

Tarriel Cell

The Newsletter of the Organized Rebel Adventurers' Club
Volume 13 Number 5 ♦ June 2000 ♦ \$2

Special Report: The Digital Land Grab

Can we take our cultural heritage back from media corporations?

Strip-mining culture

By Henry Jenkins

Fans of artists and artistic works borrow characters, situations and themes from pre-existing works and use them as resources for their own stories. The modern-day scribblers are housewives, students, average students; their parodies pay public tribute to popular narratives that capture their imagination. These fans are also shock troops in a struggle that will define the digital age. Not long ago, Fox's lawyers took down dozens of *Buffy the Vampire Slayer* fan sites, and nobody even blinked because such saber rattling has become a regular occurrence. Although cease-and-desist orders are routine corporate practice, not a single case involving fan fiction has ever reached the courts. No civil liberties organization has stepped forward to offer pro bono representation. Presumably, the right to free expression does not extend to the right to participate in your culture. As currently understood, the First Amendment protects media producers, but not media consumers. Media companies are expanding their legal control over intellectual property as far and as wide as possible, strip-mining the culture in the process.

Between 1869 and 1930, some 200 writers imitated, revised or parodied Lewis Carroll's *Alice in Wonderland*. Some sent Carroll's plucky protagonist into other imaginary lands; others sent different protagonists to encounter the Mad Hatter or the Cheshire Cat. Some promoted conservative agendas, others advocated feminism or socialism. Among Carroll's imitators were literary figures such as Christina Rossetti, Frances Hodgson Burnett and E. Nesbit. Literary critic Carolyn Sigler argues that

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Copy catfight

By Jesse Walker

On August 19, 1999, in Los Angeles, a mild act of censorship took place. Twentieth Century Fox, the colossus behind the cult series *Buffy the Vampire Slayer*, sent a letter to Alexander Thompson, a 35-year-old data processor and devoted *Buffy* fan. Thompson had spent countless hours transcribing each episode of the show, complete with descriptions of the scenery and action, and had posted the results on the World Wide Web, to his fellow fans' delight. Joss Whedon, the show's writer and producer, had praised Thompson for the job he'd done, even autographing one of the transcripts.

Whedon, however, did not own the copyright to his work. Fox did. And Fox, the company told Thompson, "has a legal responsibility...to prevent the unauthorized distribution of its proprietary material."

In other words, Thompson had to remove his transcripts from his Web site or face a lawsuit.

As far as repression goes, this no doubt sounds trivial. Fox is clearly being stupid—Thompson's transcripts were a resource for fans, not a substitute for the show—but the company was within its legal rights as the owner of the *Buffy* program. What it did was obnoxious, silly, and bad business, but it's hardly a threat to free speech. Right?

Don't be too sure. There is an inherent conflict between intellectual property rights and freedom of speech, a tension between your right to control story you've written and my right to use it as raw material for my own work. Thanks to two trends, that tension is turning rapidly into a collision—one

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Alice parodies contributed considerably to Carroll's subsequent reputation. Today, after Shakespeare's work and the Bible, Lewis Carroll's writings are the most often cited in the English-speaking world.

Now try a thought experiment. Imagine that the *Wonderland* stories were first appearing in 2000 as products of Disney or Viacom, and Rossetti, Burnett and Nesbit were publishing their parodies on the Internet. How long would it be before they were shut down by "cease-and-desist" letters? How many people would download "A New Alice in the Old Wonderland" before a studio flack asserted Disney's exclusive control over Humpty Dumpty, The Cheshire Cat or The Red Queen?

Rossetti's descendants, now called "fans," borrow characters, situations and themes from pre-existing works (more often television series than novels) and use them as resources for their own stories. Sometimes, such stories offer ideological critiques. Other times, fans recenter the plots around secondary characters or simply provide back story. These modern-day "scribblers" are housewives, secretaries, librarians, students, average citizens; their parodies are labors of love, paying public tribute to popular narratives that capture their imagination.

These fans are also shock troops in a struggle that will define the digital age. On the one hand, the past several decades have seen the introduction of new media technologies (from the VCR to MP3) that empower consumers to archive, annotate, appropriate and recirculate cultural materials. On the other, the emergence of new economic and legal structures makes tight control over intellectual property the basis for the cross-media exploitation of "branded" materials. We can already see bloody skirmishes over intellectual property as these two trends collide. Not long ago, Fox's lawyers took down dozens of *Buffy the Vampire Slayer* fan sites, and nobody even blinked because such saber rattling has become a regular occurrence.

A year or so ago, J. Michael Straczynski, executive producer of the cult television series *Babylon 5*, was speaking to the students in my science fiction class at MIT. One student asked him what he thought about "fans," and after a pause, he replied, "You mean, copyright infringers." The remark was met with nervous laughter and mutual misunderstanding.

So far, most discussions of intellectual property in cyberspace are preoccupied with calming corporate anxieties about controlling the flow of images and information. Technologists have touted new

automated enforcement mechanisms that allow owners to ferret out infringements, and digital watermarks for tracing the precise origins of appropriated images. Yet we rarely ask whether such tight regulation of intellectual property is in the public interest. Who speaks for the fans? No one.

That doesn't mean they don't have a case. Indeed, there's much to be said on the scribblers' behalf. Fan critics might be covered by the same "fair use" protections that enable journalists or academics to critically assess media content, or by recent Supreme Court decisions broadening the definition of parody to include sampling. Fans don't profit

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Tarriel Cell (ISSN 1075-573X) is published by ORAC, P.O. Box 566123, Dallas, Texas 75356-6123. Annual membership dues are \$12 in the United States, US\$13 in Canada, and US\$18 elsewhere. (Outside the USA, please remit payment by postal money order.) Additional members of a household may be added to an individual membership for half the above price for each additional person (household members do not receive a newsletter.) Membership includes a membership card, access to ORAC functions, discounts on selected merchandise and six issues of *Tarriel Cell*.

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Club E-mail: orac@orac.cjb.net
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from their borrowings, and they clearly mark their sites as unofficial to avoid consumer confusion. Fan sites don't diminish market value, often actively organizing letter-writing campaigns to keep floundering programs on the networks.

Sadly, none of this matters. If you are a housewife in Nebraska and you receive a letter from Viacom's attorneys telling you to remove your Web site or they will take away your house and your kid's college fund, you don't think twice about your alternatives. You fold.

