



THE STUDY OF FAN-FICTION IN REFERENCE TO COPYRIGHT LAWS: A CRITICAL STUDY

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ABSTRACT

This paper examines the complex legal position of fanfiction under Indian copyright law. Governed by the Indian Copyright Act, 1957, copyright protection extends to original literary, dramatic, musical, and artistic works. Fanfiction, which reuses copyrighted characters, settings, and narratives, is generally classified as a derivative work. Under Section 14, authors hold exclusive rights over adaptations, and Indian courts, following the “skill and judgment” test set by the Supreme Court in *Eastern Book Company v. D.B. Modak* typically requires a higher threshold of originality than fanfiction often demonstrates. The fair dealing doctrine under Section 52 offers narrow exceptions for private use, research, criticism, and review, but lacks the broader flexibility of U.S. fair use, leaving fanfiction largely unprotected. Transformative works that substantially alter the original material might qualify, but most fanfiction does not meet this standard. Additionally, Section 57 grants authors moral rights, allowing them to prevent unauthorized reinterpretations or distortions of their work, adding further risk for fanfiction writers. Fanfiction creators in India face potential copyright infringement claims, exposure to takedown actions, and moral rights challenges, especially when their work impacts the market for the original or misattributes the author’s intent. Overall, Indian law offers limited safe harbor for fanfiction, placing creators in a legally vulnerable position.

CHAPTER-1: INTRODUCTION

1.1 Background

Fanfiction is often misunderstood and dismissed, despite its significance as a form of creative expression. At its core, fanfiction is a celebration of fandom. It allows enthusiasts to engage deeply with fictional worlds by creating original stories that extend or reinterpret existing narratives. Through this process, fans develop creative skills, experiment with storytelling, and find new ways to connect with characters and themes.

Fanfiction platforms foster a culture of experimentation and growth. Writers explore character backstories, alternate storylines, and overlooked themes, often bringing fresh perspectives and diverse experiences to established works. Supportive fan communities encourage artistic development and create lasting connections between writers and readers.

However, fanfiction occupies a complex legal space. Although it revitalizes and reimagines existing works, it often repurposes copyrighted material without permission, raising questions about copyright infringement, fair use, and moral rights. While many fan creators argue that their work is transformative—and thus protected under fair use—legal protections vary widely across jurisdictions. Some courts recognize fanfiction's non-commercial, transformative qualities as grounds for protection, while commercialization of fan works tends to invite legal challenges.

The derivative nature of fanfiction raises further concerns about the rights of original creators, particularly when significant changes are made to characters or storylines. Legal treatment of fanfiction differs depending on whether it is shared non-commercially or through platforms seeking to profit from it.

This research paper examines the legal tensions between fanfiction and copyright law across different jurisdictions. It analyzes the copyrightable elements of fictional works and potential infringements arising from fanfiction, with a focus on laws and case decisions in the United Kingdom, the United States, and Canada. It also explores the legal defenses available to fanfiction authors, especially doctrines of fair use and fair dealing, and whether fanfiction's transformative nature can shield it from liability. Finally, the paper studies the legal landscape surrounding fanfiction in India and proposes ways to adapt international legal insights to the Indian context.

1.2 Research Objective

1. To analyse the elements of a fictional work protected under copyright legislation and examine the legal implications of fan fiction in terms of copyright infringement?
2. To identify and evaluate the legal resources available to fan fiction authors under copyright law, focusing on strategies to safeguard against allegations of copyright infringement.

3. To explore the concept of universality in fan fiction, assessing its transformative nature and its potential impact on preventing infringement lawsuits arising from derivative works.
4. To assess the present legal standing of fan fiction in India, considering the existing laws and regulations, and propose strategies to effectively navigate and address the legalities concerning fan fiction in the Indian context.

1.3 Literature Review

The intersection of fanfiction and copyright law has been the subject of growing academic interest, particularly as online platforms have expanded the production and dissemination of derivative works. Early scholarship, such as Rebecca Tushnet's seminal work, frames fanfiction as a form of free speech and transformative creativity. Tushnet (1997) argues that fanfiction represents a legitimate form of commentary and criticism, protected under fair use doctrines, particularly in the United States. She emphasizes that fanfiction often reinterprets or subverts the original narrative, contributing new meaning rather than simply copying the original work.

Further studies have expanded on the transformative nature of fanfiction. Litman (1990) and De Kosnik (2016) highlight how fan works serve as critical tools for marginalized voices to reframe mainstream media narratives. They argue that fanfiction contributes to cultural discourse by offering alternative perspectives often absent from commercial media, suggesting that legal protections should recognize these social functions.

However, scholars also acknowledge the limits of fair use and fair dealing doctrines. Ginsburg (2000) and McJohn (2005) caution that transformative use does not automatically shield fanfiction from infringement claims. They note that while non-commercial uses are more likely to qualify as fair use, courts consider multiple factors, including the amount of material used and the effect on the market for the original work. Consequently, fanfiction remains legally vulnerable, especially where it competes with the original work or distorts the creator's moral rights.

International scholarship reveals a fragmented legal landscape. Craig (2010) discusses how Canadian law, through its fair dealing framework, imposes stricter limits on unauthorized uses compared to U.S. law. Similarly, Stokes (2009) analyzes the United Kingdom's approach, noting that although recent reforms introduced limited exceptions for parody and pastiche, protection for fanfiction remains uncertain and context-dependent. Scholars agree that these differences complicate efforts to develop a unified global approach to fanfiction legality.

Indian legal scholarship on fanfiction is relatively sparse but growing. Bhat (2020) examines how India's Copyright Act, 1957, lacks explicit fair use provisions akin to those in U.S. law, relying instead on a closed list of fair dealing exceptions. This restricts the scope for defending fanfiction as transformative use under Indian law. However, scholars such as Ghosh (2019) argue that Indian courts have shown increasing

willingness to interpret fair dealing flexibly, particularly in cases involving public interest and creative expression.

Several scholars, including Katyal (2006), advocate for a model of “semi-permission” systems, where fan creators operate with the implied consent of original authors unless expressly forbidden. This model, they argue, balances the interests of original creators and fan communities without resorting to heavy-handed legal action.

Overall, the literature reflects both the cultural importance and legal precariousness of fanfiction. While transformative use theories offer strong defenses in some jurisdictions, inconsistencies across legal systems and uncertainties around moral rights continue to challenge fanfiction’s legal status. This paper builds on these insights to evaluate how international principles can be adapted to better support fan creators in India.

Chapter-2: Copyright Protection and Fan-fiction: Navigating the Legal Landscape and Implications for Fictional Element

Fictional characters such as Luke Skywalker, Santa Claus, Bugs Bunny, Superman, and Harry Potter exert a profound influence on modern cultural life—often surpassing that of real individuals within our immediate environments. These characters shape behavior, inform ethical decisions, and cultivate emotional bonds comparable to familial relationships. Despite their fictional origins, their sustained presence, emotional resonance, and moral authority suggest a form of authenticity and cultural permanence that may outlast many real-world figures.

In contemporary society, these characters serve not only as entertainment but as symbols through which people interpret their world. They inform identity, shape interpersonal relationships, and act as moral compasses. The influence of fictional characters is reinforced through structured fan engagement—such as conventions and merchandise consumption—and informal, decentralized interactions across digital platforms. Fans examine canonical texts, participate in online discussions, and generate original content—fanart, fanfiction, memes—expanding the characters’ cultural presence beyond their original contexts.

A significant subset of engagement involves memes, where characters serve as shorthand for complex cultural messages or archetypes. Memes become vehicles for political commentary, satire, or collective identification, as seen in the use of Winnie the Pooh imagery in protest movements. Through these uses, fictional characters gain symbolic weight and function as condensed cultural signifiers. As such, the question arises: do these uses fall within the purview of copyright infringement, or do they reflect legitimate forms of cultural dialogue?

This chapter focuses on fanfiction as the primary site of analysis, with memes serving as a parallel form of creative engagement. It argues that certain fictional characters—especially those constructed with high levels of verisimilitude and artistic clarity—acquire a distinct cultural and aesthetic identity worthy of legal protection. These characters are more than abstract archetypes; they are specific, recognizable creations that generate commercial and emotional value in the experience economy.

The notion of “originality,” essential to copyright law, becomes complicated in this context. As early as 1845, legal thinkers acknowledged that literature is inherently derivative, built upon pre-existing narratives, themes, and archetypes. In today’s media landscape—dominated by short-form content like memes, gifs, and brief fanfictions—the reused element is often the character or setting itself. If such reuse constitutes infringement, much of online participatory culture would fall outside the bounds of legality.

To properly assess this tension, a clear distinction must be made between archetypes and specific characters. While literary tradition recognizes a limited number of archetypes—protagonist, antagonist, foil, confidante—this analysis focuses on distinct characters like Harry Potter or Voldemort, rather than generic roles. It is this specificity—the unique blend of narrative, design, and audience perception—that forms the basis for both cultural relevance and legal consideration.

Thus, the chapter examines whether and how specific fictional characters should be protected as creative works in their own right, especially given their enduring significance in the public imagination and their central role in shaping modern cultural and digital interaction.

2.1 United Kingdom Perspective on Copyright Laws

UK copyright law protects “original literary, dramatic, musical or artistic works and films” (LDMA), a classification that clearly includes creative outputs such as novels, television programmes, and films—works that frequently feature the characters and settings central to this analysis. These elements, while intangible, must reach a level of recognisability and distinctiveness to attract derivative use, such as memes, gifs, and fan works. Fixation is often debated, but in practical terms, recognisable characters and worlds cannot exist without being fixed in a specific medium.

The foundation for copyright protection lies in originality. In the UK, copyright legislation deliberately refrains from defining “originality” in absolute terms, allowing the law to evolve alongside new creative formats. UK jurisprudence historically anchors originality in the “skill, labour and judgement” employed by the author, as affirmed in cases such as *Ladbroke* and *Interlego*. This approach reflects a Lockean property-right perspective, wherein authorship is viewed through the lens of intellectual investment in a work.

However, this interpretation contrasts with broader international standards. Under the Berne Convention and EU law, originality is framed as “the author’s own intellectual creation,” focusing on creative autonomy and individual expression. European courts have developed this standard further, emphasizing the “choice, sequence, and combination” of elements that reflect the author’s personal input—a concept echoed in cases that underline the significance of “artistic choices.”

The UK has increasingly moved toward this European model, as seen in the *Meltwater* case and the UK Intellectual Property Office’s alignment with EU jurisprudence. Notably, legal scholars such as Rahmatian argue that the term “judgement” used in UK law is functionally equivalent to “artistic choice.” In this sense, the test for originality is not merely mechanical or labour-based, but rather hinges on the author’s capacity to make intentional, creative decisions during the process of realisation.

In practice, the key determinant is the transformation of a general idea into a concrete expression. Copyright law does not protect ideas per se, only their expression. John Perry Barlow encapsulates this distinction by noting that “rights... apply to activity in the physical world,” where protection is granted not for the idea itself, but for its tangible, expressive embodiment—the bottle, not the wine.

