[WORKING TITLE]: Non-Functional: Interrogating the Absent Author in Game Studies

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Introduction: The Experiment Has Failed

In late April of 2015, Valve's extremely popular modding forum Steam Workshop announced that it would shortly begin allowing its users to profit from their creations, selling their work to other users while passing game publishers (and presumably Valve) a portion of the proceeds. The initiative launched April 23rd by opening up sales of several mods for Bethesda's much-modded *Skyrim*, a selection curated in collaboration between Bethesda, Valve, and the modders producing the content for sale. (Purchese 2015a n. pag.) It took only a day for this endeavour to turn sideways for all involved, with one of the first pieces made available—a fishing mod called Art of the Catch created by user Chesko—inciting a torrent of discussion for its use of content from another mod entirely whose creator disapproved of monetizing the creation and consumption of mods. (Purchese 2015b) Chesko chose to remove their mod from the curated workshop in deference to the creator who had been upset, though it remained available to users who had already paid. In a reddit post made the same day titled "The experiment has failed: My exit from the curated Workshop," Chesko explained that they had only produced a mod for sale using another creator's work after being assured that it was "okay" by Valve, and had only neglected to discuss the issue with the creator in question due to numerous non-disclosure agreements (NDAs) they had signed as part of working with the curated workshop. Further, Chesko explained that Valve's legal representatives refused to

refund money to any of those users who had already purchased Art of the Catch unless they became "legally compelled to do so." (Chesko 2015) The post addressed many aspects of Chesko's personal experiences working with the curated workshop and some of the larger issues the modder felt were endemic to the paid mod system. It also clarified the revenue split between the modders, Valve, and Bethesda a bit:

> Things internally stayed rather positive and exciting until some of us discovered that "25% Revenue Share" meant 25% to the *modder*, not to Valve/Bethesda. This sparked a long internal discussion. My key argument to Bethesda (putting my own head on the chopping block at the time) was that this model incentivizes small, cheap to produce items (time-wise) [sic] than it does the large, full-scale mods that this system has the opportunity of championing. It does not reward the best and the biggest. But at the heart of it, the argument came down to this: How much would you pay for front-page Steam coverage? How much would you pay to use someone else's successful IP (with nearly no restrictions) for a commercial purpose? I know indie developers that would sell their houses for such an opportunity. And 25%, when someone else is doing the marketing, PR, brand building, sales, and so on, and all I have to do is "make stuff", is actually pretty attractive. It is fair? No. But it was an experiment I was willing to at least try. (Chesko 2015)

In the wake of all the controversy, Valve decided to indefinitely kill paid mods on Steam and refund all Steam users who purchased a *Skyrim* mod through the curated workshop. (McWhertor 2015) In a reddit discussion thread, Valve CEO Gabe Newell admitted that the backlash had been expensive for the company, saying "pissing off the Internet costs

you a million bucks in just a couple of days." (Newell qtd in Smith 2015) Pointedly, he also said that the company's main goal was to "make modding better for the authors and gamers." (Newell 2015) The entire incident occurred over the course of fewer than four days.

This anecdote throws into sharp relief a number of complications in the central subject up for discussion here, which is not modding but the tension between conceptions of authorship and ownership in the production, dissemination, and consumption of digital games. Issues of authorship have long been discussed as they pertain to cultural properties. While seminal pieces like Roland Barthe's 1967 essay "Death of the Author" and Michel Foucault's 1969 lecture "What is an Author?" rendered the author's nature as a construct visible, they do not address the particularities of new media and cannot account for how the vagaries of massively collaborative creative contribution, intellectual property, or work-for-hire political economies affect the production and reception of authorship in digital games. Furthermore, the matter of authorship has not been thoroughly or explicitly developed theoretically in the realm of games studies itself. This paper seeks to address some of these gaps by offering a survey of how authorship has thus far been conceptualized, enacted, and critiqued in terms of digital game creation, extrapolating those writings relatable to the question and synthesizing them with the views that do exist categorically in games scholarship.

Establishing the Author and Authorial Establishments

To begin an exploration of authorship in games, it will be useful to first establish the stakes of the term 'author' itself. Returning to Foucault's well-known lecture, "What is An Author?" we can find the term dissected down to its institutional limitations:

Further elaboration would, of course, disclose other characteristics of the 'author-

function,' but I have limited myself to the four that seemed the most obvious and

important. They can be summarized in the following manner: the 'author-

function' is tied to the legal and institutional systems that circumscribe,

determine, and articulate the realm of discourses; it does not operate in a uniform

manner in all discourses, at all times, and in any given culture; it is not defined by

the spontaneous attribution of a text to its creator, but through a series of precise

and complex procedures; it does not refer, purely and simply, to an actual

individual insofar as it simultaneously gives rise to a variety of egos and to a

series of subjective positions that individuals of any class may come to occupy.