As a result, although cease-and-desist orders are routine corporate practice, not a single case involving fan fiction has ever reached the courts. No civil-liberties organization has stepped forward to offer *pro bono* representation. Presumably, the right to free expression doesn't extend to the right to participate in your culture. As currently understood, the First Amendment protects media producers, but not media consumers. Copyright and trademarks are legal "rights" granted to property owners, while fair use is a "defense" which can only be asserted and adjudicated in response to infringement charges. And most of the people being caught in these battles lack the financial resources to take on a major corporation in court.

Disney, Fox and Viacom understand what's at stake here. The proliferating media mergers attest to their recognition that media convergence transforms intellectual property into solid gold. Viacom calls a television series like *Star Trek* a franchise that can generate a seemingly infinite number of derivative products and revenue streams in many media channels. What they can't

produce and market directly, they license to another company.

Preparing for this new era, media companies are expanding their legal control over intellectual property as far and as wide as possible, strip-mining our culture in the process. They have made inventive uses of trademark law to secure exclusive rights to everything from Spock's pointy ears to Superman's cape, pushed policies that erode the remaining protections for fair use,

King Arthur, for example, first surfaces as a passing reference in early chronicles and only over the course of several centuries of elaboration becomes complex enough to serve as the basis for *Le Morte D'Arthur*.

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and lobbied for an expansion of the duration of their copyright protection and thus prevented works from falling into the public domain until they've been drained of value. In the end, we all suffer a diminished right to quote and critique core cultural materials. Imagine what our holiday season would look like if Clement Moore had trademarked Santa Claus!

For most of human history, the storyteller was the inheritor and protector of a shared cultural tradition. Homer took plots, characters, stories, well known to his audiences, and retold them in particularly vivid terms; the basic building blocks of his craft (plots, epithets, metaphors) were passed from one generation to another. The great works of the western tradition were polished like stones in a brook as they were handed off from bard to bard. This process of circulation and retelling improved the fit between story and culture, making these stories central to the way a people thought of themselves.

ership cuts directly against the grain of the technology in question. From the start, computers were seen as tools of collaboration, designed to facilitate brainstorming and data sharing. If one follows the flow of ideas on a Web forum for more than a few posts, it becomes harder and harder to separate one person's intellectual property from another's. We quote freely, incorporating the original message into our own. When Netizens discuss television, we quote equally freely, pulling chunks of aired material into our posts, and adding our own speculations. Other people respond, add more material, and pretty soon the series as viewed by list participants differs radically from the series as aired. In other words, webbers approach television content as "shareware."

Still, what one originates, the law insists, one should have the right to control and profit from. The legal fiction is that no one is

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harm by this land grab on the cultural commons. Tight control over intellectual property isn't ulti-

"investments"-emotional, spiritual, intellectual-we consumers have made in our own culture?

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mately a question of author's rights, because without much discussion, control has shifted from individual artists to media corporations-authors now have little say over what happens to their creations. The corporate attorneys rule.

If trademarks are used too broadly and without a history of legal enforcement, companies will lose exclusive claims to them-so Coca-Cola sends out spies to make sure nobody gets served a Pepsi when they order a Coke, Xerox insists that we call a photocopy a photocopy and Fox scans the Web to make sure nobody puts an "X-Files" logo on an unauthorized homepage. Attacking media consumers damages relationships vital to the future of their cultural franchises, but corporations see little choice, since turning a blind eye could pave the way for competitors to exploit valuable properties.

Copyright law was originally understood as a balance between the need to provide incentives to authors and the need to ensure the speedy circulation and absorption of new ideas. Contemporary corporate culture has fundamentally shifted that balance, placing all the muscle on one side of the equation. Media companies certainly have the right to profit from their financial investments, but what about the

Through its "associates" program, the online book dealer Amazon.com encourages amateur critics to build book-oriented Web sites. If they link back to Amazon's homepage, they will get profit points from every sale made to consumers who follow that link. Amazon has discovered that revitalizing a grassroots book culture increases public demand for books. Perhaps media producers should follow Amazon's example and find ways to transform media consumers from "copy-

perceived as a direct threat to the media conglomerates.

One can, of course, imagine that fans should create original works with no relationship to previously circulating materials, but that would contradict everything we know about human creativity and storytelling. In this new global culture, the most powerful materials will be those that command worldwide recognition, and for the foreseeable future, those materials will originate within the mass media.

For the past century, mass media have displaced traditional folk practices and replaced them with licensed products. When we recount our fantasies, they often involve media celebrities or fictional characters. When we speak with our friends, sitcom catchphrases and advertising jingles roll off our tongues. If we are going to tell stories that reflect our cultural experiences, they will borrow heavily from the

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material the media companies so aggressively marketed to us. Let's face it: media culture is our culture and, as such, has become an important public resource, the reservoir out of which all future creativity will arise. Given this situation, shouldn't we be concerned about the corporations that keep "infringing" on our cultural wellspring? ♦

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where more than the convenience of online *Buffy* fans is at stake.

On one hand, as information has grown more valuable, copyright and trademark law has become increasingly restrictive. At the same time, there has been, in the words of MIT media studies professor Henry Jenkins, an "explosion of grassroots, participatory culture," a new high-tech folkway that not only draws on pop culture but appropriates from it more easily than ever before, and disseminates itself on a wider scale.

Now the companies atop the culture industry, from Fox to Disney to LucasFilm, are starting to notice this alternate universe of fans, parodists, and collagists. They don't quite understand what they're finding, and for the most part they don't like it. And they've got the government on their side.

In theory, a copyright is simply an incentive to create: Compose something original, the Constitution says, and we'll make sure you get a chance to profit from it. Trademark law is even simpler. It's a protection against fraud and consumer confusion, a recognition that Nike shoes are a particular product, and that if I start selling some homemade slippers as "Nikes," I am deceiving my customers.

Copyrights, unlike trademarks, have always posed problems, even if you think they're necessary. They are, after all, government-granted monopolies; as such, they should be strictly limited and carefully watched. If someone wants to extend their reach, he'd better have a compelling argument for doing so, and lawmakers should approach his proposal with due skepticism.

Instead, Congress acts as a rubber stamp for copyright holders, especially the big campaign donors in the entertainment industry. At the dawn of the republic, copyrights lasted for just 14 years and could be renewed for another 14. This period has been gradually extended, especially lately: It has been lengthened 11 times in the last 40 years, most recently by the Sonny Bono Copyright Term Extension Act of 1998.

Before the Bono Act, new or recent works copyrighted by individuals were protected for life plus 50 years. Afterward, protection lasted for life plus 70 years. Corporate-owned copyrights were also extended by two decades, to 95 years, as were all copyrights for works produced before 1978. The

the '70s, it successfully halted sales of *Air Pirates Funnies*, a risqué underground comic by Dan O'Neill featuring the Disney characters, even though the comic was clearly a Mad-style parody.