Thus, authors demonstrate originality through their specific expressive decisions. In literature, this involves the selection and arrangement of words; in visual media, it may include camera angles, editing techniques, or stylistic presentation. This principle will inform the following analysis, which posits that the use of literary characters in memes, gifs, and fanfiction constitutes a form of artistic discretion. These reuses—when guided by discernible creative judgement—can therefore meet the threshold for originality and merit copyright protection in their own right.

However, not all elements within a fictional universe meet this standard. Settings or locations often lack sufficient artistic specificity to qualify for protection independently. For the purposes of this study, the underlying works (novels, films, or television productions) are presumed to meet the originality and fixation criteria. The focus will instead be on the derivative use of individual characters as creative expressions shaped by new artistic choices.

2.2 Characters and Copyright in United Kingdom

UK copyright law has seen limited judicial exploration regarding the independent protection of characters or fictional locations, distinct from the literary, dramatic, or audiovisual works in which they appear. Section 1 of the Copyright, Designs and Patents Act 1988 (CDPA) explicitly enumerates protected categories—literary, dramatic, musical, and artistic works (LDMA)—but does not separately reference characters or settings. Consequently, courts have often been reluctant to recognise such elements as standalone copyrightable subject matter, viewing them instead as components embedded within broader protected works.

This interpretation imposes a significant constraint on creators seeking to assert rights over their original characters or settings. Unless a character or setting can be shown to constitute a “substantial part” of the underlying work, unauthorised reuse may not be deemed an infringement. This framework places the burden on the rights holder to prove that the reused element—such as a character—carries substantial narrative or expressive weight within the source material.

Such an approach reflects a conservative application of copyright, intended to balance private rights with public domain access. It prevents overly broad protection that could inhibit cultural exchange or the development of new creative works. This principle is consistent with the rationale for *sui generis* rights afforded to more technical or entrepreneurial creations, such as databases. These are protected under separate legislative mechanisms, as they do not exhibit the same level of creative expression typically required for LDMA works.

However, this policy distinction between “technical” works and “creative” works warrants further scrutiny when applied to characters and settings. Unlike databases or sound recordings, characters and fictional worlds are inherently imaginative. They often emerge through complex narrative development and are expressed through distinctive language, traits, and relational dynamics. Therefore, classifying them within the scope of LDMA works—particularly as literary works—is both logical and appropriate.

Recent legal trends lend support to this position. Courts have, for example, upheld copyright claims over short text expressions such as newspaper headlines. If an 11-word headline can meet the threshold for originality, then a fully developed fictional character—often defined through multiple layers of description, dialogue, and narrative function—arguably satisfies the criteria for protection as a literary work.

This analysis suggests a shift in judicial and legislative attitudes may be necessary to reflect the cultural and economic significance of fictional characters in the contemporary creative landscape. The next section will demonstrate that characters, and to a lesser extent settings, often exhibit sufficient originality and creative input to merit recognition as independent literary works under UK copyright law.

2.3 Assessing the Originality of Fictional Characters and Setting under United Kingdom Laws

In determining whether fictional characters and settings possess sufficient originality to qualify for copyright protection under UK law, it is essential to examine the extent of the author’s expressive choices and the exercise of artistic judgment involved in their creation. For a character or setting to be protected independently from the broader literary or dramatic work in which it appears, it must be expressed in a concrete, specific, and recognisable form, surpassing the level of mere abstract idea.

This requirement is grounded in the foundational legal principle distinguishing ideas from their expression, a concept firmly established in UK copyright jurisprudence, most notably in *University of London*

Press Ltd v University Tutorial Press Ltd [1916]. The decision in that case reaffirmed that copyright protects only the original expression of ideas, not the ideas themselves. Artistic discretion—reflected in the author’s selection and arrangement of narrative or stylistic elements—is central to this distinction.

As a result, copyright protection is generally not extended to storylines or plots, as these often remain too generalised to meet the threshold of originality. Absent clear evidence of authorial choices such as unique structure, tone, or character-driven development, plots tend to resemble widely used narrative templates, and therefore fall outside the scope of protection.

Fictional characters, by contrast, may meet the legal standard of originality where the author has exercised sufficient creative judgment in their development. This includes expressive elements such as distinctive personality traits, speech patterns, visual attributes, and relational dynamics. When these features are articulated with clarity and consistency, they reflect the kind of individual creative input required to merit copyright protection.

This approach reflects the broader policy rationale underlying copyright law: to encourage the production of original works by protecting expressive output, while ensuring that fundamental ideas, archetypes, and tropes remain in the public domain. Granting protection to characters that demonstrate expressive specificity and creative development supports this aim. By contrast, granting exclusive rights over generalised narrative concepts would unduly constrain subsequent creative expression.

The assessment of fictional settings presents particular challenges. Like plots, settings are often seen as generic story elements and may lack the distinctiveness required for standalone copyright protection. For instance, the use of conventional backdrops—such as a British intelligence agency in a spy thriller or a school in a young adult novel—typically does not demonstrate the level of originality necessary under UK law. Simple references to real-world locations such as “MI5” or “London” are unlikely to satisfy the legal threshold for originality.

To qualify for protection, a fictional setting must be highly specific and demonstrate a substantial degree of originality. This typically requires extensive literary development, internal consistency, and conceptual coherence. In practice, however, authors frequently do not allocate sufficient narrative focus or artistic investment to settings for them to be treated as independently copyrightable components.

An illustrative exception is the depiction of Hogwarts in J.K. Rowling’s Harry Potter series. Across seven novels, Rowling provides a detailed and immersive portrayal of the school, encompassing its architectural layout, magical infrastructure, internal geography, and cultural rules. The text enables readers to infer its geographical placement within the Scottish Highlands, and the cinematic adaptations—produced with Rowling’s direct involvement—reinforce its visual and thematic identity. Taken together, these elements reflect a degree of artistic discretion and specificity that likely satisfies the originality standard, potentially qualifying Hogwarts for protection as a literary work.

Despite such exceptions, most fictional settings will not meet the threshold of independent copyrightability. Under UK and EU law, the requirement of “expression of the author’s own intellectual creation” is rarely fulfilled unless the author provides extensive textual detail or fixed representations such as maps, blueprints, or visual renderings.

Science fiction and fantasy genres may provide stronger grounds for protection, as they frequently involve the creation of entirely novel worlds. In these cases, the setting often plays an integral role in the narrative, requiring deliberate and original decisions regarding physical laws, ecosystems, governance systems, and other elements. However, even where such settings display originality, establishing infringement remains challenging. In fan-created “alternate universe” (AU) works, settings are often reused in tandem with characters, and disputes tend to focus on the latter. Consequently, while an original setting may support a broader infringement claim, it is rarely protected in isolation.

UK courts have historically provided limited recognition of fictional characters as independently copyrightable components, especially when compared to developments in U.S. jurisprudence. However, recent decisions, such as *Meltwater*, suggest a shift in judicial thinking. This case clarified that distinct elements within a literary work can attract protection if they exhibit sufficient originality and independence.

Traditionally, courts have treated fictional characters as inseparable from the works in which they appear. In *Conan Properties v Tyburn Productions*, for example, the court refused to grant protection to the character of Sherlock Holmes on the grounds that characters did not fall within the closed categories of copyrightable works set out in Section 1 of the Copyright, Designs and Patents Act 1988 (CDPA). The decision avoided any substantive consideration of originality, effectively precluding protection for even well-developed characters.

However, in the aftermath of *Meltwater*, the reasoning in *Conan Properties* may no longer hold. Earlier case law, such as *Kelly v Cinema Houses*, although rarely cited, supports the view that the degree to which a character is portrayed may determine its eligibility for protection. While the characters in *Kelly* were not found to meet the required standard, the court acknowledged that more fully developed characters could potentially qualify.

This aligns with the broader principle articulated in *Hyperion Records*—that literary works must be evaluated holistically, and that copyright protection may extend to individual components where they reflect original expression. From a narrative theory perspective, characters are not incidental; they are core expressive units through which stories are structured and meaning is conveyed.

A comparison between James Bond and Jason Bourne illustrates this point. Though both characters function within the espionage genre and share attributes such as emotional restraint and combat proficiency, their specific narrative construction differentiates them. Bond, a British orphan educated in elite institutions, operates with limited self-reflection and strict institutional loyalty. Bourne, in contrast, undergoes

psychological evolution, values personal relationships, and actively questions his institutional affiliations. These character-specific details—developed through backstory, naming, and behaviour—demonstrate the creative input required to meet the UK standard of originality and artistic choice.

This distinction becomes especially relevant in the context of online reuse, particularly in memes and fan fiction. Characters featured in memes often derive their impact from their recognisability and cultural resonance—qualities stemming from original expressive development. For example, the “Distracted Boyfriend” meme, based on a stock image, lacks character development and narrative context. By contrast, the use of Pikachu from the Pokémon franchise carries specific expressive associations: distinct visual identity, voice, emotional traits, and symbolic function within a broader fictional universe. These features reflect deliberate artistic construction and establish Pikachu as a protectable character under copyright law.

Although both memes may qualify as visual works, only the Pikachu-based example involves the unauthorised reuse of a protected character. This comparison highlights the legal significance of originality and expression in determining the protectability of fictional characters, and reinforces the importance of authorial discretion in copyright analysis.

2.4 Legal rights entailed by an author in United Kingdom

The rise of fanfiction as a form of user-generated content has raised important questions about its compatibility with copyright law. In the United Kingdom, the legal framework governing the reproduction and adaptation of copyrighted material is primarily set out in the Copyright, Designs and Patents Act 1988 (CDPA). This section examines the legal risks posed by fanfiction in light of the rights conferred upon copyright holders under the CDPA, specifically the reproduction and adaptation rights.

2.4.1. The Right to Reproduce a Work

Under Section 16(1)(a) and Section 17 of the CDPA 1988, the copyright holder possesses the exclusive right to reproduce the work, either in full or in a substantial part. This provision embodies the economic rationale behind copyright law: by restricting unauthorized copying, the law enables authors to control the commercial exploitation of their work. The reproduction right is considered violated when a significant portion of a work is used without authorization.

Characters and settings that exhibit a sufficient level of originality and artistic expression are eligible for copyright protection. Prior case law indicates that fanfiction, which frequently incorporates central characters, settings, and specific descriptive language from original works, is likely to infringe the reproduction right. For example, the use of defining characteristics—such as Harry Potter’s scar or Anne of Green Gables’ red hair—may constitute unauthorized reproduction if the language and elements used are substantially similar to those in the original text.

The threshold for substantiality has evolved over time. Early 20th-century UK case law adopted a more flexible standard, as seen in *Glyn and Joy Music*. However, from the 1980s onward, courts began to interpret “substantial part” more strictly, often finding infringement even in relatively small portions of a work. This trend has been reinforced by the *Infopaq* decision, where the European Court of Justice held that even an 11-word newspaper extract could be protected if it represented the author’s intellectual creation. Consequently, even brief excerpts of expressive content may suffice for a finding of infringement.

