

The Legal Landscape of Fan Fiction: Analysing Copyright Challenges in Fan-Generated Content

Architha Ashok

5th Year B.com LLB Hons in Sastra Deemed to be University

ABSTRACT

¹Fan fictions, called as fanfics involves stories of fictional characters written by fans which may be published as books, movies or shared through internet. Fan fiction can be taken as one of the growing trends in this digital era. Some authors support fan fictions, while some allow them up to a point. For instance, Joss Wedon, the author of “Buffy The Vampire Slayer” said that he loves Fandom. But authors like George Martin, who has written “Game of Thrones” strongly opposed fan fictions. ²Original authors would also issue take down notices to remove the fan fictions from particular websites. The author’s detestation with regard to fan fictions depends on how overly accessible fans will make them through internet or other means. ³Apps like Wattpad offers space for streaming of fan fictions where amateur writers easily find their audience. The Copyright Act seeks to protect the original works of authors, whereas on the other hand there is a conflict to consider fan fiction as creative expression of work. In this paper we will analyze the legality of fan fictions in the digital era and whether fan fictions must be supported or eradicated.

BACKGROUND

Fan fictions are created when the fans want a different ending to the original story or when the fans are not able to wait until the release of the next episode of the work. The origin in the trend of fan fictions is not specifically defined. In the article published in Northern Valley News it is inferred that initially the trend of fan fiction was started by the fans of Star Trek in 1960. ⁴And the development in usage of internet during 1990’s – 2000’s has made this trend grow more. It is said that before the year 1960 itself fan fictions were prevalent, that is fan fictions were available even before the term copyright was coined. There are several works of Bible Fanfics. One such work is Divine Comedy which was authored by Dante where the concept goes through hell and it included several Fanfic concepts.

The plots and characters of other stories were used by the famous author Shakespeare in his works. ⁵For instance in 1594 Romeo and Juliet was published which had its roots in The Tragical History of Romeus and Juliet which was authored by Brookes in the year 1562.

⁶The publishing of fan fictions became difficult with the implementation of copyright laws. One of the famous fan fiction is the Fifty Shades of Grey. Then eventually Amazon Worlds was announced by

¹ <https://thesoftcopy.in/2024/03/21/more-fans-for-fan-fiction/>

² <https://csipr.nliu.ac.in/copyright/writings-of-an-aficionado-fan-fiction-and-copyright/>

³ <https://blog.ipleaders.in/swords-capes-fanart-and-fanfiction-delving-deeper-into-the-copyright-act-1957/>

⁴ <https://www.theipress.com/2020/09/25/the-world-of-fanfiction-and-questions-of-copyright-protection/>

⁵ <https://or.niscpr.res.in/index.php/JIPR/article/download/4294/3335/52965>

⁶ <https://nvnews.com.au/the-history-of-fanfiction/>

Amazon to monetise fanfics and fandoms. Some of the proceeds were given to the creators of fanfic and the remaining would go to the original author of the work.

LITERATURE REVIEW

⁷In the research, “WHEN THE AUTHOR OWNS THE WORLD: COPYRIGHT ISSUES ARISING FROM MONETIZING FAN FICTION,” it was found that the works of fan fictions are often brought under the ambit of copyright infringement which hinders the creative expression of the fans. Thereby the paper recommends that the creators of fan fictions must be given broader protection under the fair use doctrine.

⁸The research, “DECONSTRUCTING INTELLECTUAL PROPERTY RIGHTS IN FANFICTION: A CASE STUDY ON COPYRIGHT PROTECTION AND MORAL RIGHTS,” provided that in US the fan fiction is considered as a work which is not illegal. To assess the legality the tests of fair use and similarity tests are being used.

The research, “CULTURE OF THE FUTURE: ADAPTING COPYRIGHT LAW TO ACCOMMODATE FAN-MADE WORKS IN THE TWENTY-FIRST CENTURY,” recommended that accessible compulsory license must be provided to fans for the creation of fan fiction through payment of nominal fees. And the non commercial uses and transformative uses must be considered as under fair use.

In the research “FANFIC AND FANFACT: HOW CURRENT COPYRIGHT LAW IGNORES THE REALITY OF COPYRIGHT OWNER AND CONSUMER INTEREST IN FANFICTION” the defense used by the creators of fanfics was discussed such as fair use doctrine, implied consent defense and compulsory licensing. It suggested that if the fanfics contains creative and valuable content, then it must not be regarded as a copyright infringement.

The research “COPYRIGHT LAW AND FANFICTION,” dealt with various legal issues faced by the enthusiasts of fan fiction. The fans are not able to be financially benefited because there is a less possibility for them to get the fan fictions published legally. It provided that appropriate measures are being taken to regulate the copyright laws with regard to fan fictions.