(Foucault "Author" 910)

For Foucault, an author is not an individual so much as a construct of multiple systems

and procedures. Despite the widespread acceptance of Foucault's conception of

authorship as an institutional power function within many schools of literary criticism

and media theory, it may be hard to reconcile this revolutionary thought process with

both law and general understanding; freely accessible dictionary definitions make no

mentions of constructs and several mentions of individuals, positioning the author in

literature as a person who composes a literary work, the author in computers as the writer

of a software program, and generally as the maker, creator, or originator of anything.[1] So

clearly there's a deep discrepancy between the way that authorship is theorized

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[1] From dictionary.com, definitions of author in the noun form include: "1. A person who writes a novel, poem, essay, etc.; the composer of a literary work, as distinguished from a compiler, translator, editor, or copyist.[...]3. The maker of anything; creator; originator [...] 4. *Computers*. The writer of a software program, especially a hypertext or multimedia application." In the verb form, to author is either "to write; be the author of" or "to originate; create a design for."

academically and how it's understood publicly. For the purposes of this paper, it may be best to begin with a view of the concept that takes both ends of the spectrum into account, where at any given point we are prepared to acknowledge the contradiction between how an author is considered in detail and how it's deployed in the rhetoric of the everyday. In more than one way, trying to think in these terms leads us to cultural theorist Stuart Hall's concepts of encoding and decoding. First of all, negotiating the distinction between academic post-structuralist concepts of authorship and the more broadly accepted dictionary definitions is similar to Hall's strategies for navigating hegemonic viewpoints in decoding cultural works:

> The definition of a hegemonic viewpoint is (a) that it defines within its terms the mental horizon, the universe, of possible meanings, of a whole sector of relations in a society or culture; and (b) that it carries with it the stamp of legitimacy – it appears coterminous with what is "natural", "inevitable", "taken for granted" about the social order. Decoding within the *negotiated version* contains a mixture of adaptive and oppositional elements: it acknowledges the legitimacy of the hegemonic definitions to make the grand significations (abstract), while, at a more restricted, situational (situated) level, it makes its own ground rules – it operates with exceptions to the rule. It accords the privileged position to the dominant definitions of events while reserving the right to make a more negotiated application to "local conditions", to its own more *corporate* positions. (Hall 172)

Here, Hall distinguishes a 'negotiated version' of an object of study where both a widely accepted viewpoint and a more nuanced and exceptional exploration can co-exist. In attempting to parse out critiques of authorship in digital games, it will be helpful to be

able to work within a negotiated version of the concept where we can acknowledge both the hegemonic viewpoint of individual originators and the position of author-functions. Hall's thinking in this area is also methodologically and theoretically helpful in that we can utilize the very notions of encoding and decoding. Encoding and decoding offers a view of cultural production in which producers and users complete a circuit and the act of reception is just as much a productive practice as that of production or dissemination. "If no 'meaning' can be taken," writes Hall, "there can be no 'consumption.'" (Hall 164) As we will see when discusses the actions of players, interpreting decoding as a determinate moment capable of creative contribution to the object of study works well with the thinking of several games scholars on the sovereignty of authorship and the proprietorship of gameplay. This is also in line with Raymond Williams' ideas of the analysis of form where meaning is determined by the dynamic relationships between authors, products, and users (1977), and James Hamilton's elaboration of the concept in terms of user production (Hamilton 2014 492).

Ideas of 'Creativity' in Digital Games Production

Many works in game studies begin to explore authorship in games, but most shift focus shortly after starting and before getting in-depth. The majority of games scholarship that invokes the concept of authorship does so not to build a theoretical framework, but rather in service to performing a discussion of creative work as immaterial labour. For the most part, researchers discussing the messy authorship of games are using the all-important concept of control over and recognition for one's creations as a stepping-stone to discuss controversies of political economies, capital, and Empire. In the platform studies book *Racing the Beam*, an often-cited and perhaps key text in games scholarship, Nick

Montfort and Ian Bogost bring up one of the first historical cases of the tension between authorship and ownership in games: the incident of Warren Robinett, Atari, and *Adventure*. In this well-known anecdote, Robinett included an easter egg: he built a hidden room into the game he had created for Atari with text on a wall that read, "Created by Warren Robinett." (Montfort & Bogost 59) Montfort and Bogost are quick to point out that Robinett did so in order to "sign" his work in protest of the lack of profit sharing or royalties awarded to game developers in the early days of digital game design, and immediately pivot to a discussion of the amount of work and responsibility placed upon immaterial labourers and the dearth of remuneration offered to them (61). The anecdote is also told, this time more hyperbolically, by Nick Dyer-Witheford and Greig de Peuter in their book *Games of Empire*, where they place more focus on the fact that Robinett quit working at Atari shortly (in their version of the story immediately) after adding this digital signature (Dyer-Witheford & de Peuter 10-11). Like Bogost and Montfort, Dyer-Witheford and de Peuter emphasize the incident as illustrative of the exploitative nature of immaterial labour in a context of Empire and Robinett's actions as an act of protest against an unfair economic system. So both accounts are quick to frame the issue in terms of labour and reward rather than authorship and creative control. Both accounts, however, also somewhat gloss over the fact that when Robinett secretly signed *Adventure* as "Created by Warren Robinett," he was neglecting to share any credit with William Crowther and Don Woods, the developers of *Colossal Cave Adventure*, the text-based game on which Robinett's game was almost entirely based. In fact, the narrative elements of Robinett's game were all derived in some way from the content of *Colossal Cave Adventure*. Without taking away from the fact that a text-based game is extremely

different from a graphical one, to credit Robinett as the 'creator' of *Adventure* without mentioning the work of Crowther and Woods is a bit like adapting a book to a film without ever crediting the writer of the source novel. From a Foucauldian perspective, the Robinett easter egg incident demonstrates the author-function as a site of power struggle; from an encoding and decoding perspective, one might debate who was the bigger thief: Atari for failing to properly credit Robinett, driving him to illicitly credit himself, or Robinett for failing to offer any credit to Crowther and Woods, neither of whom were compensated for their original work at all.