In addition to the quantity of material copied, courts consider whether the fanfiction creates an overall impression similar to the original. If a character or setting is recognizable beyond the confines of the original work, their use in fanfiction may be deemed substantial and infringing. This aligns with the reasoning in *Infopaq*, which underlines the significance of the author’s creative input in determining copyright protection.

2.4.2 The Right to Create Adaptations

The right to adapt a work is granted under Section 16(1)(e) and Section 21 of the CDPA 1988. For literary works, the statute outlines a closed list of permissible adaptations, including translations, theatrical renditions, and illustrated editions. The restrictive nature of this list reflects historical concerns about allowing copyright owners to retain excessive control over their work after release. Parliamentary debates surrounding both the Copyright Act 1956 and its successor, the CDPA 1988, rejected proposals to introduce a more open-ended adaptation right.

As a result, UK courts have applied this provision narrowly. While the CDPA does not offer the same broad protection against derivative works as US copyright law, it does allow courts to consider whether a substantial part of a work has been reproduced or re-expressed in material form, under Sections 16(3) and 17(2). This enables the law to remain adaptable to new technological developments, including the rise of user-generated content. However, the adaptation right itself has not been interpreted to include literary fanfiction, which often falls outside the scope of the enumerated categories.

It is therefore unlikely that fanfiction alone would infringe the adaptation right under UK law, unless it fits one of the specific forms of transformation recognized by the statute. In contrast, US copyright law, under Section 106(2) of the Copyright Act of 1976, grants a much broader derivative works right, covering any form in which a work may be recast, transformed, or adapted. This expansive scope has allowed US courts to find infringement in a wider range of secondary uses, such as trivia books or rearranged artworks, that would not necessarily constitute infringement in the UK.

2.4.3. Legal Workarounds and Practical Implications

Many fanfiction writers adopt a practical workaround by including disclaimers that acknowledge the original copyright holder and assert non-commercial intent. While this approach may reduce the likelihood of legal action, it does not constitute a legal defence under the CDPA. With the growing importance of the

experience economy and the increasing commercial interest in user-generated content, reliance on informal norms and tacit permissions may no longer suffice.

Given the evolving digital landscape, fanfiction authors in the UK may have to rely more heavily on fair dealing exceptions to justify their work. These exceptions, however, are narrowly construed and subject to strict limitations, particularly regarding transformative use and market harm.

In conclusion, under current UK law, the reproduction of substantial expressive elements and the unauthorized use of identifiable characters or settings in fanfiction are likely to infringe the copyright holder's rights. While the adaptation right under UK law is relatively limited and unlikely to encompass most literary fanfiction, the reproduction right remains a significant barrier. Without explicit permission or a strong fair dealing justification, fanfiction remains vulnerable to claims of copyright infringement.

2.5 Moral Rights and Authorial Objections to Fanfiction in UK Copyright Law

While economic rights provide the foundational framework for protecting authors' financial interests, they do not fully account for the objections many authors raise toward the reuse of their works in user-generated content (UGC), particularly fanfiction. In the United Kingdom, the moral rights enshrined in Sections 77–89 of the Copyright, Designs and Patents Act 1988 (CDPA) offer a more nuanced explanation of this tension. These provisions, which give domestic effect to Article 6bis of the Berne Convention, protect three key moral interests: the right of integrity, the right of paternity, and the right to object to false attribution.

2.5.1 The Right of Integrity

At the heart of the debate surrounding fanfiction is the author's right to object to "derogatory treatment" of their work. Section 80 of the CDPA defines "treatment" broadly, encompassing "the addition to, deletion from, alteration of or adaptation of the work." This expansive definition moves beyond the narrower concept of "adaptations" found in Section 21 and offers a wider scope for potential infringement. The right of integrity enables an author to prevent others from presenting their work in a way that is prejudicial to their honour or reputation.

Authors such as Robin Hobb and Diana Gabaldon have cited this right when objecting to fanfiction based on their work, arguing that the unauthorised use of their characters and storylines distorts their creative intentions and undermines their literary identity. Such objections reflect a view of literary works not merely as economic commodities, but as personal extensions of the author's inner self. When characters are altered, repurposed, or reimagined—especially in ways the original author finds objectionable—this is often perceived as an affront to the author's reputation and creative authority.

The issue becomes more complex in the context of online fanfiction, particularly when such works are

published on commercial platforms that generate revenue through advertising, such as Fanfiction.Net. Although the individual writers may not profit directly, the commercial nature of the platform could potentially bring the content within the scope of the integrity right under Sections 80(3) and 80(6). Nonetheless, the actual enforcement of this right in UK courts has been notably cautious. Jurisprudence in cases such as *Tidy v Natural History Museum Trustees*, *Pasterfield v Denham*, *Confetti Records v Warner Music UK Ltd*, and *Harrison v Harrison* suggests that courts apply an objective standard when assessing derogatory treatment, requiring demonstrable reputational harm rather than mere dissatisfaction on the part of the author.

This high threshold makes successful claims under the integrity right rare, particularly when the fanfiction in question is non-commercial, clearly disclaimed, or still in progress. Courts have also been reluctant to interfere where the fan work is evidently distinguishable from the original, or where disclaimers effectively signal the separation between the fan's interpretation and the author's canon.

2.5.2 The Right of Paternity

Another central moral interest is the right of paternity, which protects the author's entitlement to be identified as the creator of their work. This right gained public attention in the UK following the 2017 controversy surrounding retailer John Lewis's Christmas advertisement, which featured a monster resembling Mr Underbed, a character created by author and illustrator Chris Riddell. While Riddell did not pursue legal action, he emphasized the importance of attribution over financial compensation, underlining the emotional and professional significance of recognition in creative industries.

Under Section 77(7)(a) of the CDPA, for an author to enforce their paternity right, they must first have asserted this right in a "clear and reasonably prominent manner," typically in the front matter of a book. They must then show that the work was used without proper attribution in circumstances where no exception applies. This requirement is generally met in most published literary and audio-visual works, as authorship credits are standard practice.

Fanfiction poses unique complications in this context. While fan writers openly use copyrighted characters and settings, they typically include disclaimers that acknowledge the original creators. These disclaimers often take the form of general statements ("I do not own these characters") or specific acknowledgements to individuals (e.g., "Joss Whedon") or corporate rights holders (e.g., "TPTB"). Such practices make it difficult for authors to claim that their paternity rights have been violated, particularly when the disclaimer is prominently displayed. Unless attribution is entirely absent or deliberately misleading, claims under this provision are unlikely to succeed.

2.5.3 False Attribution and Fanfiction

The third moral right under the CDPA is the right to object to false attribution, set out in Section 84.

This provision protects authors from being erroneously credited for works they did not create, especially where such association might harm their personal or professional reputation. Unlike the integrity right, this protection does not require evidence of damage to honour or reputation, which theoretically makes it a more accessible legal avenue for authors seeking to dissociate themselves from unauthorised derivative works.

This right is particularly relevant to derivative or parodic works that may be mistaken for extensions of the original. In the context of fanfiction, however, courts have recognized that disclaimers and other countermeasures may sufficiently avoid false attribution. In *Clark v Associated Newspapers*, the court accepted that clear and prominent disclaimers could prevent confusion about authorship. Applying this logic, fanfiction platforms like Fanfiction.Net—which explicitly identify themselves as repositories of fan-created content—may be seen as adequately distancing fan works from the original authors.

Thus, although the right to prevent false attribution offers a potential tool for authors to assert control over the public perception of their work, it has limited practical utility in the fanfiction context. The widespread and standardized use of disclaimers in fan communities generally shields fan creators from liability under this provision.



Chapter-3: Copyright Protection and Fan-fiction: Navigating the Legal Landscape and Implications for Fictional Elements in United States of America and Canada

3.1 Perspective of United States of America on Copyright Laws

Fanfiction does not typically involve verbatim reproduction of copyrighted material. Instead, it relies heavily on the appropriation of characters—creative constructs developed by authors to convey specific themes or emotional depth. The use of these characters raises significant legal concerns, particularly regarding whether such use constitutes copyright infringement. While historically, copyright law focused primarily on preventing literal copying, the scope of protection has expanded to include broader forms of appropriation, including the use of characters that may exist somewhat independently from the works in which they appear.

The question of whether fictional characters can receive copyright protection in their own right remains unsettled, with legal precedents offering inconsistent guidance. Nonetheless, many scholars and courts agree that, under certain conditions, copyright can extend to characters—especially when they are sufficiently developed and distinctive. This has led some authors to reject fanfiction, relying on the premise that the legal system recognises their right to control derivative uses of their characters.

In the United States, courts have applied two major legal tests to assess whether a character qualifies for copyright protection. The first is the “Learned Hand” test, named after Judge Learned Hand, which asserts that protection may be granted where a character is more than a stock figure or abstract concept. For copyright to apply, the character must be “distinctively delineated”—meaning clearly expressed, uniquely portrayed, and developed to a level that separates it from generic or public domain archetypes. This test aims to protect expressive content while avoiding overreach into the domain of unprotectable ideas.

This principle was refined in the so-called “Nichols test,” developed in *Nichols v. Universal Pictures Corp.* The modified test considers two central questions: first, whether the character is sufficiently developed to constitute original expression, and second, whether the character in the allegedly infringing work is substantially similar to the original. This approach is highly relevant in the context of fanfiction, where authors often adapt, reinterpret, or expand on existing characters in creative ways. These adaptations can blur the line between homage and infringement, particularly when the character’s core attributes—appearance, behaviour, voice, or relationships—remain recognisable.

However, the Nichols test has faced criticism for favouring particular types of expression. Characters in visual media, such as comics or animation, often enjoy stronger protection due to their vivid and recognisable visual characteristics. Similarly, works that are heavily character-driven—such as serialised dramas or detailed literary sagas—may benefit more readily from this form of protection. In contrast, characters in genres where deep development is less central (e.g., allegory, satire, or minimalist fiction) may

not meet the threshold, despite the author's investment in them. This creates an uneven landscape in which some creators are afforded stronger legal protections than others, depending on the expressive style of their work.

Further complexity was introduced by a decision from the U.S. Court of Appeals for the Ninth Circuit, which proposed a different test for assessing character copyrightability. According to this ruling, a fictional character may qualify for protection if they are "especially distinctive" and play a central role in the overall work, as opposed to serving merely functional or narrative-supporting roles. This threshold has also been met with criticism for being overly restrictive. In literary fiction, characters often function within ensembles or evolve gradually, without necessarily serving as the dominant focus of the narrative. As a result, many richly imagined characters may fall short of this criterion, despite their integral role in shaping the reader's experience of the work.

Moreover, this heightened standard appears ill-suited to other narrative elements such as fictional settings, which rarely receive independent protection unless they are particularly detailed and original. As with characters, settings in fanfiction are often borrowed, expanded, or reimaged, yet remain difficult to categorise under existing copyright tests.