RESEARCH PROBLEM

Extensive researches have focused on the legality of fan fiction and defenses available to the creators of fan fiction. This research paper specifically focuses on the popularization of fan fictions due to the technological development, legal issues posed to creators of fan fictions in the digital era and the extent of applicability of the fair use doctrine.

OBJECTIVE

To understand how the digital system has made the fan fictions easily accessible to people and the copyright issues it creates.

To interpret the fair use doctrine and to study the extent to which it can be applied to fan fictions.

The exclusive rights of the copyright holder and the need to support the innovation of fan fiction is also inquired into by this research.

⁷ <https://scholarship.law.tamu.edu/lawreview/vol1/iss4/9/>

⁸ https://doc-pak.undip.ac.id/id/eprint/26434/2/Deconstructing%20Intellectual_turnitin.pdf

RESEARCH QUESTION

- 1) Whether fan fiction must be considered as transformative work or derivative work?
- 2) Whether fan fiction should be brought under the fair use doctrine?
- 3) Whether fan fictions infringe the copyrighted work?

WHAT IS FAN FICTION?

⁹The enthusiasts of a particular original work use the existing setting or characters and craft their own narratives called Fan fictions. ¹⁰In Merriam-Webster dictionary fan fictions are defined as the ones which involve familiar fictional characters authored by fans and are made available through internet. The original work may be a movie, TV show, a book and so on. The creators of fan fiction may give an alternate story line, combine two unrelated works or even delete an element from the original work. It may be said that the fans author fan fictions in order to make good their regret from the original work.

¹¹The authors can exhibit extreme innovations where anything is possible. It is comparatively easy to write fan fictions because the characters used are already familiar and pre-developed. The fans trust that through authoring fan fictions they will be able to showcase their love for the particular work.

FANFIC WEBSITES

¹²Some of the fan fiction website include Wattpad, Kindle, Quotev, Commaful, Archive of Our Own (AO3) and fanfiction.net (ff.net.). These platforms publish fan fictions for free and readers can express their thoughts and freely communicate with each other. Over the years, these websites have become as fully grown publishing sites. ¹³A marketing reporting software known as Semrush states that India stands as the second largest contributors of Wattpad. The terms and condition of the Wattpad provides that it prohibits publishing of works which infringe the existing copyrighted work. It also does not publish works which are considered as adaptations of the original work. If the work published in the website in infringing copyrighted work, then the copyright holder can issue takedown notice under **section 52(1)(c)** of the Copyright Act 1957. Wattpad is a Canadian based website and it is being used by users in India. Indian users have uploaded a million of stories in the website.

From this we can understand that the development in the technology has lead to creation of various fan fiction websites. This has further lead to easy accessibility of fan fictions.

FAN FICTION, A REMIX CULTURE

¹⁴Remixing means remodeling, combining and altering the purpose of the prevailing work. It is not merely said to be copying because of its creative and innovative nature. This makes the remixed work as a distinct piece of work, displaying originality. Unfortunately the copyrights law when trying to protect

⁹ <https://nhfpl.org/what-is-fanfiction/>

¹⁰ <https://novelpad.co/blog/is-fanfiction-legal>

¹¹ <https://thesoftcopy.in/2024/03/21/more-fans-for-fan-fiction/>

¹² <https://thesoftcopy.in/2024/03/21/more-fans-for-fan-fiction/>

¹³ <https://articles.manupatra.com/article-details/AN-ANALYSIS-OF-LEGALITY-OF-REMIX-CULTURE-COMPLIANCE-OR-VIOLATION-OF-COPYRIGHT-LAWS>

¹⁴ <https://www.yourlawarticle.com/post/copyright-and-remix-culture-analyzing-the-role-of-copyright-in-supporting-creative-expression-and->

r#:~:text=Remix%20culture%2C%20where%20people%20take,rights%20of%20the%20original%20creators

the exclusive rights of the original author (**section 57 of the Copyright Act**), stops the remixers from displaying their innovations.

¹⁵Through keen observation of the remix culture, we can understand that fan fiction comes under the purview of remix culture, since as stated in remix culture fan fictions are a result arrived by taking an authentic original work and changing it according to their imaginations or by changing perspective or introducing new elements to it.

¹⁶Thereby when disputes arise between the creator of fan fiction and the copyright holder of the work it is important to consider section 51(acts amounting to copyright infringement), section 52(exceptions of copyright infringement) and section 57(special rights of authors) of the Copyright Act.