The prospect that just anyone would be allowed to produce his own Mickey merchandise was evidently unthinkable at Disney HQ, and the company exploited its connections to get the copyright extension passed. The very day Senate Majority Leader Trent Lott became a co-sponsor of the bill, the Center for Responsive Politics reports, the Disney Political Action Committee donated \$ 1,000 to his campaign chest; within a month, it had also sent \$ 20,000 in soft money to the National Republican Senatorial Committee. And Disney had help: Other entertainment giants, from Time-Warner to the Motion Picture Association of America, joined the lobbying effort, as did some well-known songwriters, such as Bob Dylan, and heirs of dead songwriters, such as George and Ira Gershwin.

The irony was rich: Disney, which draws heavily on public-domain characters and stories in its own products (*Aladdin*, *The Little Mermaid*, *Mulan*), was fighting to keep the cultural commons closed. And Dylan regularly bases his work on the chord structures, and sometimes lyrics, of older folk songs—*The Girl from the North Country* on *Scarborough Fair*, *I Dreamed I Saw St. Augustine* on *I Dreamed I Saw Joe Hill Last Night*. Yet there he was, demanding royalties from his music until 70 years after his death.

Meanwhile, the Gershwin heirs, who didn't even write the songs that keep them wealthy today, found themselves essentially arguing that the 20-year extension would somehow be a further incentive to their dead ancestors' creativity, a claim that smacks of either spiritualism or desperation.

"It's a joke," declares David Post, a professor of law at Temple University. "It's a disgrace. There is no better example that I can imagine, literally, of Congress caving in to small, highly focused special interests. There is no conceivable public benefit from the additional 20 years. Zero." Copyrights don't bother Post, but retroactive extensions of them, which by definition cannot affect the original creator's incentives, do. "Congress was bought," he continues. "This was the sale of legislation in the crudest form."

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an ancient R&B record—that discourages companies from reissuing the work, even if there's considerable interest in reviving it. The potential legal hassle is simply too daunting.

Last October, the U.S. District Court for the District of Columbia rejected a suit alleging the Bono bill was unconstitutional; the plaintiffs have appealed the case, and it should be heard again by next August. One plaintiff, 56-year-old Eric Eldred of East Derry, New Hampshire, operates Eldritch Press, a popular Web site filled with digitized editions of old volumes, ranging from H.L. Mencken's

Congress acts as a rubber stamp for copyright holders, especially the big campaign donors in the entertainment industry.

In Defense of Women to books about boats. "I'm not interested in putting up works by Stephen King," he says. "I'm interested in books that are down a couple of tiers books that are interesting, but that publishers don't find profitable to reprint." The new law threw some roadblocks in his way.

Consider *Horses and Men*, a 1923 collection of short stories by Sherwood Anderson. The book has long been out of print; the rights to it are owned by the Sherwood Anderson Trust, which makes money by putting out scholarly editions of Anderson's work. Many of the stories in *Horses and Men* will not be reprinted in any of their Anderson anthologies, and those that are will often have the punctuation "corrected" to reflect modern usage. Eldred would like to put the original book up on his Web site, so people can read the out-of-print tales and so they can compare Anderson's original punctuation to the new version. He expected the book to pass into the public domain in 1998, allowing him to do just that. But thanks to the Bono bill, the copyright won't expire for another 20 years.

And that's no aberration. Another 1923 book, Robert Frost's *New Hampshire*, has been out of print for more than 70 years; several of the poems have not been reprinted, and many of those which have been reprinted now include—this seems to be a theme—different punctuation marks. (It's also, Eldred notes, an attractive book in itself, with handsome woodcuts he'd like more people to see.) "Our real battle is not with the traditional publishers," Eldred explains. "It's not with people who want to

make money publishing books. It's with people who want to lock up books."

A law that keeps old books out of the public domain does the same for old movies. One vocal opponent of the copyright extension is Sinister Video, a small company that specializes in reissuing old exploitation flicks. "There are literally thousands of works, particularly in the area of motion pictures, that are sitting on the shelf waiting for the freedom of the public domain," the company noted in a statement. "The large companies that own the rights to them have no intention of ever making most of those works available again on a wide-spread basis." Thanks to the Bono Act, "copyrights on all works will be extended so that the major companies can continue to exploit the small percentage of works that are still profitable to them—the rest be damned!" Damned indeed: In 20 years, a lot of those "protected" movies will have physically disintegrated. (For that reason, a film preservation group and a movie archive have joined Eldred's suit against the Bono law.)

For those who can't wait for those movies to enter the public domain, there is a loose distribution network that might satisfy them. But it exists in a gray area: not quite illegal, but always subject to the possibility that someone will decide a tape violates his copyright. For the most part, the videos are available only by mail order, though some specialty stores carry them as well.

One such store is Cinefile Video, a film buff's nirvana located next to Los Angeles' famous Nuart theater. Founded last May by four refugees from another video shop, Cinefile carries tapes that range from obscure industrial films to footage from Orson Welles' unfinished *Don Quixote*, from Italian horror-porn to classic Soviet silent cinema, from ancient TV specials to Grade Z movie trailers. "We'll buy anything that we find that we know you just can't find anywhere else," reports co-owner Hadrian Belove, "even if I don't particularly like it. There's a certain respect I have for the archival value of having such really weird tapes."

Most of the store's wares are regular copyrighted tapes, though many of them have gone out of print. Some have copyrights that have expired; others were never copyrighted; with others, no one's sure who owns the rights at all, and someone decided to release the films anyway. Some are foreign movies that don't have official distributors in the United States, thus giving Americans the right to sell dubs of them on demand.

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And then, Belove concludes, "There are certain companies that own things and purposefully don't release them, either because they think they're embarrassing or—who knows?—because of some vindictive streak." Disney, for example, will not allow anyone to sell or rent *Song of the South*, a 1946 film of Uncle Remus stories that is periodically damned for its alleged racism. It is indisputably illegal to carry those movies, and Cinefile will not stock them. Belove does have his own copies of several such tapes, however, and often personally lends them to his store's customers for free—thus moving the transaction out of the marketplace and out of the reach of the company lawyers.

Song of the South, of course, would be covered by a copyright whether or not the Bono bill was in effect. Disney's efforts to suppress it indicate that the trouble with intellectual property laws goes deeper than the length of time a work can be monopolized. It can erode free speech to monopolize a work at all.