In summary, while U.S. jurisprudence provides more guidance than other jurisdictions regarding the protection of characters, the application of these legal standards is far from settled. The current framework offers inconsistent protection, favouring creators of certain types of works while excluding others. For fanfiction, this legal ambiguity creates both space for creative reinterpretation and grounds for legal objection, leaving the boundary between lawful homage and unlawful infringement contested and context-dependent.

3.2 Legal rights entailed by an author in United States of America

Authors in the United States are granted a specific set of rights under the federal Copyright Act, codified in Title 17 of the United States Code. These rights are designed to protect the original expression of authors while balancing the public's interest in accessing and building upon creative works. The statutory rights granted to authors include the exclusive right to reproduce their work, prepare derivative works, distribute copies to the public, and perform or display the work publicly (17 U.S.C. § 106). However, the exercise of these rights is conditioned by both statutory exceptions and judicial doctrines, particularly the fair use doctrine and the idea/expression dichotomy.

3.2.1 Requirements for Copyright Protection

To enjoy copyright protection, an author must meet three foundational criteria: authorship, originality, and fixation. The work must be independently created by a human author, involve a minimal level of creativity, and be fixed in a tangible medium of expression.

This framework was clearly articulated in *Feist Publications, Inc. v. Rural Telephone Service Co.*,

where the U.S. Supreme Court held that a telephone directory's listings were not copyrightable due to their factual nature and lack of original authorship. The Court rejected the "sweat of the brow" doctrine, clarifying that effort alone does not qualify a work for protection. Instead, copyright is intended to protect creative expression, not facts or ideas.

3.2.2 Exclusive Rights and Derivative Works

Section 106 of the Copyright Act provides authors with several exclusive rights, including the right to create derivative works based on their original creations. A derivative work is defined under Section 101 as a work "based upon one or more preexisting works," including adaptations, fictionalisations, translations, and other forms of transformation. This provision is especially significant in the context of fanfiction, which often reuses characters, settings, or plots from existing works without the copyright holder's permission.

The right to create derivative works enables authors to control how their creations are used and extended. Courts have consistently upheld this right in cases where a secondary work borrows substantially from protected characters or narratives. For instance, in *Anderson v. Stallone*, the court found that the plaintiff's script for a proposed sequel to the Rocky films constituted an unauthorised derivative work. The court held that the characters created by Stallone were sufficiently developed and distinctive to warrant copyright protection and that Anderson's use of them without permission was an infringement.

3.2.3 Proving Copyright Infringement

In order to establish a claim of copyright infringement, the copyright owner must prove: (1) ownership of a valid copyright; (2) unauthorised copying by the defendant; and (3) that such copying constitutes improper appropriation. In *Arnstein v. Porter*, the court distinguished between factual copying and improper appropriation, affirming that not all copying constitutes infringement unless the copied material is qualitatively significant.

When direct evidence of copying is unavailable, plaintiffs can rely on circumstantial evidence, such as access to the original work and substantial similarity between the two works. Courts also consider whether the defendant appropriated the "heart" of the original work, as emphasized in *Harper & Row v. Nation Enterprises*, where unauthorized use of a central portion of President Gerald Ford's memoirs was deemed infringing.

The test developed in *Nichols v. Universal Pictures Corp.* further broadened the scope of protectable content. The court acknowledged that copyright extends beyond verbatim text to include expressive elements such as character development and thematic structure. The ruling cautioned against allowing minor alterations to shield infringers and emphasized the importance of evaluating the qualitative value of what was taken, not just the quantity.

3.2.4 Balancing Author Rights with Public Interest

The rights granted to authors are not absolute. U.S. copyright law reflects a utilitarian foundation aimed at promoting creativity and the dissemination of knowledge. The idea/expression dichotomy permits others to reuse ideas, themes, and stock elements so long as they do not copy the author's unique expression. Similarly, the fair use doctrine allows limited use of copyrighted material for purposes such as commentary, criticism, parody, and education.

These balancing mechanisms are crucial in contexts like fanfiction, where authors borrow elements from existing works to create new stories. While such works may technically qualify as derivative under Section 101, they may still be protected under fair use, depending on factors such as purpose, transformation, and market impact.

However, courts have not always been consistent in applying these doctrines to fan works. In *Walt Disney Productions v. Air Pirates*, the court found that even when used for parody, the unauthorized depiction of Disney's highly recognizable characters constituted infringement. The case underscores the risks fan creators face when using protected characters, even for transformative purposes.

3.2.5 Implications for Fanfiction

Fanfiction, by definition, repurposes existing intellectual property—often involving characters, settings, and plotlines that are central to the original author's work. While fan authors frequently introduce new elements or reinterpret canon content, the reliance on copyrighted material generally places their works within the scope of the derivative works right. Unless a work qualifies for fair use or the original rights holder grants permission, such creations may be classified as unauthorized derivative works.

In practice, enforcement varies. Some copyright holders tolerate or even encourage fanfiction, while others take a more aggressive stance. For example, J.K. Rowling has shown leniency toward fan works based on the Harry Potter universe, provided they remain non-commercial and respectful. Conversely, the legal foundation remains unchanged—unauthorized derivative works, even when transformative, carry a legal risk if they appropriate protectable elements.

3.3 Moral Rights and Authorial Objections to Fanfiction in USA Copyright Law

Despite ongoing discussions at the governmental level about whether to expand or strengthen protections, moral rights in the United States remain limited in both scope and legal enforcement. While the United States is a signatory to the Berne Convention, which obligates member states to uphold certain minimum standards of moral rights—specifically, the right of attribution and the right of integrity—it remains unclear whether the U.S. has fully satisfied these international obligations. The American legal tradition, grounded in strong economic and utilitarian justifications for copyright, has often been in tension with the European model that places a higher value on protecting the personal and reputational interests of authors.

Currently, the primary statutory framework for moral rights in the U.S. is the Visual Artists Rights

Act of 1990 (VARA), which provides limited protection for authors of works of visual art. VARA grants rights of attribution and integrity but applies only to specific categories of works—namely paintings, sculptures, and certain other visual media. The types of literary and narrative works that commonly form the basis for fanfiction fall outside its scope, rendering VARA largely irrelevant in such contexts.

This gap in protection has led scholars and advocates to question whether American copyright law adequately reflects the deeper emotional and personal connections that authors often have with their creations. The absence of a unified and comprehensive moral rights framework arguably leaves a void that benefits fanfiction creators, who frequently repurpose established characters and settings without seeking the author's permission. Unlike in jurisdictions where moral rights offer a direct cause of action against reputational harm or misattribution, U.S. authors must typically rely on economic rights to assert control over their works.

Among these economic rights, the derivative works right under 17 U.S.C. § 106(2) plays a key role. In the absence of robust moral rights, the ability to control the creation of derivative works offers the closest alternative for authors wishing to prevent the adaptation or reinterpretation of their material. This legal mechanism has been used by some authors as a proxy to assert concerns that, in other legal systems, would be addressed through the right of integrity.

Additionally, the Lanham Act—specifically Section 43(a), which prohibits false designations of origin and false advertising—has occasionally been invoked to address moral rights-like concerns. In *Gilliam v. American Broadcasting Companies, Inc.*, the Monty Python comedy troupe successfully argued that heavily edited broadcasts of their television shows by ABC constituted a false designation of origin. Although moral rights claims were unavailable, the court acknowledged that the edits distorted the artistic message of the original work and misrepresented the creators' intentions. This case demonstrated a potential, albeit limited, avenue for addressing concerns over the integrity of an author's work.

However, the U.S. Supreme Court's decision in *Dastar Corp. v. Twentieth Century Fox Film Corp.* significantly curtailed the applicability of the Lanham Act in such contexts. The Court held that the Act does not cover the misattribution of creative works once they have entered the public domain or where copyright protection is more appropriate. As a result, the Lanham Act cannot be broadly applied to police reputational harm or enforce attribution standards for literary or narrative works. This development has further constrained authors' ability to rely on non-copyright avenues to assert moral interests in their works.

Given these legal limitations, authors in the U.S. must largely depend on economic rights to protect aspects of their reputation, authorship, and creative integrity. However, many commentators have argued that economic rights alone are insufficient, especially in a digital environment where works are frequently remixed, reinterpreted, and disseminated without commercial intent. Fanfiction, in particular, often operates in legal grey areas where it escapes enforcement, not because it is legally sanctioned, but because the cost and complexity of enforcement outweigh the perceived harm.

The American emphasis on market-based justification for copyright has led to a system that privileges commercial infringement over reputational or emotional harm. While economic loss remains a central concern, the lack of recognition for the non-economic dimensions of authorship—such as identity, integrity, and attribution—continues to draw criticism from both legal scholars and creators. Despite periodic legislative review, there appears to be little political momentum for establishing a stronger moral rights framework. As such, it remains unlikely that the United States will adopt a model comparable to European jurisdictions in the near future.

In conclusion, the fragmented and limited state of moral rights in the U.S. offers limited recourse for authors concerned about the misrepresentation, distortion, or unauthorised reinterpretation of their works. This legal vacuum allows fanfiction to flourish under the radar of enforcement, especially when economic harm cannot be clearly demonstrated. In the absence of legislative reform, U.S. authors must continue to rely on the derivative works doctrine and market-based controls to address concerns that, in other countries, would fall squarely under moral rights protections.

3.4 Rights of an Author under Canadian Legal System

Canadian copyright legislation grants authors exclusive rights to reproduce their work, or substantial parts of it, in tangible form. At its core, the Copyright Act of Canada protects the exclusive right to copy or adapt a work. Beyond reproduction, it also encompasses rights such as public performance, translation, publication, and adaptation into other media. However, the legislation does not clearly delineate whether individual elements within a work—such as characters, settings, or fictional technologies—can be independently protected. This legal uncertainty is especially relevant in the context of fan fiction, which often repurposes characters and elements from established fictional universes in original narratives.

Fan fiction typically incorporates existing characters, settings, or themes from copyrighted works, but reimagines them within novel scenarios. These derivative narratives are not mere replicas but re-interpretations that frequently explore themes or perspectives absent in the original works. A hypothetical example might include a fan-written story about a retired Harry Potter confronting a new antagonist. The legal question arises: can the character of Harry Potter, as an individual entity, be considered independently protected under Canadian copyright law?

Similarly, suppose a fan constructs a story within the Star Wars universe, introducing new characters while referencing established concepts like “the Force” or known planetary settings. Are these elements—beyond characters—subject to copyright as standalone components? Canadian copyright jurisprudence offers limited clarity on these questions, particularly when applied to literary and cinematic universes widely used in fan fiction.

The lack of legal precedents on this issue in both Canada and the United States contributes to the ongoing ambiguity. While a small number of litigated cases address the protection of fictional characters,

most do not directly tackle the broader question of how fan fiction fits within copyright frameworks. Existing case law offers limited guidance regarding the independent copyrightability of fictional components such as spells, technologies, or locations.

One significant Canadian case—*Preston v. Lucasfilm*—provides some judicial insight. In this case, the Federal Court considered whether George Lucas and Lucasfilm had infringed on the copyright of Preston’s script *Space Pets*, which featured teddy bear-like extraterrestrials resembling the Ewoks from *Star Wars: Return of the Jedi*. Preston alleged that his concept had been substantially reproduced. The court applied the Nichols test, formulated by U.S. Judge Learned Hand, to determine the copyrightability of characters. According to this test, a character must have a distinct and recognisable identity to merit protection.

