*, Princeton, NJ: Princeton University Press, 2001, p. 1 and p. 5 especially.
4 Especially Robert Stebbins, *Amateurs: On the Margin Between Work and Leisure*, Beverly Hills, California: Sage Publications, 1979; Robert Stebbins, *Amateurs, Professionals and Serious Leisure*, Montreal: McGill-Queen's University Press, 1992.
5 See www.alexa.com/topsites (last visited 1 December 2011).

Part I

Economic histories

1 Histories of user-generated content

Between formal and informal media economies

Ramon Lobato, Julian Thomas and Dan Hunter

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.[1] 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 eighteenth century;[2] 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 recognises 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 organisations, and the purportedly docile and passive modes of consumption associated with mass analog media.[3] 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';[4] or on how 'old media' businesses respond to the UGC 'challenge'.

In this chapter, we see UGC not in opposition to 'producer media', or in hybridised forms of combination with them, 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 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. Hence, the historical migration of scientific writing from informal letters to formal published journals is not the whole story.

We describe in this chapter 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 varieties 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, numerous industrial and institutional media systems and governmental forces.

The analytical framework outlined in this chapter 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 chapter 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,[5] and a study of urban labour markets in Ghana by the anthropologist Keith Hart.[6] 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[7] and Sassen[8] 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.[9] 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'[10] 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,[11] in internet and convergence studies,[12] in studies of alternative media,[13] in diasporic media studies,[14] 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 pre-industrial 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'.[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 schematic in three stages.

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.

Figure 1.1 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, 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'.[16] UGC also has an important role in highly regulated twentieth-century electronic media, notably in programming formats such as talkback radio[17] as well as in open-access and community radio and television channels.[18] More recently, websites seeking user content for the purposes of a commercial promotion – 'Invent our new flavor!', 'Caption
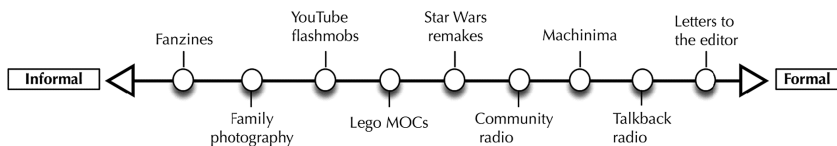

Figure 1.1 UGC across the spectrum of formality

this photo/cartoon', and so on – generate carefully managed, legally controlled transactions soliciting user involvement in highly formalised 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 licences.[19] 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. 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, 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. 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, 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.[20]

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

Figure 1.2 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 capital intensity, and level of institutionalisation. They refer to organisational 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 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. 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.
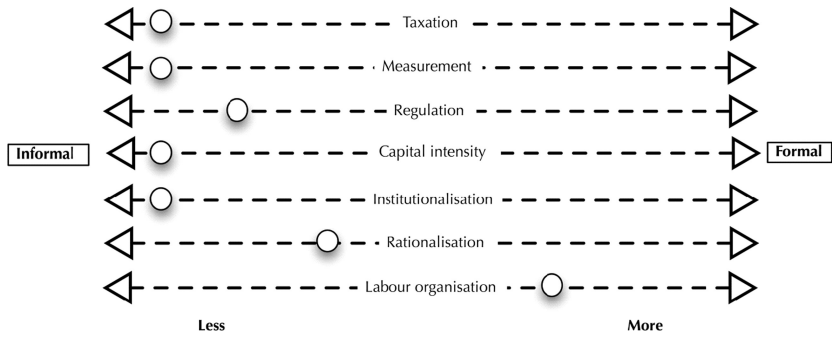
Figure 1.2 Variables of formality: the example of fansubbers

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.[21] 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, 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 approach. 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 licences according to formal (often formalistic) criteria enshrined in media law and policy. Because of the scarcity of spectrum in the broadcast range, licences 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 licences when objectionable content is broadcast. Broadcast delays and cut-out 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 1.1. 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 'um', they 'ah', 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 1.2, we find that the medium is spread across the spectrum, although it clusters towards 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 generalised location on the spectrum of formality (Figure 1.1) nor on any one of the component variables (Figure 1.2). Figure 1.3 illustrates this with the example of family photography.

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,
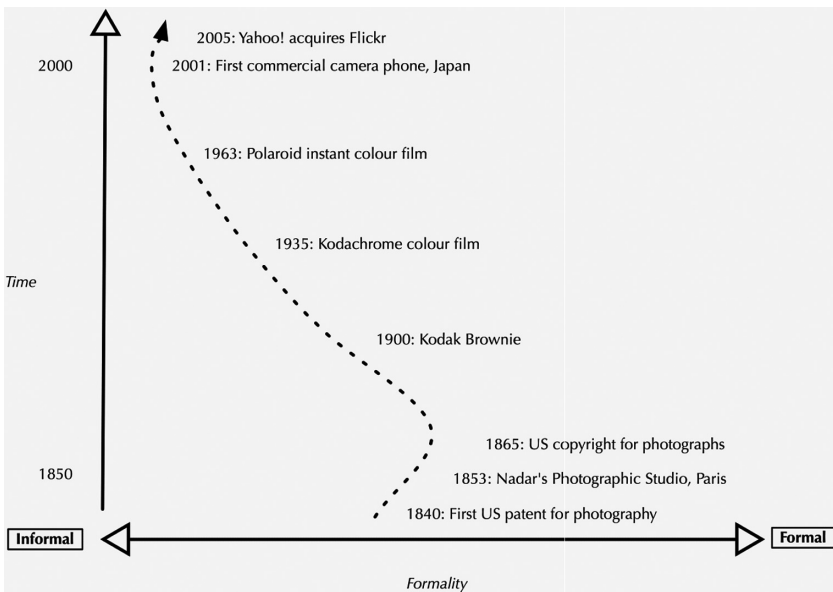

Figure 1.3 Family photography and formality, over time