The incident itself is less significant for this paper than the fact that neither *Racing the Beam* nor *Games of Empire* recognizes it as an opportunity for significant interrogation of how authorship is enacted within the realm of digital games production. The fact is that this oversight is typical of accounts of authorship provided by games scholars. As mentioned earlier, most works in games studies that discuss authorship at all use it as a launch pad for more in-depth explorations of the tensions between labour and capital in games industries. While Montfort and Bogost are mainly interested in exploring industry in terms of platform studies, Dyer-Witheford and de Peuter are far more interested in extrapolating Antonio Hardt and Michael Negri's definitions of Empire to games industries. In *Games of Empire*, the authors define Empire as "the global capitalist ascendancy of the early twenty-first century, a system administered and policed by a consortium of competitively collaborative neoliberal states." (Dyer-Witheford & de Peuter xxiii) Within that system, immaterial labour in information and communication systems, such as the media, "is not necessarily most important. But it clearly occupies a strategic position because of its role in intellectually and affectively shaping subjectivities

throughout other parts of the system." It is this shaping that's most germane to the discussion at hand. How are the contributions of immaterial labour, especially those that constitute an "authorial" or "creative" position, viewed throughout the rest of the network of Empire? One angle is provided to us by Trevor Barnes and Neil Coe in their 2011 article "Vancouver as media cluster: the case of video games and film/TV." In describing the history of industry development that led Vancouver to take its place as a Pacific Northwest media cluster, Barnes and Coe inadvertently draw out and clarify some of the connections between industry and authorship in the production of videogames. They describe a process of 'firm fission' in which new studios are born of the splitting of talent from established studios (8), and place publishing giant Electronic Arts' presence in the city as a 'hub and spoke' type of cluster development where a single key firm (here EA) serves as the hub in the centre as small and medium-sized enterprises (SMEs) rotate around it as spokes (9). Though their explicit focus is on the creative transformation of Vancouver as a city, Barnes and Coe are also here exploring the nature of networked production and the work-for-hire political economy of videogame industries. In the hub and spoke model of media clustering, authorship is contracted or subcontracted out from the larger firm to the SMEs in terms of labour, but wholly or partially retained in terms of recognition, and usually wholly retained in terms of rights and negotiating power. Most large-scale projects under development in such a media cluster either originate in or flow through the hub firm, which then engages the 'services' of an SME (8, 13). However, the linguistic distinction of engaging *services* puts SMEs in this context into the realm of labour rather than creativity. This dichotomous paradigm of these two concepts will always situate services as somewhat uncreative or uninspired, no matter how

contradictory it may be in light of the work being done and the product being fabricated.

So though they may not recognize it, in aligning their focus on labour with other key

works on games production Barnes and Coe also establish one of the central reasons that

authorship in video games can be so tricky. Because so many games are produced on a

contract basis, the owners of the final product have no authorship claims to it, while the

creators have neither any ownership claims nor even the freedom to discuss their

processes due to industry customs of secrecy and binding non-disclosure agreements

(NDAs).

Due to all these practical limitations, attempts to discern how specific games are

developed in detail are scarce in games studies, but some writers do offer more

substantial examinations of authorship in games as an issue unto itself. Perhaps one of the

first points of intervention we can detect are those where the idea of "originator" meets

those of institution and network, in the so-called 'creative moment.' Several games

scholars have addressed creativity in detail, making for many points of overlap and

fissure, and one of the main reasons surveying them is important is because none are

necessarily dominant. For example, Daniel Ashton examines creativity in games design

from a pedagogical perspective in a 2010 article for *Games & Culture*. Ashton frames

creativity in the design and production of videogames in terms of "rearranging the old in

a new way." This framework is heavily reliant on notions of 'conceptual heterogeneity'

(Ashton 265) that posit creation as an inherently intertextual process, where in addition to

the serendipity of inspiration ideas can be generated through processes of free association

and memoir. (Ashton 267) While Ashton is careful not to fold ideas of creative

sovereignty into his explanation of this rearranging the old in a new way, other games

scholars are equally careful in positing the importance of tracing these intertextual connections back to the author of the original text: Jaroslav Švelch, for one, developed literary scholar Anton Popovič's three binary categories of intertextual relationships (attitude of the author towards the original text, strategy of the author in identifying the relationship, and the level of transfer from the original text to the new one) to studies of video games borrowing from other games and/or intellectual properties (Švelch 2012 170-171). In this dynamic, creativity is recognized as a process of intertextual borrowing where the assumed goal is to comment upon the borrowed-from text in some way. This is not necessarily the case for Ashton, who allows for the process to be unconscious or unintentional, and in many instances owing nothing to the object borrowed from. (Ashton 266-267) This is in keeping with how we can interpret Robinett's easter egg in *Adventure*: though he had borrowed heavily from Crowther and Woods' *Colossal Cave Adventure*, he had seemingly felt that their work existed in a creative commons where imitation was the sincerest form of flattery, whether or not the imitator (or in this case adaptor) explicitly credited those being mimicked.