The court concluded that Preston’s Ewoks lacked sufficient definition to be protected. Nonetheless, the endorsement of the Nichols test implies that if a character is sufficiently developed—through consistent attributes, backstory, and context—it may receive protection under Canadian copyright law. The Preston case illustrates that well-defined fictional characters could, in theory, be subject to copyright, but the threshold remains vague.

This test also raises further questions regarding the treatment of less developed or background characters. Would a fan fiction story focused on an unnamed or minor Hogwarts student be less legally problematic than one centered on Harry Potter? The implication is that the use of underdeveloped characters may fall closer to the “idea” side of the idea-expression dichotomy, and therefore be less likely to trigger infringement concerns.

The situation becomes more complex when fictional settings or other narrative elements are considered. What happens when a fan work references Hogwarts, or uses concepts such as “the Force”? Canadian law provides little direction on whether such elements are protected in isolation. Yet another relevant case, *Robinson v. Cinar*, offers some precedent. In this Quebec Court of Appeal case, TV writer Claude Robinson successfully sued animation company Cinar for infringing on his proposed series *Robinson Curiosité*, which shared significant similarities with Cinar’s produced show *Robinson Sucroe*. The court found that characters in *Robinson Sucroe* were substantially similar, in both visual appearance and personality, to those in Robinson’s concept. The court emphasized that even a “colourable imitation” could constitute infringement if it reproduces significant aspects of an original work.

This case illustrates that animated or visual characters may receive stronger copyright protection, as courts can more easily identify substantial similarities in appearance or style. Literary characters, by contrast, pose greater challenges due to their abstract and interpretive nature. Furthermore, Canadian courts have acknowledged that infringement does not require a complete copy; substantial similarities in certain key respects can suffice.

Despite these developments, the application of such legal principles to fan fiction remains unresolved.

Characters from visual media—especially if distinctly drawn or animated—are more likely to receive protection than vague or generically described literary figures. However, these conclusions are far from definitive.

A critical question arises from the Preston precedent: why should fan authors who focus on underdeveloped characters encounter fewer legal risks than those engaging more prominent figures? How can creators reliably predict how a character might fare under the Nichols test? The subjectivity embedded in these evaluations creates a lack of certainty for fan fiction authors and opens the door to inconsistent legal outcomes.

There is an emerging counter argument suggesting that copyright law should be more accommodating to second-generation creators who expand upon underutilized or peripheral aspects of original works. These elements arguably occupy the “idea” end of the spectrum, thereby fostering opportunities for new expressions. From this perspective, using lesser-known characters or unexplored worldbuilding details can contribute meaningfully to cultural dialogue and creativity. However, critics point out that fan fiction that reinterprets central, well-defined characters may also offer critical or transformative value.

Ultimately, the criteria for assessing the copyrightability of fictional characters and components remain unclear. While central characters with unique visual traits are more likely to receive protection, background elements are less predictable. For fan fiction authors, this uncertainty presents both a creative opportunity and a legal risk. In the absence of legislative reform or more definitive case law, fan creators must navigate these complexities without firm guidance on what is permissible under Canadian copyright law.



Chapter-4: PROTECTING FANFICTION AUTHORS: EXPLORING LEGAL REMEDIES IN COPYRIGHT LAW AGAINST CLAIMS OF INFRINGEMENT POSSIBLE ACADEMIC REWRITE - "STRATEGIES FOR RESPONDING TO ALLEGATIONS OF COPYRIGHT INFRINGEMENT"

4.1 UK Perspective

Legislators and policymakers have increasingly acknowledged the cultural and economic significance of amateur creativity in the digital age. The emergence of new technologies has reshaped how works are created, distributed, and consumed. This shift has brought with it a proliferation of platforms, actors, and business models, prompting renewed attention to the boundaries of copyright law. For copyright holders, this evolving ecosystem represents both opportunity and challenge. For creators of UGC, it raises pressing questions about the extent to which their works are legally protected or infringing.

In the UK and EU context, most existing scholarship on UGC has focused on musical and artistic works—particularly in relation to remixes and parodies. These studies often highlight the transformative nature of such creations and their broader social benefits, which can justify protection under specific copyright exceptions. However, relatively little attention has been paid to fanfiction as a form of UGC, despite its widespread popularity and creative significance.

To be legally published without a licence, fanfiction that incorporates copyrighted material must fall within one of the copyright exceptions recognised in law. The most relevant of these is the fair-dealing exception, codified in sections 28 to 30 of the Copyright, Designs and Patents Act 1988 (CDPA). Where a user can demonstrate that their use of a protected work constitutes fair dealing—as defined by statute—they are exempt from the standard restrictions imposed by copyright. This would, in principle, permit fanfiction writers to share their work, even where it makes use of protected characters, settings, or plot elements.

The UK Government describes fair dealing as involving the actions of a “reasonable and honest” person using a work in a way that is fair. This chapter contends that fanfiction meets this standard. It is proposed that fanfiction represents a fair and honest form of creative engagement with existing works and should therefore be afforded protection under the fair-dealing exception. In advancing this position, the analysis moves beyond emotional responses to fanfiction—whether protective or critical—and instead offers a systematic legal assessment. This approach aims to contribute meaningfully to the broader discourse on UGC by articulating a coherent framework for understanding fanfiction’s place within the copyright regime.

4.1.1 Dealings

The Copyright, Designs and Patents Act 1988 (CDPA) outlines specific categories of “dealing” or “permitted acts” that may qualify as fair under the law. For the purposes of this research, the most relevant exceptions for user-generated fanfiction are examined in detail. This list of exceptions is exhaustive, meaning

that for a fanfiction work to be protected under the fair-dealing doctrine, the author must demonstrate that their use falls within one of the recognised categories. A general claim of fairness, absent a connection to one of these statutory exceptions, is insufficient.

Once it is established that a work potentially falls within a permitted category of dealing, the next step is to assess whether the dealing itself is fair. This evaluation involves several contextual factors, including the public availability of the original work, the extent of the use, and whether appropriate acknowledgment has been given. These criteria help determine whether the use in question meets the legal threshold for fair dealing.

This section offers a detailed analysis of each relevant category of fair dealing, considering how each may apply to UGC fanfiction. The goal is to clarify the legal scope available to fanfiction authors who seek to rely on these exceptions. Following this breakdown, the section will assess whether such uses can be regarded as fair according to the general test articulated in *Hubbard v Vosper*, which remains a guiding precedent in the interpretation of fair dealing under UK law.

4.1.2 Research

The research and private study exception under the CDPA permits the use of copyrighted material without a licence, provided that the use is solely for non-commercial, educational purposes. This exception is narrowly defined and does not extend to works that are publicly disseminated or marketed on a mass scale. It is intended to support individual study or learning in academic or educational settings.

Despite these constraints, the practice of writing fanfiction may, in certain cases, align with the underlying spirit of this exception. Notably, fanfiction communities often operate as informal learning environments where writers refine their skills through active participation, feedback, and peer-to-peer exchange. The concept of distributed mentoring is particularly relevant in this context. Platforms such as FanFiction.net exemplify this model, offering a digital space where aspiring authors can publish their work, receive constructive criticism, and engage in ongoing dialogue with fellow writers. This dynamic fosters a collaborative, low-barrier form of skill development that is both educational and participatory.

Fanfiction communities demonstrate key elements of distributed mentoring: collective knowledge-sharing through reviewer feedback, asynchronous communication, rapid dissemination of information, and open access to community resources. Importantly, the tone and format of feedback often contrast with traditional top-down teaching methods, favouring a more supportive and iterative form of learning. These features suggest that fanfiction may serve an educational function, albeit outside formal institutional frameworks.

However, applying the research/private study exception to fanfiction remains problematic. One of the core requirements of this exception is that the use of copyrighted material must be motivated solely by an educational purpose. While many fanfiction writers are primarily driven by the desire to improve their writing

and gain recognition within a creative community—rather than seeking financial gain—this intent does not always satisfy the strict legal criteria. Furthermore, the growing trend of fanfiction authors transitioning into commercial publishing raises questions about the boundaries between informal education and professional ambition. The presence of reputational or commercial incentives may, therefore, undermine the argument that fanfiction fits squarely within the research exception.

As such, while fanfiction exhibits strong educational characteristics and may function as a valuable learning tool, its eligibility under the research exception is legally limited. These ambiguities highlight the broader tension between the rigid structure of copyright law and the evolving, informal modes of digital creativity it increasingly seeks to regulate.

4.1.3 Caricature, Parody, and Pastiche

The introduction of the fair-dealing exception for caricature, parody, and pastiche under section 30A of the Copyright, Designs and Patents Act 1988, as amended by the 2014 Quotation and Parody Regulations, marked a significant shift in the UK's approach to certain forms of creative reuse. Although the legislation does not provide statutory definitions for these terms, government guidance has offered illustrative examples: a comedian borrowing a line from a film for a sketch, a cartoonist referencing a famous artwork, or an artist assembling clips from various films to create a pastiche. These examples help situate fanfiction—at least in part—as a potential candidate for protection under the category of pastiche.

Pastiche, unlike parody, is typically defined as an imitation of the style, tone, or content of an original work, often intended as homage rather than critique. It does not rely on humour or satire and is instead associated with evocation or celebration. In this sense, fanfiction aligns more closely with pastiche than with parody. It reflects the distinctive style and elements of an original work while contributing new perspectives, characters, or narratives. While historical pastiches were often commercially motivated and unregulated by copyright law, modern fanfiction is governed by stricter copyright controls, even though it is predominantly created and shared without commercial intent.

Fanfiction thus embodies many features commonly associated with pastiche: it imitates, expands, and honours existing works without necessarily critiquing them. Scholars have argued that modern UGC—including mash-ups, fan edits, and fanfiction—should be included under a broad understanding of pastiche, particularly when created for non-commercial, expressive purposes. The absence of a formal legal definition of pastiche may suggest Parliament considered the term sufficiently self-evident, especially given its European origin and adoption without significant legislative debate in the UK. Parliamentary references to the role of imitation in classical literature (e.g., Plautus and Terence's adaptations of Greek texts) reinforce the legitimacy of derivative creative practices historically and, by analogy, in modern UGC.

Nevertheless, key distinctions between parody and pastiche have legal consequences. Courts have generally viewed parody more favourably due to its element of critique or humour, which reinforces the

argument that it serves a public interest and thereby merits protection. By contrast, pastiche has sometimes been criticised as a form of “empty parody”—a derivative form lacking the critical function that justifies parody in legal doctrine. This distinction weakens the legal standing of fanfiction under the parody exception, particularly when the work’s intent is to engage with the original sincerely rather than mock or satirise it.