The most dangerous thing about restrictive copyright laws isn't what they do to old works. It's what they do to new ones. Copyright has traditionally been tempered by the doctrine of "fair use," which allows a limited amount of appropriation for the purpose of parody or criticism. (That is why book critics, for example, do not have to get permission to quote the texts they are reviewing.) Fair use is not dead: In the 1994 case *Campbell v. Acuff-Rose Music, Inc.*, the Supreme Court ruled unanimously that the rap group 2 Live Crew had the right to parody the old Roy Orbison hit *Oh, Pretty Woman*, declaring that "a parody's commercial character is only one use to be weighed in a fair use enquiry," and that the new record was clearly "commenting on the original or criticizing it, to some degree."

Unfortunately, the courts have not been consistent friends of fair use. Two years after the *Campbell* decision, for instance, Dr. Seuss Enterprises successfully convinced a federal district court to issue an injunction against *The Cat NOT in the Hat!*, an O.J.-oriented parody by "Dr. Juice." Splitting every hair in sight, the court ruled that the parody defense applied only when there was "a discernible direct comment on the original." And Dr. Juice's book, the court ruled, was lampooning the Simpson case, not *The Cat in the Hat*; Seuss' story merely provided a narrative framework. The U.S. Court of Appeals for the 9th Circuit agreed: "While Simpson is depicted 13 times in the Cat's distinctively scrunched and somewhat shabby red and white stovepipe hat," it ruled, "the substance and content of *The Cat in the Hat* is not conjured up by the fo-

cus on the Brown-Goldman murders or the O.J. Simpson trial." Therefore, the book was bannable.

Nor is fair use consistently protected for the purpose of criticism. There is a long tradition of letting critics and scholars quote passages from books. There is much less precedent for quoting, say, a 30-second excerpt from a movie on a CD-ROM, or 10 seconds of a song in an online journal, partly because CD-ROMs and Web sites have not been around that long and partly because the courts seem to regard sounds and images as somehow different from text. The editors of one recent critical collection, *The Many Lives of the Batman*, discovered that they could not freely quote images from comic books, a tricky problem if one wants to make an argument about the placement of words or images within a panel or the relation of one panel to another. "If you can't quote what you're talking about," comments MIT's Jenkins, a contributor to the *Batman* anthology, "then at a certain point it becomes impossible to talk about it at all. You cut off certain ideas from being heard."

One of the most common sparks for a copyright fight is the practice of sampling, in which parts of older records are spliced and recycled in newer tunes. In 1991, for instance, the long-forgotten '70s pop star Gilbert O'Sullivan, discovering that rapper Biz Markie had appropriated three words from his song *Alone Again (Naturally)*, successfully sued, not for a share of the royalties, but to suppress Biz Markie's record altogether.

These days the issue extends far beyond music. "We now live in a culture that is based on sampling," Jenkins argues, "with new means of poaching and redacting images. It's a new aesthetic." Where samizdat artists once had to make do with photocopiers and cassettes, they now can use videotapes, camcorders, Photoshop, digital film editing, recordable CDs, MP3 files, and the Internet. The result has been an explosion of amateur films, fiction, and music, which can be "published" for a minimal investment by putting them on the Web.

The most active amateurs are probably the members of various fan subcultures. I own, for example, a CD called *Do It Again: The Kover Kontroversy Continues*, a collection of songs composed by the British rock band the Kinks and performed by members of an Internet fan group, the Kinks Preservation Society. The contributors live everywhere from Holland to Hawaii to Brazil; some recorded straightforward remakes, while others reworked the songs in interesting ways—translating the lyrics into Portuguese,

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say, or adding a reggae rhythm, or splicing in a verse from the folk standard *Wayfaring Stranger*. The performers never bothered to get the rights to the songs, figuring that wouldn't be necessary for a communal, noncommercial, low-circulation project. Legally speaking, that isn't necessarily so. Fortunately, the band doesn't seem to mind, recognizing the project as an informal tribute, not a commercial competitor. ("I personally gave Dave [Davies, the band's guitarist] a copy of the CD," reports Paul Wykes, who organized the project, "and he seemed thrilled by it.")

Not every copyright owner is so tolerant. Devotees of *Star Trek*, *Star Wars*, and the like have long produced their own fiction set in their favorite show's or movie's universe. In the last decade, this genre of writing has moved almost entirely out of the realm of small presses and zines and onto the

We should look with disfavor on any law that tells us to shut up and get back on the couch.

Internet—where, being much more visible, it is also much more vulnerable to a copyright infringement challenge. This is a particular problem for fan filmmakers, a once-tiny group that has grown tremendously now that they can use relatively cheap camcorders, editing software, and computer animation instead of low-tech, silent Super 8 film—and now that their work can be viewed not just in living rooms and at science fiction conventions but on any computer screen hooked to the World Wide Web.

Thus, a Web surfer with the right software—most of it available for free—can download an astonishing array of homemade epics, varying widely in tone and quality:

◆ *Star Wars: The Remake* is a mimetic recreation of the first *Star Wars* film, compressed into 15 soundless minutes. Made in 1980, this specimen from an earlier generation of fan filmmaking will be utterly incoherent to viewers who have not seen the original movie, and will be rather impressive, in an odd way, to viewers who have.

◆ *Kung Fu Kenobi's Big Adventure* is a seven-and-a-half-minute short by one Evan Mather, with musical and visual allusions to everything from *Mission: Impossible* to *A Charlie Brown Christmas*. Performed by *Star Wars* action figures against a computer-generated animated background, this film is 50 times as inventive as *The Phantom*

Menace and about 100 times as entertaining. My favorite scene: a recreation of the Jedi Council meeting in *Menace*; on a set made out of Legos. The Jedi knight played by Samuel Jackson rises and delivers a speech, sampled directly from a rather different film starring Jackson, *Pulp Fiction*: Blessed is he who, in the name of charity and good will, shepherds the weak through the valley of darkness, for he is truly his brother's keeper. And I will strike down upon thee with great vengeance and furious anger—" Yoda interrupts: "Anger leads to hate."

Kung Fu Kenobi violates more copyrights than I could count. All the dialogue is taken directly from the soundtracks of other films. All the characters are lifted from other films, too. And I doubt Mather paid any licensing fees for the music. But it's an original work in itself, a funny movie that appeals even to ogres like me who don't care much for *Star Wars*. Mather has made several other pictures, each of them built, in different ways, on pop culture allusions; his latest is titled *Buena Vista Fight Club*.