This problem of creativity, compensation, and credit is further complicated once other actors start entering onto the scene in unofficial or unsanctioned ways, either during initial development or after the release of the "final" product. I refer here not only to the types of mods that framed this paper's introduction, but also to what John Banks terms co-creativity in his book *Co-Creating Videogames*. According to Banks, co-creativity is the process in which most games are constructed to one degree or another, but some games are designed specifically to favour co-creative processes in which multiple developers, fans, and users work together through various means to build the game

system and player experience. In writing the book Banks spent several years with Australian studio Auran, and followed the company's staff through the development of *Trainz* (a train building simulator) and *Fury* (a PvP MMORPG). Many studies of participatory culture and user-generated content as it pertains to the development of games focus on the potentially exploitative nature of playbour practices (Kücklich 2005, Postigo 2007), taking stances on the precarity of the user position in the dynamic and the lack of control they're able to exert over their creations (an observation certainly relevant to our discussion of authorship and ownership here). However, Banks' study is positioned here in contrast to such claims, asserting that co-creativity needs to be studied in terms of both market and non-market contexts:

> To understand these emerging forms of social exchange and how they are organized, we approach co-creative relations in terms of *co-evolving market and non-market contexts* to draw in the complex interrelationships between multiple contexts, incentives and motivations, and the emergence of markets and dynamics of institutions. This fundamentally involves a co-evolutionary dynamic of *both economic and cultural change*. (Banks 135)

Banks found that in the case of Auran, the idiosyncrasies of individual co-creative processes overshadowed the development of general systems of co-creation, but that in all cases the concerned parties operated with a more or less full understanding of their roles. In the case of *Trains Railroad Simulator 2004* neither the pros nor the amateur fan creators were operating with blinders on or only partial knowledge or understanding of their roles in making the final product—everyone was 'pretty much' aware of where they stood and how their labour and creativity was being used (105). The co-creative

development of *Trainz*—in which users were kept abreast of the game's dev progress and invited to contribute content before the initial release—was so successful for Auran that the studio opted to develop their massively multiplayer *Fury* in much the same way. This time, however, things did not run as smoothly: the process was plagued with difficulties and controversies further exacerbated by the public nature of the co-creative process, and subsequently *Fury* was so poorly received that it failed to recoup its money and effectively bankrupted the studio. In a quote that aptly sums up what *does* need to happen in a fully co-creative development process, Banks observes that in the case of *Fury*, "insufficient consideration and attention were given to reorganizing the development process and organizational structures to adequately account for the player co-creative involvement and the demands this imposed on the professional developers." (126) One of the main problems that appears to have occurred is that in the case of *Fury* there was a miscommunication about who was in control of the creative process, and a discrepancy between how much authorial power had been promised to the fans and how much they felt they were being listened to. Apparently, not all creativities are created equally, and workflows that fail to organize themselves around the idiosyncrasies of different collaborative processes have a difficult time partitioning forms of authorship and control.

Blurred Vision

Banks found that *Fury*'s failure was partially attributable to the *over*-involvement of fans in the development process, leading to a loss of focus for the professional team. (Banks 117) Key to this commentary is the idea of "focus" in the creative development of games. This is connectable to what Casey O'Donnell identifies as *vision* in his 2014 book *Developer's Dilemma: the Secret World of Videogame Creators*. Combining several case

studies of different game dev processes and numerous interviews, O'Donnell's book is an excellent resource for thinking about how creative processes get delegated and how authorship roles take shape within game studio spaces. In particular he identifies this idea of vision as key to thinking about how collaborative authorship is performed—and how it often gets lost in the mix:

> When developers talk about what is missing, about the aspect of game development that prevents them from being able to work well, they frequently settle on the highly problematic term "vision." As they conceptualize it, vision is a clear idea of what you want at the end of a project. Vision is assumed to come (or not come) from somewhere above in the company, delivered by management to help developers understand how to direct their experimental efforts.
>
> (O'Donnell 128)

This quote sums up succinctly how difficult it can be to reconcile traditional notions of authorship with what goes on in the highly chaotic and collaborative realm of game creation. As O'Donnell's interviewees have experienced it, creative control lies in many different hands in a studio, but creative *direction* is often nigh impossible to keep track of or trace back. O'Donnell goes on to relate several incidents of how vision, or rather a lack thereof, contributed to stressful or shaky development processes, and how these issues were characteristic of mainstream game production (129-130). Reflecting on the nature of this spurious and almost mystical concept, he writes, "Vision has really become shorthand for the goal that crosses each of the [many] disciplinary boundaries within a game. It represents the idealized notion that having a common goal in mind will help keep these systems in sync across their numerous fault lines. But even by game

developers' own admissions, oftentimes the idea of what a game should be at the beginning is quite different from what it is at the end." (130) Thus, says O'Donnell, the privileging of vision makes for a kind of technological determinist position, though rather than privileging the technological it privileges the vision, ultimately making vision a "kind of false hope for game developers." (131)

We can tease out this idea of vision as a mysterious and almost mystical abstract in game development by turning towards the fields of software and interface studies. If vision is the ineffable x factor for the encoding of videogames, then perhaps the difficulty end user decoders have in attributing authorship to specific games can be adapted from Wendy Chun's idea of 'sourcery.' In her article "On 'Sourcery,' or Code as Fetish," Chun articulates sourcery as a fetishism that obfuscates the vicissitudes of execution and 'makes our machines demonic' (Chun 300). Sourcery is the obverse of the user as agent—rather than an oppositional or master-slave relationship between user and machine, Chun places software as the other side of the dynamic, where code and software take on an almost magical aspect. Chun posits that the very idea of source code creates the fetishism of sourcery, where the average user concludes that there's little point in understanding how software functions and imbues those who do understand such processes as enlightened (301). The logic of sourcery is germane to a discussion of authorship in videogames for two reasons: first, because its relationship to software development reflects on work processes in videogame development fields as well; and second, because if we extend the fetishism of sourcery to completed videogames, the suggested conclusion is that most users of videogames do not consider the extensive development processes of the products they use. Like sourcery, videogames may inhabit