In the United States, parody has played a more central role in protecting certain fanfiction under the fair use doctrine. However, UK law, shaped by different statutory interpretation principles and a more rigid approach to fair dealing, does not easily extend such protection. The leading UK case *Deckmyn v Vandersteen* defines parody as requiring two features: evocation of the original work and expression of humour or mockery. While some fanfiction may meet this threshold, the genre as a whole is generally motivated by admiration and creative extension rather than humour, and is thus unlikely to qualify as parody in the strict legal sense.

Fanfiction’s distinguishing features further complicate its classification. Unlike parody, which is typically distributed as polished, finalised content, fanfiction is often released in an unfinished, serialized format. Platforms like FanFiction.net and Archive of Our Own foster a developmental, iterative writing environment where users share chapters incrementally and rely on peer feedback for improvement. This structure reflects the broader participatory culture of fandom, which is both social and educational in nature. Notably, a substantial proportion of fanfiction writers are teenagers or young adults seeking to improve their skills. Data from FanFiction.net, for example, indicates that over 60% of its users are in their teens. For many, engaging in fanfiction communities functions as informal vocational training, comparable to membership in professional writers’ guilds.

This communal, non-commercial aspect of fanfiction distinguishes it not only from parody but from commercial derivative works in general. The fanfiction ecosystem prioritises interaction, growth, and expression over profit. Works are usually distributed free of charge on digital platforms and are rarely positioned as substitutes for the original. On the contrary, fanfiction writers are often highly engaged consumers of the source material—purchasing collector’s editions, engaging with official merchandise, and maintaining loyalty to the canon. Their creative engagement does not compete with the original, but rather coexists with it in a parallel cultural space.

The legal framework presumes that derivative works created without the copyright holder’s permission pose a threat to the original’s economic or moral interests. However, this rationale is weaker in the context of fanfiction. Parodies are already understood as unlikely market substitutes, and this logic applies even more strongly to fanfiction. These works are not sold, are often incomplete, and are distributed through different channels from the original content. In most cases, they enhance fan engagement rather than diminish the value of the source material.

While the absence of direct case law on fanfiction as pastiche in the UK leaves its legal status uncertain, a strong argument can be made that it aligns with the principles behind the pastiche exception.

Should a case arise, there is a plausible basis for arguing that fanfiction deserves protection as a form of non-commercial, respectful, and creative reuse—an evolving expression of cultural engagement that the law is increasingly required to accommodate.

4.1.4 The Stance of the United Kingdom

Having established that certain forms of fanfiction may fall within the scope of “permitted acts” under the fair-dealing provisions of the Copyright, Designs and Patents Act 1988 (CDPA), particularly under exceptions relating to research or pastiche, the next step is to assess whether such use is, in fact, fair. This determination requires a fact-specific inquiry grounded in the principles articulated in *Hubbard v Vosper* and developed in subsequent case law.

Fairness is not a fixed standard but a cumulative assessment involving several key factors. As articulated by the courts, relevant considerations include:

1. The number and extent of the quotations: Are they too many or too substantial to be fair.
2. The purpose and nature of the use.
3. The proportion of the original work used.

Each of these factors contributes to the overall evaluation of whether the user-generated content (UGC), such as fanfiction, can legitimately claim protection under the fair-dealing exception. This area has become the central focus of fanfiction scholarship in the UK, given its interpretive flexibility and the role it plays in shaping the legal status of such works.

If a fanfiction author is to rely on the fair-dealing defence, it is not sufficient to show that their work falls under a relevant statutory exception. They must also show that the dealing itself is fair under these cumulative criteria. Importantly, should a work be found fair and non-infringing, it may be distributed without requiring additional permissions, subject to compliance with other relevant areas of law.

4.1.4.1 Number and Extent

first factor in assessing fairness relates to the quantity and prominence of the material used from the original work. Excessive or frequent borrowing—particularly when it includes core elements such as narrative structure, dialogue, or central characters—may weigh against a finding of fairness. This is rooted in the utilitarian underpinnings of UK copyright law, which seeks to balance the public benefit of creative reuse against the rights of the original author to profit from their work.

When considering fanfiction, the role of characters becomes central. If characters are sufficiently developed to qualify for independent copyright protection—a position recognised in certain legal and

academic commentary—their wholesale reproduction in derivative works could be seen as substantial appropriation. This is especially true in cases where major characters are used without modification, such as in fanfiction stories that closely mimic the original narrative or in video content featuring cosplayers portraying principal characters.

Such uses may undermine the fairness of the dealing, especially if the fan work risks serving as a substitute for the original. However, where fanfiction relies on secondary or minor characters lacking the originality threshold for protection, or where the fan work significantly alters character traits, invents new narratives, or introduces original characters within the same universe, the likelihood of a fair-dealing finding increases.

It is also important to consider the potential market impact. The fair-dealing exception is not intended to be a workaround for avoiding payment where licensing is available and appropriate. The broader trend within EU copyright policy, particularly under the CDSM Directive, reflects a growing emphasis on licensing as a mechanism to close the so-called “value gap” in online content markets.

4.1.4.2 The Use Made of the Material

The second key element in the fairness analysis concerns the nature and purpose of the use. Under the fair-dealing framework, the use must be consistent with what a reasonable and honest person would consider fair in the circumstances. This goes beyond fitting the use into a statutory category (e.g. research, criticism, parody) and requires examination of whether the use is transformative in nature or merely reproduces the original.

4.1.4.3 Transformative Purpose

Transformative use is central to this assessment. A work that adds new expression, meaning, or value—by reinterpreting, recontextualizing, or building upon the original—is more likely to be protected under fair dealing. Conversely, works that closely mirror the original without contributing significant new insight or commentary are less likely to qualify.

Fanfiction often sits on a continuum between these two poles. Some works offer substantial reinterpretation or critique, presenting the original narrative through a new lens or exploring themes left unexplored by the source material. Others may offer little beyond replication. The evaluation of fairness in such cases will therefore turn on the specific creative choices made by the author and the broader context in which the fanfiction is shared.

The concept of “transformativeness” plays a central role in modern copyright discourse, especially in relation to user-generated content (UGC) such as fanfiction. Copyright law acknowledges that new creative works often build upon existing material. This recognition is reflected in legal principles such as the low threshold for originality and the distinction between protected expression and unprotected ideas. These

principles allow room for the continued reuse, reinterpretation, and evolution of cultural content.

Creative works, by their nature, become part of an ongoing cultural cycle: each generation absorbs existing media and reworks it to reflect new values, perspectives, and experiences. Fanfiction, which engages directly with existing stories and characters, is a clear product of this process. Its transformativeness lies in the way it recontextualises, refocuses, and often reimagines the source material, contributing original elements while remaining connected to the canonical work.

Under UK copyright law, fair-dealing requires that the use of a protected work serves a legitimate purpose (e.g. research, parody, or pastiche) and that the use is “fair.” A key element in determining fairness is whether the new work is transformative. This involves assessing whether the secondary work adds new expression or meaning or merely reproduces the original for the same purpose.

Fanfiction can be highly transformative in this regard. Through devices such as crossovers, alternate universe settings, reimagining character identities, personalisation, emotional deepening, and subversion of genre expectations, fanfiction often does more than simply copy—it reshapes. Scholars have noted that such reworking aligns with the emergence of a “Participation Age” in which consumers of media are also producers, actively engaging with texts and producing new cultural meanings, particularly from historically marginalised perspectives.

This cultural participation itself can be seen as serving a transformative purpose. By creating alternative narratives—particularly those that provide greater diversity and representation—fanfiction contributes to social and expressive goals that go beyond commercial intent. In this way, the act of reworking mainstream media to serve underrepresented audiences may provide a public interest justification for protection under fair dealing.

While the transformative nature of fanfiction may support its claim to fairness, there are legitimate concerns raised by copyright holders, particularly with regard to future markets. If derivative works closely resemble forthcoming projects, authors may feel constrained in exploring similar themes for fear of legal or reputational risk. A notable example is the case of Marion Zimmer Bradley, who withdrew a manuscript from publication after a fanfiction writer claimed that her work had been plagiarised. While the fan’s claim lacked legal merit, the chilling effect on publishers was tangible.

This scenario illustrates a paradox: the more transformative a fan work is, the less likely it is to harm the original. Conversely, the closer the fanfiction remains to the source material, the greater the risk it poses to the author’s creative and commercial interests.

Market segmentation, especially by age, adds another dimension to the analysis of transformative use. Fanfiction that shifts the intended age group of the source material—e.g. reimagining a children’s story for an adult audience—may be seen as transformative due to the altered tone, language, and themes. The

publishing industry heavily relies on age and genre segmentation to assess marketability, predict consumer behaviour, and determine product placement.

Children's books, particularly those for readers under eight, are often illustrated and marketed to adults who read to children. Works in this category tend to rely more on visual than textual characterisation, and thus may be more sensitive to unauthorised derivative use, especially when characters are recontextualised in adult-themed narratives. This raises concerns not only about market impact but also about reputational harm to the original work.

In contrast, the young adult (YA) market—where fanfiction is most prevalent—is more dynamic and price-sensitive. This demographic is highly active in online spaces, making it a prime target for non-commercial fan engagement. Copyright holders may be particularly vigilant in this space, both due to the commercial value of YA properties and the risk of fan-created content substituting or distorting the original's appeal.

Beyond age segmentation, shifts in genre can also signal transformative use. A fan work that moves a narrative from fantasy to horror, or from adventure to romance, introduces new themes, structures, and emotional dynamics. Such reclassification can reflect a substantial creative reworking, supporting a claim of fair-dealing. Publishers themselves rely on genre classification for market forecasting, pricing, and branding decisions. A shift in genre thus affects both the form and function of the derivative work, distancing it from the original in meaningful ways.

Similarly, language is a critical consideration. Section 21 of the CDPA grants copyright holders exclusive rights over authorised translations of their works. However, translations—while requiring technical skill—are not generally regarded as transformative, as they replicate the original content in a different linguistic form without substantial creative input. Fanfiction, to qualify as transformative, must go beyond mere restatement or literal adaptation. It must offer reinterpretation, not just rewording.

Fanfiction's transformative potential is shaped by several interrelated factors: character usage, age and genre shifts, intended audience, thematic alterations, and creative reinterpretation. When these factors align to produce a work that is significantly different in purpose, tone, and message from the original, a strong argument can be made that the fan work meets the fairness standard under UK law.

However, this remains a nuanced and case-specific analysis. The stronger the evidence of transformation—especially in service of new creative expression or social commentary—the greater the likelihood that the work qualifies for protection under the fair-dealing exception. Conversely, works that closely mimic the original without meaningful alteration are less likely to be seen as fair and may infringe on the economic and moral rights of the original author.

4.1.4.4 Use Made for a Rival Purpose

An essential element in assessing fair dealing under UK copyright law is whether the secondary use serves a rival economic purpose to the original. This inquiry stems from the principle that copyright exists to protect not only the expression of an author's ideas but also their ability to commercialise and license their work. In particular, the courts have cautioned against permitting uses that effectively communicate the same information as the original author for a competing purpose. This standard was affirmed in *Ashdown v Telegraph Group Ltd*, where it was held that the reuse of a protected work for a competing objective may render the use unfair.