◆ * *Star Wars: A Newfangled Hope* is too big to put on the Web, but individual sites have screened it as a streaming video at pre-advertised times. It consists of the first *Star Wars* film in its entirety, with a new soundtrack dubbed over the old one. I haven't seen it, but according to the Mos Eisley Multiplex, an online guide to *Star Wars* fan cinema, it presents a world in which "Ben Kenobi's a hairdresser, Luke is one horny dope, Threppio endlessly sings showtunes and Darth has a major high-school crush on Leia."

Redubbing—an honored comic technique ever since Woody Allen turned a Hong Kong spy flick into *What's Up, Tiger Lily?*, if not earlier—is a favorite method among fan directors. The most common target appears to be the *Phantom Menace* trailer, which exists online in countless guises.

◆ * *Macbeth Episode 5: MacDuff Strikes Back*, an English project by some New Jersey high school students, is a 17-minute featurette reminiscent of the cult video *Green Eggs and Hamlet*. By any rational standard, it is a bad movie: It fuses *Macbeth* and the *Star Wars* films rather haphazardly, it's sometimes impossible to make out what the actors are saying, and the filmmakers didn't bother concealing the fact that they were shooting inside a school.

But it would take a cold-hearted snob indeed not to appreciate this movie, or at least the spirit

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behind it. There's a message on the directors' Web site, a few sentences that sum up the spirit of the micro-moviemaking movement: "If you have a video camera lying around, and better yet some editing equipment (pretty cheap for computers nowadays), go experiment. Be your own director. Go Hollywood...use a skateboard for dolly shots, or a fishing rod for special effects. It's fun..."

That is, ultimately, the best argument for letting movies like this exist. It's not just that there's a sizable subculture that wants to watch them, and it's not just that sometimes a director like Evan Mather will make something so fun that even nonfans will enjoy the results. These movies are a first rung in the art of filmmaking, a chance for budding actors, writers, and directors to learn the rudiments of their craft. If those young auteurs want to adopt bits of the *Star Wars* mythos in their films, well, why shouldn't they? *Star Wars* is a part of our culture; it's a shared experience. And as Jenkins points out, "If something becomes an essential part of our culture, we have a right to draw on it and make stories about it.... The core question is whether First Amendment protections include a right to participate in our culture." And not just to participate, but to criticize: A law that prohibits a *Star Trek* devotee's homages to his favorite show also restricts a *Star Trek* hater's right to parody the program's militarism, its view of sex roles, or its vision of the future.

There's a common-sense issue here, too. It is legal, after all, to write or improvise one's own *Star Wars* adventures using action figures; that is, indeed, what the toys are for. It is legal to record those playlets on film or video; this is known as "making a home movie." Shouldn't it be legal to show those home movies to anyone you please? Especially if it's all done on a nonprofit, amateur basis, with no threat of direct, head-to-head competition with the official *Star Wars* pictures?

LucasFilm has taken an inconsistent approach to its online imitators. Some fan films—such as Kevin Rubio's *Troops*, a *Cops*-inspired parody I have not seen—have received Lucas' warm praise. Others, such as the Australian-made *The Dark Redemption*, have received letters from lawyers telling them to shut down their sites, or else.

If copyrights have grown more restrictive over the years, trademarks have been transformed even more radically. Once restricted to preventing customer confusion and protecting businesses' reputations, they are increasingly treated as property that no one may appropriate at all. In 1996, for example, the New York Racing Authority sued Jeness

Cortez, a painter whose work often depicted the Saratoga Race Course and, thus, various Racing Authority trademarks.

In that case, the courts upheld Cortez's First Amendment rights. In other cases, artists have not been so lucky. In one infamous incident, the Rock and Roll Hall of Fame successfully sued photographer Chuck Gentile over a poster depicting its museum at dusk. The Hall of Fame not only alleged that the poster's title—"The Rock and Roll Hall of Fame and Museum in Cleveland"—violated one of its trademarks; it claimed that the building's design itself was a protected mark, thus in essence claiming a property right in the way part of the Cleveland skyline looks. The U.S. District Court for Northern Ohio sided with the museum and issued an injunction against Gentile's poster. The U.S. Court of Appeals for the 6th Circuit later tossed out the injunction, but the museum is still pushing its case in the district court.

In part, this shift reflects the increased popularity of "dilution" laws over the last several decades, culminating with the Federal Trademark Dilution Act of 1995. Under this rule, it is illegal to produce, say, Microsoft brand ramen noodles, even though that other Microsoft isn't in the noodle business, lest the lousiness of your pasta undermine the software company's reputation. When dealing with a famous mark, such as Microsoft, the dilution doctrine makes some sense: There is, after all, a reasonable argument that commercial misrepresentation is afoot. The courts have stretched the doctrine out of shape, however, applying it with little regard for whether the trademark in question is famous enough for "dilution" to be a possibility.

Furthermore, the very definition of trademark has been expanding for the last 10 years. Writing in the *Yale Law Journal*, Mark Lemley of the University of Texas notes that "companies have successfully claimed trademark rights in the decor of their restaurant, the 'artistic style' in which they paint, the design of their golf course, the shape of their faucet handle, the diamond shape of a lollipop, the 'unique' registration process of their toy fair, the shape of their mixer, and the design of their personal organizers." At some point, this stops being anything more than a way to club your competition.

The fiercest trademark battles, though, involve words, not images. As e-commerce sweeps the Internet, domain names—those ugly streams of letters that end with "org" or "net" or "com"—have become more valuable, and some companies have

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become upset over URLs that bear too great a resemblance to theirs. Many of the resulting conflicts don't even make it to court: The very threat of legal action is enough to cow the alleged transgressor into dropping its address, even if he'd probably prevail before a judge. "A lot of this is just bullying," comments Temple University's David Post. "A lot of these claims are totally spurious." But the simple cost of defending themselves is often too much for those on the receiving end of a legal threat. The plaintiffs in such suits tend to have more money and lawyers at their disposal.

Besides, given the vagaries of the justice system, the defendant just might lose. Late in 1999, a judge ordered etoy.com, a Web site run by some European performance artists, to take down its site or pay a fine of \$10,000 a day. Its URL, the court ruled, violated the trademark held by the online retailer eToys.com—even though etoy had been around since 1994, well before eToys existed. If the older site is finally saved, its rescuer will probably be public opinion, not the common sense of a judge or jury. Two weeks after the injunction, eToys suggested that it may voluntarily withdraw its suit, its reputation battered by constant protest on the Internet. (At press time, the case is not yet closed.)