a fictional space where the interface seems productively spectral (301). How deeply does the player of the game understand what goes into the game itself, technically or artistically? Chun sums up this conundrum elegantly, writing that "software as we now know it conflates word with result, logos with action. The goal of software is to conflate an event with a written command." (303) Software blurs or hides the lines between command and execution, leaving out the huge thing in the middle: process. According to Chun, instead of being a source, source code is a resource used by the (en)coder; it becomes source when it becomes integrated with the transistors comprising a machine's logic gates, when it expands to include software libraries, etc.--namely, after the fact. (307) So it's source by the time we as users get it. But this allows us to ignore the processes it has to go through (which are many) and reduces our understanding of it to 'magic'.

We can extend this idea of code as 'magic' into the context of the circuitous threading of work, compensation, and recognition within game development. Here, the blurring of the lines between both individual contributions and process, and logos and action, to produce a seemingly fully formed product out of thin air is exacerbated by the secretive nature of much videogame development. Not only are origins and processes obscured by the frequent utilizations of NDAs and commissioned works, but also by the interdisciplinary nature of game development and the lack of formalized induction processes into the culture of the industry. Here it is useful to return to O'Donnell, who writes extensively about the gaps in language that developer teams exhibit in connecting ideas, instead relying mostly on shared cultural experiences and creative chaos. (O'Donnell 17, 39-40, 74) These lapses in communication brought about by the 'in-crowd' culture and language

of the industry (75) help to obscure process from within the industry, while players

encounter their own difficulties decoding authorship from the little information the game

itself provides them with:

> …[T]oo often, while a game is credited to the numerous developers found in a
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> game's actual credits screen, it is cited as the work of an individual; a producer or
>
> designer. Yet this neglects the fact that the entire process of preproduction is
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> about the coming together of people possessing different expertise and capacity to
>
> think about what a game might be, how it might come to be created and begin that
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> process. Game development is about interdisciplinarity, thus any reductionism
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> with regard to what/who a "developer" is neglects those other disciplines that
>
> make games possible. This isn't about a single individual or one discipline
>
> guiding the process. It is about the assembly of a space where creative
>
> collaboration can occur. Any commitment to a single person's ego, approach, or
>
> perspective will only end in disaster. (O'Donnell 70)

While I don't necessarily agree with O'Donnell's assessment that games are often

credited to individual producers or designers (if anything, I believe the studio or publisher

appears as the authorial entity for decoders), I do see the difficulty for players in mentally

connecting the dots between the lengthy end credits they view upon finishing a game and

the realities they experience both before and while experiencing the game. When

audiences *do* attempt to discern the authorship of a game, there appears to be a strong

disconnect between the perception of what goes in and who does what and the reality of

development. As Chun writes on source code, "we 'primitive folk' worship it as a

magical entity—as a source of causality— when in truth the power lies elsewhere, most

importantly in social and machinic relations." (Chun 311) For O'Donnell, games, despite their lengthy end credits, are notorious for obscuring or cloaking the work of individuals in the collective, rendering specific creative contributions almost invisible in the final product (O'Donnell 7). This makes O'Donnell one of the few authors looked at in this paper to explicitly acknowledge the important gap in scholarship on IP and the production of games or transmedia more generally (12, 275). Barnes and Coe do acknowledge the gap as well, but, again, situate it in terms of transmedia *labour* practices and industry rather than transmedia authorship practices and cultural production, writing that in the case of Vancouver, strong growth in subsidies across media production forms is acting as a bridge connecting the various industries in functional terms (Barnes and Coe 206). They go on, however, to inadvertently point toward some of the problems that arise from massively collaborative transmedia creative practices and the imbrication of multiple media and projects sharing workers in quoting one of their interviewees:

> "…[T]here are a range of emerging functional connections between firms in these different areas. Sound engineering, for example, has for a while now been an area of expertise that straddles film, cartoon and video game projects. Technological trajectories are also at play here, such as the increasingly interactive nature of television programming. One respondent spoke to both these aspects when he described how 'Electronic Arts is now thinking about getting into the movie business. So ... you can have somebody working on a visual effect in Stage 17 and then going to Electronic Arts and working on a game. Or now ...the movie, it's integrated with animation and integrated with a video game. And so ... we're just sort of starting to see that convergence model really happening: before we just

talked about it' (personal interview, October 2009)." (Barnes and Coe 26)

The interviewee that Barnes and Coe quote here paints a rich picture of the questions I am interested in exploring. In such a model where the creative worker shuttles from project to project in different media in the course of his or her day, how do we account for or track the impact of that worker's efforts on the final products? The preoccupation of our culture with creativity, authorship, vision and 'genius' seemingly diminishes in the utopian collaborative process envisioned here, but does not account for its re-emergence when it comes to ideas of branding, royalties, and intellectual property rights. These are the same dilemmas orbited by O'Donnell's work more explicitly and Chun's tangentially; in games production, the risk of large collaborative products within an industry preoccupied with secrecy is that the authorial contributions of individuals will necessarily be obfuscated, leaving no one to claim any form of authorship besides the monolithic entity of the developing studio or publisher. Just as we can connect the false hope and technological determinism of vision to the 'magic' of sourcery, we can draw a line from the enlightened magicians of programming to the mystical keep of the game studio.