In this context, a key question arises: does fanfiction compete with the original work, or does it operate in a complementary manner that may, in some cases, enhance the cultural value or commercial ecosystem surrounding the original? This distinction is crucial when evaluating whether fanfiction could qualify as fair dealing under the CDPA 1988.

The commercialisation of fiction through licensing—such as film adaptations, merchandise, and branded content—is now a cornerstone of the publishing industry. Successful franchises like Harry Potter exemplify how derivative rights can be monetised through extensive licensing agreements. As such, some argue it is reasonable to expect those wishing to create derivative works—whether transformative or not—to obtain a licence, particularly when the original author is demonstrably willing to enter into such agreements.

Moreover, the expansion of secondary markets through digital platforms has increased the visibility and accessibility of licensed derivative content. In this environment, regulating fan-created adaptations is often viewed as part of maintaining control over the brand and managing commercial risks. In markets such as children's literature, where content is priced lower but relies heavily on brand loyalty and licensing for profitability, copyright holders may be especially sensitive to unauthorised uses that could potentially disrupt these revenue streams.

The standard for evaluating whether a secondary work serves a rival purpose involves both a financial and qualitative assessment. Courts have examined whether the reuse diminishes the market for the original or its licensed derivatives and whether the accused party derives substantial economic benefit from the unauthorised use. When a use could have feasibly been licensed, courts are less inclined to view it as fair. This reasoning assumes that commercial uses of copyrighted material should be subject to market-based licensing mechanisms.

However, the application of this logic to non-commercial fanfiction presents complications. Most fanfiction is published in online forums, as unfinished or in-progress works, and is shared without any monetary compensation. These works often exist outside traditional commercial distribution channels and may not be viable candidates for licensing due to their informal and fragmented nature. To expect non-professional, often amateur creators to pay licensing fees for these works would impose a disproportionate burden, potentially chilling legitimate forms of cultural expression and participation.

This stands in contrast to professionally produced works such as musical covers, which—even when shared freely—are often subject to licensing because they are complete, polished works that may substitute for the original. In such cases, the risk of market harm is higher, and the fairness of the use is more difficult to establish. The difference between these examples highlights the importance of context in determining whether a use serves a rival.

A rigid interpretation of “rival purpose” also risks undermining the broader objectives of fair-dealing provisions, which, like the U.S. fair-use doctrine, exist to allow certain uses even where copyright holders might otherwise object. If copyright protection were used to suppress non-commercial creative works that are unlikely to be licensed or published by the rights holders, this would result in an inefficient allocation of cultural resources. As copyright law is intended to promote creativity and dissemination of knowledge, such outcomes may be viewed as contrary to its core objectives.

The relationship between licensed derivative markets and fanfiction remains unsettled. While some argue that the existence of a thriving licensing system precludes the need for unauthorised adaptations, there is insufficient empirical data to determine whether fanfiction actually displaces or harms these markets. Logical assumptions about market substitution are not a sufficient basis for concluding that fanfiction operates as a rival product. Indeed, fanfiction is typically published in formats—online archives, forums, serialized short-form writing—that are distinct from those used in official publications. Furthermore, many fan works are released during periods of reduced canonical output, potentially sustaining audience engagement during these gaps.

Given its form, audience, and distribution model, fanfiction is unlikely to serve as a substitute for the original work in economic terms. Instead, it can be viewed as a parallel and often complimentary cultural practice that extends the life and relevance of the source material. While concerns about market harm and licensing control are legitimate, these must be weighed against the expressive, educational, and participatory functions that fanfiction performs.

A nuanced application of the fair-dealing test requires acknowledging these contextual factors. Unless a fan work is demonstrably commercial or designed to serve the same purpose as the original in a competitive market, it should not be automatically classified as infringing under the “rival purpose” criterion. Rather, the presence of a transformative function, coupled with non-commercial dissemination and a distinct audience, may tilt the balance toward fairness.

4.1.4.5 Proportions

The final component in assessing whether user-generated content (UGC), such as fanfiction, qualifies for protection under the fair-dealing exception concerns the proportion of the original work incorporated into the new creation. This factor focuses on the relative amount of pre-existing material used and the balance between borrowed and original content.

In the leading case of *Hubbard v Vosper*, Lord Denning famously warned that even when annotations or commentary are present, the reproduction of extensive excerpts from an original work may tip the scales against a finding of fairness. This reflects the principle that the more a secondary work relies on copyrighted content without substantial transformation or original input, the more likely it is to be considered unfair.

Within the broader discourse on UGC, much attention has been given to remix culture, sampling, and mash-ups—practices that involve significant reuse of existing materials. However, the fairness of these practices often turns on the originality and creative contribution introduced by the new author. Where the majority of a new work is independently created, the concerns raised by extensive copying are diminished, even where key elements such as characters, scenes, or settings are borrowed.

In the context of fanfiction, this proportionality assessment tends to favour the fan creator. While characters, universes, or plot structures may be drawn from the source material, fanfiction writers typically develop new dialogue, character arcs, internal monologues, relationships, and scenarios. The majority of fanfiction consists of original writing, reflecting the author's own creative labour and narrative direction. Even where central elements of the original work—such as a major character—are used, their presence may be treated as a “short extract” in terms of proportion, particularly when the remainder of the work is distinct in content and form.

Therefore, under the proportionality criterion, fanfiction often has a strong claim to fairness. Its transformative and predominantly original nature helps mitigate concerns about excessive borrowing. As such, fanfiction can be distinguished from mere replication, placing it on firmer ground within the framework of fair dealing in UK copyright law.

4.1.4.6 *The Three-Step Test*

The fair-dealing exception, as recognised under UK copyright law, must be interpreted in light of international obligations—specifically the “three-step test” articulated in Article 9(2) of the Berne Convention and Article 13 of the TRIPS Agreement. This test serves as a framework to assess the legitimacy of copyright limitations and exceptions and applies to all member states. It comprises three cumulative requirements:

1. The use must occur in “certain special cases”
2. It must not conflict with the normal exploitation of the work;
3. It must not unreasonably prejudice the legitimate interests of the author.

Fanfiction, as a form of user-generated content, must therefore be assessed against these three criteria to determine whether it can be justifiably protected under the fair-dealing exception.

The first criterion—that the exception must apply to a “certain special case”—can be satisfied by categorising fanfiction as a form of pastiche. Pastiche is a recognised exception under section 30A of the UK’s Copyright, Designs and Patents Act 1988, and its inclusion in domestic law reflects the broader European Union framework under the InfoSoc Directive. While the UK and EU legal frameworks do not provide a rigid definition of pastiche, the concept has been interpreted to include respectful, non-critical imitations that recontextualize existing works. In this context, fanfiction falls within a clearly defined and limited category of use, meeting the first step of the test.

The second and third steps are more complex. The second step requires that the use not interfere with the normal exploitation of the original work. Here, the concern is whether fanfiction displaces or substitutes the original in its primary or secondary markets. As previously discussed, most fanfiction is non-commercial, distributed freely online, and is often unfinished or experimental in nature. It is typically shared in formats—digital archives, forums, or serialized postings—that differ from those used for official publications. As such, it is unlikely to serve as a market substitute or meaningfully disrupt the economic exploitation of the original work. In some cases, fanfiction may even enhance engagement with the source material by sustaining interest during lulls in production or expanding its cultural reach.

The third step considers whether the use causes unreasonable harm to the author’s legitimate interests. This includes both economic harm and non-economic interests, such as the author’s moral rights. While there is always the potential for reputational concerns—particularly in cases where fan works introduce controversial themes or shift the target demographic—such uses must be evaluated in proportion to their actual impact. Where fanfiction demonstrates a transformative purpose and does not erode the commercial value of the original, it is difficult to argue that the author’s rights are unfairly prejudiced. Furthermore, the use of exceptions to block publication of works that the copyright owner has no intention of exploiting may be viewed as an overextension of copyright control, inconsistent with the broader public interest objectives of the copyright system.

It is important to recognise that the three-step test does not prescribe rigid outcomes. Rather, it offers a structured but flexible tool to evaluate whether exceptions like fair dealing are compatible with international norms. Its implementation allows for national variation, reflecting the legal traditions of different jurisdictions. This flexibility was especially significant when the United States acceded to the Berne Convention in 1989, given the divergence between its fair-use doctrine and the more author-centric systems of many European nations.

In the European Union, the three-step test has been codified in Article 5(5) of the InfoSoc Directive and now informs the interpretation and application of all listed exceptions. In the UK, although courts have not yet produced a definitive interpretation of the test, its influence on fair-dealing doctrine is implicit, particularly in judicial considerations of proportionality, purpose, and market effect.

In sum, fanfiction, when appropriately transformative and non-commercial, may be capable of satisfying the three-step test. Its classification as a special case (via pastiche), its minimal market interference, and its alignment with public interest goals in cultural participation and diversity all weigh in favour of a fair-dealing defence under UK and international copyright law.

4.1.4.7 *Conflicting with the Normal Exploitation of the Work*

A central consideration in assessing the legitimacy of a fair-dealing exception under international copyright law—particularly within the three-step test framework—is whether the use in question conflicts with the normal exploitation of the original work. This criterion is grounded in the broader rationale of copyright as a tool for incentivising creative production by enabling authors to control and profit from the dissemination of their works.

The economic underpinning of this test is often interpreted to mean that authors must retain the ability to charge an exclusive price for their work, and that uses which undermine this right should be restricted. From this perspective, a broad construction of “normal exploitation” might seem warranted, one that includes a wide range of digital uses, including unauthorised fanfiction. Such an approach would ensure robust protection for rights holders’ economic interests across both primary and derivative markets.

However, this expansive interpretation has faced criticism for being circular and overly general. It risks equating all forms of reuse with market harm simply because they bypass licensing frameworks. Instead, courts and policymakers have tended to adopt a more targeted understanding of “normal exploitation,” focusing on uses that result in measurable economic impact—such as loss of licensing income or reduced sales of authorised versions. Importantly, case law suggests that it is not necessary to demonstrate actual harm; rather, it is sufficient to show that the unauthorised use could, with reasonable plausibility, affect a market of significant economic or practical value.

Copyright holders have argued that the authorised adaptations market—encompassing sequels, spin-offs, merchandise, and licensed digital content—constitutes a core form of normal exploitation. In this view, the publication of fanfiction online, even when non-commercial, represents an encroachment on the licensing territory of the original creator. It is posited that by distributing unlicensed derivative narratives, fanfiction writers are effectively operating in a parallel market, thereby creating conflict with the copyright holder’s economic interests. Courts have, in certain cases, endorsed this reasoning, finding that unauthorised derivative works may encourage piracy, undermine the financial return to creators, and interfere with authorised derivative markets.

This interpretation poses a significant obstacle to the legal recognition of fanfiction under fair-dealing provisions. However, this view is not without challenge. For instance, the argument put forward in ACI Adam—that unauthorised derivatives cause a substitution effect in the market—lacks empirical support. No comprehensive studies have conclusively demonstrated that fanfiction meaningfully displaces demand for

authorised works or negatively impacts the licensing market. In the absence of such data, applying a blanket presumption of market interference to all forms of fanfiction appears legally and economically questionable.