Now Congress has gotten involved, passing the infamous "cybersquatting" law in late 1999. Cybersquatting is the practice of registering someone else's trademark (or a famous person's name) as a domain name, usually in hopes of selling the domain to the trademark holder later. The new law prohibits such speculation, imposing fines of up to \$100,000 and, in the process, undermining the adjudication process already hammered out by the members of the International Corporation for Assigned Names and Numbers, a.k.a. ICANN. Civil libertarians worry that it will also intrude on our right to use trademarks in real sites' addresses—that if I devote a site to criticizing Shell Oil and call it www.shelloil.org, or even www.shelloilstinks.org, I may be breaking the new law.

While it would be a good idea to repeal the cybersquatting and dilution laws, one could probably avoid even more trademark battles with more prosaic measures. Post suggests expanding the range of domain names: If eToys.com could have called itself eToys.toys, he argues, the problem might never have emerged in the first place. There is also, he adds, a case for adopting the so-called "English system," in which a lawsuit's loser pays the winner's legal costs. Such an arrangement poses some problems of its own, but it would clearly discourage frivolous, bullying suits.

For centuries, our popular myths have enshrined the "romantic" or "heroic" author, conjuring new books out of nothing but his solitary genius. This image is popular with nonwriters, because many of them do not know how writing is done, and it is popular with writers, because it flatters us. It is, however, untrue. Every book, film, and song in the world draws on an existing cultural commons. Creativity rarely, if ever, means inventing something out of nothing. It means taking the scraps and shards of culture that surround us and recombining them into something new.

When the government tells us we can't use those scraps without permission from Disney, Fox, or the Sherwood Anderson Trust, it constrains our creativity, our communications, and our art. It tells us we cannot draw on pop songs the way we once drew on folk songs, or on TV comedy the way we once drew on vaudeville; it says we cannot pluck pieces from *Star Wars* the way George Lucas plucked pieces from foreign films and ancient legends. The consequences are staggering. Imagine what would have happened if, 100 years ago, it had been possible to copyright a blues riff. Jazz, rock, and country music could not have evolved if their constituent parts had been subject to the same restraints now borne by techno and hip hop.

Few would argue that artists shouldn't be able to make a living from their work, or that customer confusion is a good thing. But we've stood those ideas on their heads. Rather than promoting enterprise and speech, copyrights and trademarks often restrain them, turning intellectual property law into, in Jenkins' words, "protectionism for the culture industry."

Fortunately, the state simply isn't big enough to enforce every intellectual deed on the books. You can still find Alexander Thompson's *Buffy* transcripts on the Web, even though he's taken them down: Several fellow fans had already downloaded them and posted them to sites of their own. Copies of *The Dark Redemption* are still floating around—if the movie itself isn't online, people willing to sell you tapes are. Even *The Cat NOT in the Hat!* persists, not as a book but as a frequently forwarded e-mail. The overzealous enforcement of copyrights and trademarks may chill speech, but it won't kill it.

But the chilling is bad enough. Americans are not mere passive consumers, dully absorbing images invented in distant corporate laboratories. We hatch our own ideas and compose our own stories, drawing on pop culture without absorbing it blindly. We should look with disfavor on any law that tells us to shut up and get back on the couch. ♦

'Blake's 7' Movie Project Proceeding

By Judith Rolls

Horizon

This report is primarily based on the transcript of the *Blake's 7* Movie Workshop in which Andrew Mark Sewell and Paul Darrow talked to *Blake's 7* fans attending the Cult TV Break-away Weekend, September 1999, with some additional information from Andrew Mark Sewell, for which we thank him.

The idea of a *Blake's 7* movie now seems to be a reality. The project is up and running and, between them, the movie's producers have an impressive pedigree: Kate Nation, widow of the original series' creator Terry, has been brought on board as Executive Producer, Brian Lighthill and Andrew Mark Sewell — who was involved with the BBC's *Walking With Dinosaurs* — are the Co-Producers, and *Blake's 7* stalwart Paul Darrow is acting as the movie's Associate Producer, as well as returning to the role of Avon. Clearly, the producers intend the newest incarnation of the *Blake's 7* legend to strongly reflect the character and intelligence of Terry Nation's original idea — Paul Darrow has assured Kate Nation that the movie's script will remain true to Terry's character-driven vision of *Blake's 7*. Bev Doyle, who has worked on *EastEnders* will be the script-writer, with the story set 20 years after the end of the original series.

Andrew Mark Sewell says, "The whole project is derived from an original idea by Terry Nation, where he pondered on bringing the show back and how he might do it." Though some updating of the show's look and concept is inevitable, Andrew goes on to say that the intention is not to "...reinvent the show."

What does Andrew feel are the main strengths of the project? "Well, one of the attractions of the project for me are the characters. I don't think it matters how fantastical the scenario, the audience has to relate to the characters and the story that's being told, and we are looking to deliver what we hope will be a very strong character driven and dramatic adventure." He goes on to say, "We've consciously avoided traditional SF writers — and opted for a writer who has very strong drama credentials, who in

now looking at various directors. I want someone who's a good, dramatic director but equally someone who's not an SFX novice, although ultimately the SFX is not what it's about. When we have them, they'll be 'state of the art' but I believe less is more in this case." So fans can look forward to *Blake's 7* with modern, computer-generated special effects? "There's been quite a heated discussion, some favour total CGI, whilst others still favour the model shots." Andrew adds, "I think the best option is a

"It is obviously thanks to Paul and his great friendship with Terry, and the faith the estate has in this project, why we are actually doing this and can maintain the creative control over it."

fact began his career as one of the mainstay writers on *EastEnders*. His name is Bev Doyle and he's actually written a fantastic outline for this film and the select few who have seen it are most impressed. Kate (Nation) is very happy with it and it has everyone's support."

Have Bev Doyle, and Andrew himself, seen all episodes of the original series? Andrew says; "I did used to watch it, but wouldn't call myself a die hard fan. However, I've long been an admirer of Terry Nation's work. Bev Doyle has watched, with a few exceptions, every episode — several times!"

Although Brian Lighthill was originally due to direct the movie, Andrew says, "The original idea was that Brian was going to direct, but what's developed more recently is that Brian and I have decided that we want to bring some new blood to it, so Brian has stepped down and we're

combination of the two. The trouble with CGI is that you can end up with it all looking a little too clean. For example, with *Babylon 5*, where I think, if I am correct, that it's nearly all, or possibly totally, CGI, and there are times when I look at it and I think it breaks the spell of believability. You are suddenly jolted back to the reality that you are in the living room watching it. I think a combination of styles gives it a little bit of a blur — making it more realistic — and I think we would be inclined to go that route." And models? Will the *Liberator* be returning? Andrew: "No, the *Liberator* won't be making an appearance. It blew up. They cannot rebuild it."