ANALYSING FAN FICTIONS AS TRANSFORMATIVE WORK

¹⁷Transformative work is significant from the existing copyrighted work since it alters, modifies or adds value to the existing work. They give new coats of perspective and messages. Mere replication of the existing work shall not constitute transformative work rather a new purpose and meaning must be given to the existing work. If we take into account fan fiction, creators of fan fiction display their innovative and creative skills to re-imagine the story line and fictional characters. ¹⁸The research “Hero with a Thousand Copyright Violations: Modern Myth and an Argument for Universally Transformative Fan Fiction” argues that fan fictions must be considered universally as transformative work and protected under the Copyright Act. However in many cases the conflict between amateur creators of fan fiction and the original authors leads to removal of fan fictions. For instance authors like Anne Rice and J.R.Ward have asked for the removal of the fan fictions which has its roots from their original work. So in order to escape from liability of copyright infringement one has to prove that it satisfies the ‘fair use’ doctrine under **section 52** of Copyright Act.

Delhi High Court in the case of ‘**The Chancellor Masters and Scholars of the University of Oxford v Narendra Publishing House,**’ in order to determine whether the usage of copyrighted characters fall under **fair use** referred to the four factor laid down by US.

The four factor test provides that works qualifying under this analyses is exempted from copyright infringement(**section 107 of Copyright Act**)

¹⁹1)Fan fiction works must be made for non-commercial purpose. The fan fiction must be distinct from the original copyrighted work by adding value or creating a new purpose or new perspective to the existing work.

2)Nature of the copyrighted work from which the fan fiction was authored is considered. For instance, published factual works are brought under the purview of fair use whereas works which are unpublished, works which display creativity and imagination are not available to be taken under fair use.

3)Substantial portion of the copyrighted work must not be utilized in the fan fiction.

4)The fourth factor considers whether the fan fiction poses any economic harm to the copyright holder. But the fair use cannot be determined solely based on the fourth factor.

¹⁵ [https://theowluc.com/story/the-world-of-fanfiction-which-sites-will-further-your-addiction/#:~:text=The%20world%20of%20fanfiction%20is,of%20Our%20Own%20\(AO3\)](https://theowluc.com/story/the-world-of-fanfiction-which-sites-will-further-your-addiction/#:~:text=The%20world%20of%20fanfiction%20is,of%20Our%20Own%20(AO3))

¹⁶ <https://support.wattpad.com/hc/en-us/articles/360056412711-Infringing-adaptations-and-fanfiction>

¹⁷ <https://scholarlycommons.law.northwestern.edu/njtip/vol11/iss7/6/>

¹⁸ <https://bytescare.com/blog/transformative-copyright#:~:text=Transformative%20Copyright%20refers%20to%20a,stands%20as%20an%20original%20creation>

¹⁹ <https://desikaanoon.in/do-fan-fictions-have-a-copyright-protection-in-india/>

There are no specific cases on internet fan fiction, so decision must be given based on the circumstances of the case. The Indian Courts also laid the Lay Observer Test for determining whether fan fictions fall under the fair use doctrine.

ANALYSING FAN FICTIONS AS DERIVATIVE WORK

²⁰Derivative works are works which are substantially similar to the original copyrighted work. Only the copyright holder is legally entitled to create a derivative work. In other cases where some other person wants to author a derivative work, then permission must be obtained from the copyright holder. Derivative works displays the existing work in an alternative format, but new perspective or new meaning is not provided by the work. For instance, translation of a original work in another language is considered as derivative work since only the formatting is altered in the translation.

²¹Fair use doctrine is not applicable to derivative works as it applies in cases of transformative works. Authors of derivative works are made liable for copyright infringement. The research of “Originality to Derivative Works: How to use Transformative Rules to Judge Them” quotes fan fiction to be a derivative work since they are created with original elements of the copyrighted work. From the above analysis it is clear that there prevails a dispute whether to consider fan fiction as a transformative work or derivative work. This solely depends on each case and decided after determining whether the substantial part of the copyrighted work is found in the fan fiction or not.

In the case of **Raja Pocket Books v Radha Pocket Books**, the courts held that there were only minor differences between the work of fan fiction and the original work. The secondary work had the same characters and story line which would result in harm to the original work. It was held that such fan fictions do not come under the purview of fair use under Copyright Act.

In the case of **Warner Bros v. RDR Books**, A book named the "Harry Potter Lexicon," which was essentially a thorough reference guide to the Harry Potter series, was intended for publication by RDR Books. The guide provided details on the wizarding universe developed by J.K. Rowling's characters, spells, and other elements. A lawsuit was brought against RDR Books by J.K. Rowling and Warner Bros. on the grounds of copyright infringement. The level of verbatim copying from the original volumes, the court held, precluded the lexicon in question from being considered a fair use. The court's ruling made clear that although producing a reference guide could be transformational and aid in educational activities, the considerable usage of material and direct quotations from legitimate works exceeded what could be deemed fair use.