Proprietary Codes and Productive Decoders

A pivotal area to any survey of authorship in games studies must be the legal status of games as authored cultural products, and how this affects the role of productive players as participating audiences. In the eyes of the law, ownership is constituted by authorship unless a legal transference of rights has taken place. For a legal perspective, we can turn back again to Wendy Chun, this time to her book on interface, *Programmed Visions: Software and Memory* (2011). Here, Chun uses case history from disputes over software rights to track the legal conception of software's transition in status from service to

object:

> Legal battles over software copyrights and patents make clear the stakes of this
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> transformation of software from a service, priced per instruction, to a thing. Not
>
> surprisingly, software initially was considered neither patentable nor
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> copyrightable because of its functional, intangible, and "natural" status. The US
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> Supreme Court in 1972 first rejected engineers Gary Beson and Arthur Tabbot's
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> claim to patent an algorithm for converting digital into binary digits. It decided, as
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> legal scholar Pamela Samuelson argues, that "mathematical innovations should be
>
> treated like scientific truths and laws of nature, and scientific truths and laws of
>
> nature are unpatentable subject matter." Software algorithms, in other words,
>
> were "natural" mental processes, not artificial things. As Samuelson and as legal
>
> scholar Margaret Jane Radin both note, key to the eventual patenting of software
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> was its transformation from a set of instructions to a machine. (Chun Loc 139 of
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> 3297)

In this light, software (and, we might argue, games) are derived from algorithmic

processes not subject to claims of ownership, if not from claims of authorship (perhaps

"discovery" is a more useful term here). While few works within games studies employ

the legal vocabulary to make arguments about how these transitions affect games, a few

useful articles do exist. In an article on fair use and prosumption, Steve Collins comments

that powerful cultural forces catalyzed by our digitally networked culture of sharing may

call for a reconfiguration of copyright law. (Collins 37) For Collins, changing norms

around what constitutes fair use raise the question of how adversely affected cultural

industries actually are by the remix culture of Web 2.0 (50-51). Also material to this

discussion is the work of Greg Lastowka, one of the few games scholars to closely and explicitly examine how copyright law impacts and negotiates with conceptions of authorship in games. Lastowka's perspective is of key importance to this study, because his article "Copyright Law and Video Games" (2013) immediately problematizes the idea of the sovereign, originating author by identifying the fact that in large-scale game development, traditional forms of authorship and their products only constitute the "assets" of a game, distinguishing them legally from the design of the abstracted algorithmic game system itself. Historically, however, the real issue in copyright in games has been the protection of the narrative elements of the game rather than its underlying code or systems (6-7).

Crucially, Lastowka also points out that "from the perspective of copyright law, the interactive nature of video games makes players somewhat like authors and undermines authorial status of the game creator" by viewing the design of a video game as an interactive system rather than a single scripted experience. (Lastowka 1) This observation serves as an excellent segue into the question of how end users have been theorized to author and shape the game after release, both practically and conceptually. This is a complicating line of thought to pursue, as some of the foundational thinkers in games studies have posited that play is necessarily without tangible product. In his book *Gaming: Essays on Algorithmic Culture* (2006), Alexander Galloway demonstrates that both Johan Huizinga and Roger Caillois, two of the bedrock theorists of game studies, agree point for point on a definition of play as an activity that is free, separate, uncertain, unproductive, regulated, and fictive. (20) The sticking point here is the positioning of play as unproductive. How firmly does this claim hold? Is play completely unproductive?

If we take such a view of the situation, it becomes extremely difficult to consider play as a type of authoring practice or even creative performance. Galloway, it seems, disagrees on this point, writing "the critical terrain has shrunk in the age of interactive media from a two-way relationship involving the text and the reader-as-critic to a singular moment involving the gamer (the doer) in the act of gameplay. The game-as-text is now wholly subsumed within the category of the game, for he or she creates the gamic text by doing." (105) If interactive media changes from a relationship of text and reader to a 'singular moment of doing,' then surely players are authoring and creating the games they play as they play them.

This is particularly true in the realm of e-sports, where commodification arguably invites considerations of play as productive, performative, and creative. In her book *Raising the Stakes: E-Sports and the Professionalization of Computer Gaming* (2012), TL Taylor describes the predicaments game companies face when confronted with the growing popularity of gameplay broadcasting and professionalization:

> This is a not unfamiliar dilemma for game companies as they watch their products go out into the world and develop a life all their own. There is a constant dance between wanting to assert property rights around these products—managing and often containing their actual use—and recognizing the limits of doing so. While a game company may support what e-sports brings to the overall promotion and culture of their game, they typically still see themselves first and foremost as a game *producer*—not sports provider. (Taylor 166)

As Taylor maps it out, the central concern for rights holders when it comes to the broadcasting or professionalization of gameplay is that someone else is or may be making

money off of their intellectual property. Contention with this may derive from the use and

exhibition of other media—film studios are certainly within their rights to take issue with

the unauthorized public exhibition of their film catalogues (whether it be for profit or

free), and publishers are reasonable in taking plagiarists to court or serving cease and

desist orders to those who would scan and upload their books to websites. But these do

not take into account the interactive nature of game systems, where, as noted earlier, the

game *requires* a player in order to be enacted. Taylor explores this conundrum in detail,

asking who owns the broadcast product and speculating freely on how permutations of

the game at the code level (to either make it more competitive or adjust it for

spectatorship) can be challenged by the original developers:

> Though games themselves aren't deemed copyrightable…their "constituent
>
> elements" are, which include game pieces, graphics, and even a particular
>
> expression of the rules. One can thus imagine scenarios in which a game
>
> company, exerting IP rights, precludes a tournament from using particular rule
>
> sets or mods that may override their software because they fear it corrupts the
>
> intended spirit of the game (and brand)…When a game company can, in essence,
>
> take the ball and go home we've entered some new territory. We can also
>
> certainly imagine legal battles surrounding the ownership of match videos and
>
> their distribution or streaming via third-party websites. Beyond issues of who
>
> owns a recorded game session (the game developer, the tournament licensee, the
>
> team or player, the spectator who recorded a match playback file), forms of
>
> distribution may also pose legal challenges. (Taylor 171)

Taylor's analysis of e-sports players is complemented by many other studies of the

phenomenon, notably Kaytoue et al's look at the growing popularity of streamers on sites like Twitch.tv and the usefulness of data tracking methods in determining qualitative and quantitative importance in the practice. For Kaytoue and company, the emergence of game streaming as a new web community holds major interest for all parties along the entire encoding and decoding spectrum, from the spectators and pro gamers on through the sponsors and game publishers. (Kaytoue et al. 1188) This is exactly the type of concern that Taylor raises in her commentary on e-sports as performative play that may call for many different ownership claims.

Matters are even further complicated when modding, machinima, and other types of non-formally sanctioned user-generated content are introduced to the mix. In an address on mod culture, David Nieborg elucidated the precarious position modders find themselves in. Like Banks, Nieborg positions user-generated content in terms of co-creativity (Nieborg 4), but adds a discussion of this co-creativity as an agency-building exercise. (Nieborg 7) He situates modding in terms of an agency that can rival but also cooperate with the cultural industry (4). However, he also stresses the importance of end user license agreements (EULAs) in demarcating the boundaries between mods and "illegal content," leading to self-censoring and cultural commodification. This thinking is significant to conceiving of authorship in games: in terms of sharing credit or proceeds, EULAs will always favour the IP holders and therefore position them legally as the authors of the game (after Lastowka). In terms of creative freedom, the creators of unsanctioned mods always take the risk when producing their content that they may invoke the wrath of the IP holders and have their authorship denounced as theft (though it should be noted that as cultural industries go, games industries far more commonly allow

for user-generated content derived from their properties than film studios or publishing houses). In *Games of Empire*, for example, Dyer-Witheford and de Peuter mention the fact that machinima creators filming from a game without permission can be prosecuted for EULA violations, and that many game companies have, however, been willing to accommodate and profit from machinima (27). This brief mention effectively glosses over the contradiction in practice by a company that explicitly reserves the right to litigate against violators of their copyright while tacitly encouraging such violations by promoting such violations. The fan creators in these situations perform all the work and assume all the risk, while the rights holders can either swoop in to prosecute for unflattering creations or reap the financial benefits of successful pieces. The same issue crops up in Galloway's *Gaming* as he writes in a section on countergaming that unlike the countercinema that operates outside of Hollywood's commercial machine, many game mods are actually promoted by the commercial sector, in a dynamic that Brody Condon calls "industry-sanctioned hacking." (Galloway 111) Historically, however, the attempt to professionalize such practices has usually met with the same fate as the *Skyrim* mods of the Steam curated workshop, and game history is littered with stories of rights holders aggressively going after mod teams for altering game code or including content taken from other media properties. (Postigo 2007, Sicart 2013, Kücklich 2005) "While the pattern of enforcement is highly uneven," comment Dyer-Witheford and de Peuter, "the issue hangs as a potential damper over the creativity of both mods and machinima." (Dyer-Witheford and de Peuter 208)

Regardless, the literature available to us broadly situates modding and other forms of user-generated content as productive practices where users are attempting to decode

games while simultaneously encoding new permutations and meanings. Returning to Jaroslav Švelch, we can identify some extremely interesting examples of the kind of authorship and intertextuality possible when copyright isn't at stake. Švelch documents several independently produced games made in 1980s Czechoslovakia where popular properties taken from all over the world (including Indiana Jones and Rambo) were thrown together in various text-based RPG situations; in some cases the producers of the games had not even seen the films they were taking their characters from. (Švelch 173) These creators were not concerned with infringing on the copyrights of multiple different holders or the responsibilities of canonicity or continuity for the properties involved. They took what they wanted and produced games specifically relevant to their cultural contexts with a level of abandon usually unseen in games production. Of course, the way Švelch frames their activities, these creators were also relatively unconcerned with monetizing their creations (not that monetization is necessary for rights holders to take umbrage or legal action against violators). In this light, user-generated content always constitutes a form of authorship in terms of encoding and decoding, but destabilizes the institutional aspects of the author-function.

Conclusion

This paper has barely scratched the surface of potential sites of creative contribution in the production of games. What if, for example, we were to extend ideas of authorship to craft and labour? If we were to perform a closer examination of console design or manufacturing, we might find many points of intervention where immaterial and material labour constitute forms of authorship and problematize the entire range of global video game consumption. (Nichols 2010, Huntemann 2012). From a Foucauldian perspective,

authorship will always be a matter of institutional privilege, but when approaching from an encoding/decoding vantage point, the end user will always have some creative impact upon the game product. If game studies is to attempt to more fully account for conceptualizations, enactions, and critiques of authorship, a theoretical reorientation along lines of post-structuralism and cultural studies is called for. The tactics essential to further developing theories of authorship in the production of games will be transforming discussions of labour into discussions of creative contribution, and a willingness to look at how authorship is imagined and/or constituted from the decoder's side of the process, as the secretive nature of game development may never be fully negotiated by scholars or the beleaguered workers of the games industries themselves.