What about the 'image' of the original *Blake's 7*? Will that be lost? "I think we would be fools to ignore the heritage." Andrew admits. "As to what we retain of that heritage — obviously we are

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retaining Paul (Darrow) as he's an important link with that heritage." He also says, "We will definitely move away from the tin-foil costumes. The trouble with updating a project which people remember nostalgically from the 70's are the curious costumes, which whilst apt for the 70's would be considered laughable now. Consequently, I favour something a little bit more realistic — in other words you take the fashion of today and project it to however many years hence."

Part of *Blake's 7*'s iconography, obviously, is its characters. Paul Darrow will return as Avon, but what of other characters from the original? Andrew says, "We are in the process of doing a re-draft of the script, so I can't comment about this at the moment. We haven't quite decided but we have a pretty good idea." Paul himself says, "We can't have Blake coming out of the shower, can we... saying it was all a dream?" What about the rumours that have circulated about casting? Andrew: "If you've been reading the papers, you'll have seen various rumours about casting. I'm thinking particularly about the story that appeared in the *TV Times* — suffice to say it was complete and utter fabrication, though I did think some of the suggestions were quite good!" Assuming the parts were written into the script, would any other members of the original cast be interested in reprising their roles? "I have not really talked to them about it," Paul states, "You see it is so much in the past. Stevie actually looks pretty good but we are all getting old. I mean, if this goes on much longer it will be Avon 'Ironsides', you know, so it would be daft." On the subject of the passage of time, he adds, "I would look silly

running around in black leather. I mean... it is not a comedy version."

With excitement and enthusiasm building among the fans, can Andrew give us a definite timescale for the movie's production? "I've got another project to do which takes out the beginning of next year, so at the earliest I think we'd be looking at pre-production autumn 2000 and hopefully going into production by the end of the year, but it could be as late as spring 2001. The important thing with this is that we are looking to use this film — it isn't determined at the moment whether it's going to be a tele-movie or have a theatrical release — but the idea is for it to actually pave the way for a possible revival of the series. So I'd say that as far as hitting the screens, as it were, I'd be looking at around summer 2001."

Other projects attempting to revive classic series have been badly received by audiences. *Blake's 7* fans are obviously a little nervous about a revival, but Andrew seems to understand his subject. He says, "The thing that I think separates *Blake's 7* — one of its strengths — is its characters, its humour and its UK centric nature, attributes that will enable it to travel and translate internationally. And one of the reasons why we've got the writer that we have is because, as far as UK writers go, he is one of the most commercially orientated writers going — and can tell a good yarn!"

It is clear that Paul Darrow's inclusion as Associate Producer as well as actor will also keep the movie as true to the spirit of the original as possible. Paul says, "One of the reasons that I'm involved is because Terry (Nation) was a close friend and I prom-

ised Kate that this project would be true to Terry's vision and that's why I have this rather spurious title of Associate Producer. She trusts me to say, "No! That line is..." You've got to have wit, you've got to have repartee. It has to be there... it will be there, and that is part of the reason why I am involved." Andrew agrees, "Paul's played such an important role to date in shaping and developing the show. He obviously brings his experience to the show and occasionally a sense of humour, but more importantly, since the character of Avon will be a catalyst to this story, also the knowledge and instinct that only Paul has. I mean, he's lived with this character for, what, almost 25 years so... he bullies me about it, but for the right reasons." Having had bad experiences with a similar project, Andrew points out another valuable contribution Paul has brought to the *Blake's 7* movie, "I always swore that, if I actually worked on another pre-existing property, we would have the rights. It is obviously thanks to Paul and his great friendship with Terry, and the faith the estate has in this project, why we are actually doing this and can maintain the creative control over it."

So Andrew is confident that the movie will be going ahead? "Nothing is 100% guaranteed. I always say I will believe something has happened when I am sat in the auditorium watching the finished print being broadcast. So I would be a very foolish person to say 100% guaranteed but we have a fantastic team, a very dedicated team and we have every reason to believe it will happen. We shall do our damndest to make sure it does."

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Forward Scan

June 2000

3 Monthly Meeting

Meet at 2 p.m. at Sue Aycock's house, 952 Meadow Oaks in Arlington. RSVP to 817-460-2748. See map 1.

July 2000

1 Monthly Meeting

Meet at 2 p.m. at Alan and Sylvia Balthrop's house, 929 Filmore Drive in Plano. Officer nominations will be made at this meeting. RSVP to 972-517-9703. See map 2.

4 Picnic

Celebrate the Fourth the traditional way: taking pieces of dead animals and searing them over charcoal, followed by watching DVDs, and fireworks after dark! It all takes place at Tim and Mary Miller's house, 6528 Crockett Ct. in Plano. RSVP to 972-527-7068. See map 3.

25 Tarriel Cell Deadline

Exercise your submissive tendencies! Send your newsletter contributions to **Tarriel Cell, P.O. Box 566123, Dallas TX 75356.**