ORIGINALITY

Fan fictions whether considered as derivative or transformative work, the original elements mentioned must be protected. The presence of substantial new elements is sufficient to bring it under the purview of copyright protection. However it is generally difficult to ascertain the originality since there is no specific rule addressing the particular issue. ²²The author's independent creations and innovations can satisfy the originality test. If the original elements in fan fictions are less then it cannot be considered as

²⁰ <https://www.copyright.co.nz/about/news-and-blog/is-your-work-derivative-or-transformative#:~:text=Making%20derivatives%20is%20something%20only,a%20different%20story%2C%20that's%20transformative>

²¹ <https://www.ijssh.net/vol12/1107-LS4015.pdf>

²² <https://www.mondaq.com/india/copyright/1178248/fanfiction-fan-culture-fan-art-and-copyright-law>

original work. As the quantity of original elements play a vital role in deciding the originality of the work, the quality of the original elements also are important. The creative expressions made in the copyrighted work must not be literally copied rather it must be expressed in a way which makes it different from the existing work. Clear distinctions must be shown between the fan fiction and original work because the base of fan fiction roots from the original work. So in short both the qualities and quantities of new elements in fan fiction decides whether it can be exempted from copyright infringement or not.

According to **Eastern Book v. D.B. Modak**, copyright claims demand creativity rather than invention or novelty, hence they are categorised as preceding works and secondary works. Fanfiction is an original literary work since the fan-author put effort into writing it even though they used material from another previously published work. But even at this point, no author of fan fiction has any rights, instead only the original copyrighted author is given protection from such derivative works. Fan fiction writers are so vulnerable since they may not fully understand their position on creative expression freedom and copyright rules.

EXTENT TO WHICH FAN FICTIONS CAN BE EXEMPTED FROM COPYRIGHT INFRINGEMENT

Through the analysis made by this research it is clear that only works which has transformative nature is protected by the copyright laws. However fan fictions mandatorily require references from the original work. So fan fictions cannot be highly transformative but it must be made sure that only the necessary parts are referred to.

²³ If the publication of the fan fiction affects the reputation or sales of the original work, then it cannot be protected by the copyright law. They can be published only if it does not harm the copyrighted work.

²⁴ If the fan fiction seeks to continue the story line of a copyrighted work (example- prequel and sequel), then it would have a closer connect with the original work. These fan fictions must display high personal creations to be exempted from copyright infringement.

Some fan fictions change the background or characters in the original work. For example, fan fictions are created based on how the story will end if Harry Potter's parents did not die. These are called Alternative Universe fan fictions. These kind of works made by changing the story line can be easily exempted from copyright infringement since it does not require much references from the original work.

RESEARCH METHODOLOGY

The primary focus of this research is around the legality of fan fiction and under circumstances under which fair use doctrine can be used. It also analyzed the reasons for exempting fan fiction from copyright infringement. The doctrinal research method is used for this purpose. The data used were collected through news reports, statistical reports, legal journals and previous research findings. The decisions given by courts in regard to legality of fan fictions were gathered, provisions of the Copyright Act were interpreted and conclusions were drawn based on the analysis.

²³ <https://dnluslj.in/the-fandom-chronicles-an-analysis-of-the-copyright-conundrum-in-fan-fiction-fan-art/>

²⁴ <https://scholarlycommons.law.northwestern.edu/njtip/vol11/iss7/6/>

FINDINGS

Through this research paper it is found that only if there are substantial new elements in the fan fiction from that of original work it is exempted from copyright infringement. Considering fan fiction as derivative or transformative can be decided based on the quantity and quality of original elements. It can be understood that not all the fan fictions infringe the copyrighted work.

RECOMMENDATIONS

The paper recommends that the fan fictions must be taken into the ambit of fair use under section 52 of the Copyright Act. This would support the innovations and creativity of the creators of fan fiction. The rights of the original authors will also not be affected by the fan fictions because they serve as an advertisement for the original work.

The innovations exhibited by the creators of fan fiction in recreating the original work must be protected because the preamble of the Copyright Act is to protect the original works of authors.

SCOPE AND LIMITATION

This paper studies the legality of fan fiction under the Copyright Act, 1957. It provided criteria under which a work qualifies under the fair use. It is limited to an Indian perspective. Further research can be made on the defences available to the creators of fan fiction in a legal suit and legal remedies available to the original authors if their copyrighted works are infringed.

CONCLUSION

Fan fictions even though they create different story lines and give different sketch to characters, they make a reference to the original copyrighted work. If such reference is not made then it does not qualify as a fan fiction. So these fan fictions need not adhere strictly to the test of originality. And most of the fan fictions are non commercial and do not harm the reputation of the original work. So it is concluded that fan fictions must be considered as infringing copyrights of the original owner.