Works Cited

Ashton, Daniel. "Player, Student, Designer: Games Design Students and Changing
    Relationships with Games." *Games & Culture* 5.3 (2010): 256-277.

Banks, John. *Co-Creating Videogames*. New York, NY: Bloomsbury, 2013.

Barnes, Trevor, and Neil Coe. "Vancouver as media cluster: the case of video games and
    film/TV." *Media Clusters: Spatial Agglomeration and Content Capabilities*.
    Northampton, MA: Edward Elgar Publishing, 2011.

Chesko. "The experiment has failed: my exit from the curated Workshop." *Reddit.com*.
    24 April 2015. Web. 15 May 2015. http://redd.it/33qcaj.

Chun, Wendy Hui Kyong. "On 'Sourcery,' or Code as Fetish." *Configurations* 16.3
    (2008): 299-324.

----. *Programmed Visions: Software and Memory*. Cambridge, MA: The MIT Press,
    2011.

Collins, Steve. "Digital Fair: Prosumption and the fair use defence." *Journal of Consumer Culture* 10.1 (2010): 37-55.

Dyer-Witheford, Nick, & Greig S. de Peuter. *Games of Empire*: *Global Capitalism and Video Games*. Minneapolis, MN: University of Minnesota Press, 2009.

Galloway, Alexander R. *Gaming: Essays on Algorithmic Culture*. Minneapolis, MN: The University of Minnesota Press, 2006.

Hall, Stuart. "Encoding/Decoding." *Media and Cultural Studies: KeyWorks*. Malden, MA: Blackwell Publishing, 2006.

Hamilton, James. "Historical forms of user production." *Media, Culture & Society* 36.4 (2014): 491-507.

Huntemann, Nina B. "Women in Video Games: The Case of Hardware Production and Promotion." Huntemann, Nina B., and Ben Aslinger, eds. *Gaming Globally: Production, Play, and Place*. New York, NY: Palgrave Macmillan, 2012. 41-57.

Kaytoue, Medhi, Arlei Silva, Loïc Cerf, and Wagner Meira Jr. "Watch me Playing, I am a Professional: a First Study on Video Game Live Streaming." *WWW 2012 Companion,* April 16-20, 2012, Lyon, France.

Kücklich, Julian. "Precarious Playbour: Modders and the Digital Games Industry." *The Fibreculture Journal* 5 (2005): n. pag. Web. five.fibreculturejournal.org/fcj-025-precarious-playbour-modders-and-the-digital-games-industry/print/

McWhertor, Michael. "Valve kills paid mods on Steam, will refund Skyrim mod buyers." *Polygon.com.* 27 April 2015. Web. 15 May 2015. http://www.polygon.com/2015/4/27/8505883/valve-removing-paid-mods-from-steam.

Montfort, Nick, and Ian Bogost. *Racing the Beam: the Atari Video Computer System*.

    Cambridge, MA: The MIT Press, 2009.

Newell, Gabe. "MODs and Steam." *Reddit.com*. 25 April 2015. Web. 15 May 2015.

    http://redd.it/33uplp.

Nichols, Randy. "Who Plays, Who Pays? Mapping Video Game Production and

    Consumption Globally." Huntemann, Nina B., and Ben Aslinger, eds. *Gaming*

    Globally: Production, Play, and Place. New York, NY: Palgrave Macmillan,

    2012. 19-39.

Nieborg, David. "Am I mod or not? An analysis of First Person Shooter modification

    culture." *Creative Gamers Seminar*, 2005, University of Tampere, Tampere,

    Finland.

O'Donnell, Casey. *Developer's Dilemma: the Secret World of Videogame Creators*.

    Cambridge, MA: The MIT Press, 2014.

Postigo, Hector. "Of Mods and Modders: Chasing Down the Value of Fan-Based Digital

    Game Modifications." *Games and Culture* 2.4 (2007): 300-313.

Purchese, Robert. "A paid Skyrim Steam Workshop mod has already been pulled."

    Eurogamer.net. 25 April 2015. Web. 15 May 2015.

    http://www.eurogamer.net/articles/2015-04-24-a-paid-skyrim-steam-workshop-

    mod-has-already-been-pulled./

----. "Steam Workshop now allows modders to sell their work." *Eurogamer.net*. 24 April

    2015. Web. 15 May 2015. http://www.eurogamer.net/articles/2015-04-23-steam-

    workshop-now-allows-modders-to-sell-their-work.

Sicart, Miguel. *Beyond Choices: the Design of Ethical Gameplay*. Cambridge, MA: The

    MIT Press, 2013.

Smith, Dave. "Valve CEO: 'Pissing off the internet costs you a million bucks in just a

    couple of days.'" *Business Insider*. 28 April 2015. Web. 15 May 2015.

    http://www.businessinsider.com/valve-ends-paid-skyrim-mods-2015-4.

Švelch, Jaroslav. "Indiana Jones Fights the Communist Police: Local Appropriation of

    the Text Adventure Genre in the 1980s Czechoslovakia." Huntemann, Nina B.,

    and Ben Aslinger, eds. *Gaming Globally: Production, Play, and Place*. New

    York, NY: Palgrave Macmillan, 2012. 19-39.