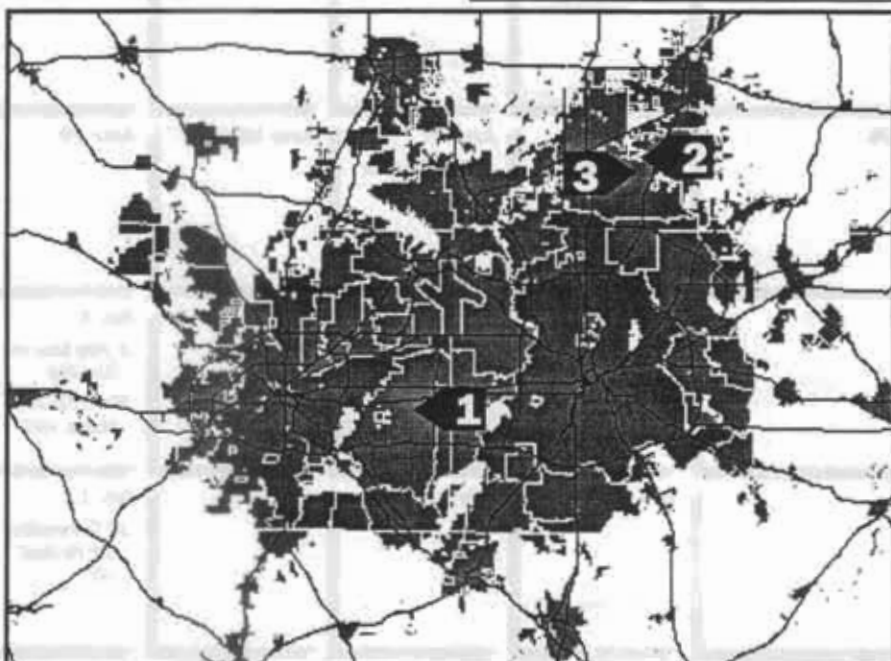
August 2000

? Monthly Meeting

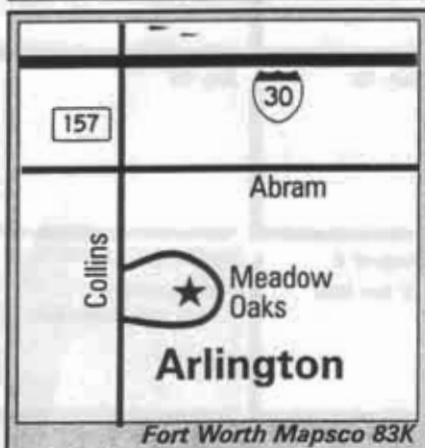
Meeting date and location to be confirmed.

The Forward Scan Calendar is on the next page.

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spoo?



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3



Tarriel Cell

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
June 4 Birthday party at 2 p.m. at Sue Aycok's in Arlington. 817-460-2748. B: Cat Conrad B: Joanne Madge	June 5 B: Steven Pacey	June 6 B: Tim Bartz	June 7	June 8 B: Colin Baker	June 9	June 10
June 11	June 12	June 13	June 14 Flag Day	June 15	June 16	June 17
June 18 Father's Day	June 19 Juneteenth	June 20 Summer begins	June 21	June 22 Corpus Christi	June 23	June 24 Fête Nationale des Québécois
June 25	June 26 B: Sylvia Balthrop	June 27 B: Brad Blakeman	June 28	June 29	June 30	July 1 ORAC meeting at 2 p.m. at Alan and Sylvia Balthrop's in Plano. 972-517- 9703. Canada Day
July 2	July 3	July 4 Cocktail at Tim and Mary Miller's in Plano. 972-527-7068. Independence Day (USA)	July 5	July 6 A: (4th) Mary and Tim Miller SC: An Instinct for Murder, 1987	July 7 B: Jon Pertwee	July 8
July 9	July 10	July 11	July 12	July 13 SC: Conversations with the Dead, 1987	July 14	July 15
July 16	July 17 B: J. Michael Straczynski	July 18	July 19	July 20 B: Carol Miller B: Louann Miller SC: Intelligent Listening for Beginners, 1987	July 21	July 22
July 23	July 24 B: Janet Paderewski	July 25 Tarriel Cell deadline	July 26	July 27 SC: Trivial Games and Paranoid Pursuits, 1987	July 28	July 29
July 30	July 31	August 1	August 2	August 3 SC: This Case to be Opened in a Million Years, 1987	August 4 B: Russ Miller	August 5 ORAC meeting likely date; location TBA.

Visit the ORAC home page! <http://orac.cjb.net>

Event Queue

All guest appearances are subject to professional commitments.

❖ indicates the convention has a web site linked to ORAC's home page.

Don't forget to enclose a SASE when writing for information.

August 2000

31-9/4 Chicon 2000 (58th WorldCon)

Location: Hyatt Regency Chicago, Chicago, Illinois. **Memberships:** \$125; supporting \$40.

Guests: Ben Bova, Bob Eggleton, Jim Baen, Bob and Anne Passevov, Harry Turtledove. **P.O. Box 642057, Chicago IL 60664**

October 2000

26-29 World Fantasy Convention

Location: Omni Bayfront Hotel, Corpus Christi, Texas. **Memberships:** SASE for current info.

Guests: K.W. Jeter. **FACT/WFC 2000, PO Box 27277, Austin, TX 78755**

August 2001

30-9/3 The Millennium Philcon (59th WorldCon)

Location: Pennsylvania Convention Center and Philadelphia Marriott Hotel, Philadelphia, Pennsylvania. **Memberships:** \$125 until 1/1/99, \$40 supporting. **Guests:** Greg Bear, Stephen Youll, Gardner Dozois, George Scithers, Esther Friesner. **Suite 2001, 402 Huntingdon Pike, Rockledge PA 19046**

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If not picking up in person, add shipping for T-shirt \$4 each	\$
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2000-01 SFTV Scorecard

By Lee Whiteside

Renewed/Returning

Fox: Futurama, X-Files
NBC: 3rd Rock From the Sun
The WB: Buffy, Angel, Charmed, Roswell
UPN: Star Trek: Voyager, 7 Days, UPN's Blockbuster Shockwave Cinema
Syndicated: Xena: Warrior Princess, Cleopatra 2525, Jack of All Trades, Earth: Final Conflict, Stargate SG-1, Outer Limits, The Lost World, Beastmaster
Cable: Stargate SG-1 (Showtime - Season 5), Lexx (SFC Season 3), First Wave (SFC-Season 3), Farscape (SFC)
Kids: Batman Beyond (Kids WB - Season 3)

Unknown/On the Fence:

Total Recall 2070 (Syndicated)
Men in Black (Kids WB)
Roughnecks: Starship Troopers Chronicles (Syn/SFC)
The Hunger (Showtime Beyond)
Honey I Shrunk the Kids: The Series (Syn)

Cancelled/Ending

The Pretender (NBC)
The Profiler (NBC)
The Others (NBC)
Early Edition (CBS)
Now and Again (CBS)
La Femme Nikita (USA)
Outer Limits (Showtime) - Ending after six seasons

Secret Agent Man (UPN)
Dilbert (UPN)
Poltergeist: The Legacy
Psi-Factor: Chronicles of the Paranormal
Peter Benchley's Amazon
Total Recall 2070 (Showtime)
GusE (USA/SFC)
Sliders (SFC)
Mystery Science Theatre 3000 (SFC)
Superman & Batman: The Animated Adventures (Kids WB) - Ended production
Roswell Conspiracies (Syn/SFC)

New Season Start Dates :

The Invisible Man: June 9 (SciFi - Debut)
Stargate SG-1: June 30 (Showtime - Season 4)
Crossing Over With John Edward: July 9 (SciFi - Debut)
Sciography: July 16 (SciFi - Debut - Monthly)

Lee Whiteside makes this list available on a regular basis via the Internet. To receive it, send E-mail to:
majordomo@starbase.niehs.nih.gov
with a message containing the instruction "subscribe sftv" (without the quotes) on the first line of the message.

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