Supporters of fanfiction argue that many fan-created works fall outside the conventional framework of market exploitation. These works are frequently shared free of charge, produced for personal or communal fulfilment rather than economic gain, and are often not viable candidates for commercial licensing due to their format, scale, or audience. Furthermore, the transformative and participatory nature of fanfiction reflects a cultural, rather than commercial, motivation. This non-economic character distinguishes fanfiction from traditional derivatives and may justify its treatment as an exception to the standard exploitation analysis.

Consequently, while the doctrine of normal exploitation aims to protect the economic rights of authors, it must also account for the changing realities of content creation and engagement in digital culture. The assumption that all unauthorised uses undermine licensing markets does not hold universally. Where a type of reuse—such as fanfiction—can be shown to exist outside the core economic model of the original, and where empirical evidence of market harm is lacking, the application of this test should be moderated accordingly.

4.1.4.8 Unreasonably Prejudice the Rights or Interests of the Copyright Holder

The third step of the Three-Step Test, as articulated in Article 9(2) of the Berne Convention and Article 13 of the TRIPS Agreement, requires that any exception to copyright must not “unreasonably prejudice the legitimate interests” of the rights holder. Traditionally, this element has been understood to protect against situations where unauthorised uses, such as fanfiction, result in excessive financial harm or interfere significantly with the author’s ability to benefit from their work.

However, this step also introduces a degree of flexibility into the assessment of copyright exceptions. It operates as a modified proportionality test that weighs the competing interests of rights holders and users. It does so by limiting only those uses that (a) interfere with the copyright holder’s legitimate concerns and (b) do so in a manner that is disproportionate or unreasonable—such as by causing measurable financial loss without justification.

This framework is particularly significant in the context of European Union copyright law, which requires that exceptions be interpreted in harmony with fundamental EU rights, including the freedom of expression and the right to receive and impart information. Accordingly, courts and lawmakers must balance the economic and moral rights of authors with the expressive rights of users—especially in contexts involving transformative, non-commercial creations such as fanfiction.

This balancing act invites an empirical dimension. If fanfiction does not cause material economic harm to rights holders—such as demonstrable loss of licensing income or substitution effects—then it becomes more difficult to argue that such uses constitute “unreasonable prejudice.” In such cases, it may be justifiable

to prioritise the user's right to freedom of expression, particularly when the fan work serves a transformative or socially beneficial purpose. This could include expanding representation, critiquing existing narratives, or contributing to cultural participation.

Recent scholarship has increasingly advocated for a more adaptive interpretation of the Three-Step Test, especially in the digital environment. Scholars argue that rigid enforcement of copyright against non-commercial UGC risks stifling online expression and innovation. In particular, leniency toward fanfiction and similar forms of UGC has been framed as a necessary evolution of copyright doctrine to reflect the participatory nature of contemporary media engagement. These scholars assert that enabling such uses meaningfully enhances the public's ability to access, remix, and reinterpret cultural materials—an essential component of digital literacy and democratic discourse.

In this light, the third step of the test should not be read in isolation or applied mechanically. Instead, it must be viewed as a flexible tool that supports a fair balance between competing rights. In the case of fanfiction, where commercial harm is minimal and expressive value is high, the potential for “unreasonable prejudice” is substantially reduced. This supports the case for recognising fanfiction as a fair-dealing exception or, more broadly, for developing a dedicated exception within UK law for user-generated content.

4.2 The United States Approach to Fair Use and Fanfiction

In contrast to the United Kingdom's fair-dealing framework, the United States adopts a broader and more flexible doctrine of fair use, codified in Section 107 of Title 17 of the U.S. Code. This doctrine permits limited use of copyrighted material without the prior consent of the copyright holder, provided that the use meets certain legal criteria. Fair use functions as an affirmative defence to copyright infringement and has its roots in Justice Joseph Story's early 19th-century opinion in *Folsom v. Marsh*. Although once purely a common law doctrine, fair use is now formally embedded in U.S. copyright legislation.

When a copyright holder establishes that their protected work has been used without permission—particularly in a derivative context—the defendant may invoke the fair-use defence. Courts then assess the claim by applying a four-factor test, as set out in Section 107. These factors are evaluated together, and no single factor is dispositive:

1. The purpose and character of the use, including whether the use is commercial or for non-profit educational purposes;
2. The nature of the copyrighted work;
3. The amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
4. The effect of the use upon the potential market for or value of the copyrighted work.

In the context of fanfiction, these factors offer a relatively favourable framework for protection, especially where the work is non-commercial and transformative in character. Scholarly analysis suggests that a substantial proportion of fanfiction may be protected under fair use, though each case must be assessed individually based on its specific facts.

The first factor—the purpose and character of the use—is especially significant in evaluating fanfiction. Courts look favourably upon uses that are non-commercial and transformative. In *Sony Corp. of America v. Universal City Studios, Inc.*, the U.S. Supreme Court found that recording television content at home for personal, non-commercial use constituted fair use, setting a strong precedent for non-commercial transformative practices.

Furthermore, the transformative nature of a work is central to the first factor. In the seminal case *Campbell v. Acuff-Rose Music, Inc.*, involving a parody of Roy Orbison’s “Oh, Pretty Woman” by the rap group 2 Live Crew, the Supreme Court held that transformative use can still qualify as fair use even when it is commercial. The Court established that a work is transformative if it adds new expression, meaning, or message, rather than merely replicating the original. The inquiry focuses on whether the new work merely supersedes the original or instead alters it with new insights or perspectives.

The ruling in *Campbell* reinforced the idea that copyright law exists not only to reward authors financially but also to promote creativity and the advancement of knowledge. The fair-use doctrine is thus viewed as a necessary mechanism for ensuring access to existing cultural material, which in turn enables the creation of new, innovative works. This principle is particularly relevant in the case of fanfiction, which often engages with original texts in ways that are reflective, critical, or expressive of new themes and identities.

The U.S. Copyright Act is ultimately guided by its constitutional objective: to “promote the progress of science and the useful arts.” Fair use plays a critical role in advancing this aim by preserving space for transformative creation. As such, it provides a legal foundation that recognises and protects user-generated content like fanfiction, which often emerges from a desire to expand, reinterpret, or challenge canonical narratives.

In summary, the U.S. fair-use doctrine offers a more flexible and context-sensitive approach to derivative creativity than the UK’s fair-dealing framework. In particular, it creates a legal environment in which non-commercial fanfiction has a stronger claim to legitimacy, provided it transforms the original work and does not cause substantial market harm.

Under the second factor of the U.S. fair-use doctrine, courts examine the nature of the copyrighted work to determine whether it is factual or creative in character, and whether it has been published. This consideration is grounded in the principle that copyright protection is more robust for expressive and

imaginative works than for factual or functional content. As the U.S. Supreme Court noted, creative works lie “closer to the core of intended copyright protection,” while factual works, which rely more heavily on public access and dissemination, receive more limited protection.

Additionally, courts are more protective of unpublished works, recognising the author’s right to control the first public appearance of their expression. Consequently, published works are often afforded relatively less protection under this factor. In practice, however, this consideration is rarely determinative. Courts tend to interpret this element in alignment with the other three factors. Where the other factors support a finding of fair use, courts are more likely to treat the published status of a work as mitigating against strong protection. Conversely, where the remaining considerations favour the copyright holder, courts are inclined to emphasise the creative nature of the original work as a factor weighing against fair use.

In the context of fanfiction, the source materials are almost always creative and widely disseminated. This naturally supports the copyright holder’s position under the second factor. However, the fact that the original work is published can reduce its claim to maximum protection. Fanfiction authors can argue that, while the source material is creative, its availability in the public domain of discourse weakens the argument for exclusive control, particularly in light of its broad cultural impact and recognition.

The third fair-use factor evaluates both the quantity and the qualitative significance of the material taken from the copyrighted work. This analysis focuses on whether the portion used is appropriate in light of the transformative purpose. The assessment includes both the sheer volume of material copied and the importance of the material to the original work.

The U.S. Supreme Court addressed this issue in *Campbell v. Acuff-Rose Music, Inc.*, where it held that using even the “heart” of a work may be justified in certain transformative contexts, particularly in parody. The Court rejected the lower court’s reasoning that the use of the most recognisable part of Roy Orbison’s “Oh, Pretty Woman” undermined the defendant’s fair-use defence. Instead, it held that the use of the central element was necessary for the audience to recognise the parody. The Court affirmed that the success of parody depends on its interaction with the original and, therefore, may legitimately draw from its most iconic aspects.

Nevertheless, the Court warned that courts must still examine whether the secondary work takes more than necessary to achieve its purpose. A use that draws disproportionately from the original—particularly when it adds little new expression—may weigh against a fair-use finding, even if it is partially transformative. The Court emphasised that a transformative work must be judged on the extent to which it distinguishes itself from the original, not merely on the fact that it includes recognisable material.

In the context of fanfiction, this factor is similarly nuanced. While many fan works reference key characters, settings, or plot structures, the majority of the content is typically original, including new narrative developments, character arcs, and emotional themes. When fanfiction is sufficiently transformative—reframing familiar elements to serve new expressive purposes—it is more likely to satisfy the third factor.

However, where the work merely retells the original narrative with minimal change, the amount and substantiality of the copying may weigh against a fair-use defence.

Fanfiction, much like parody, risks losing its impact if it fails to evoke the essence of the original work. As recognised by the U.S. Supreme Court in *Campbell v. Acuff-Rose Music, Inc.*, transformative derivative works are permitted a certain degree of latitude in drawing upon the original, particularly where such use is necessary for the audience to recognise the reference. However, the Court also cautioned that this flexibility does not extend to unrestrained appropriation of the most valuable or recognisable aspects of the original work.

For fanfiction authors, this creates a narrow but navigable path. While it is often necessary to reference key elements—such as character names, plot events, or settings—to establish a connection with the original universe, wholesale reproduction of dialogue, scenes, or narrative structures, particularly when done to avoid the effort of original composition, is likely to weigh against a fair-use finding. Verbatim reproduction of source material that does not serve a specific transformative purpose—for example, merely replicating iconic lines or moments—strengthens the copyright holder’s claim of infringement.

That said, the use of limited material to support a new narrative purpose—for instance, to synchronise events or build continuity within an alternate plot—may be considered integral to the nature of the new work. The third fair-use factor, which assesses the amount and substantiality of the portion used, therefore turns on whether the material taken is necessary to achieve the transformative objective. If fanfiction writers avoid gratuitous reproduction and rely only on what is needed to advance their unique creative contribution, this factor is likely to weigh in their favour.

The fourth and final factor in the fair-use analysis considers the effect of the secondary work on the market for the original and its potential derivatives. This includes both direct competition and harm to licensing opportunities. At face value, this factor might appear to support the original author, particularly where the creation of derivative works is a significant source of revenue. However, the Campbell Court made clear that the fourth factor must be evaluated in light of the first—specifically, the degree of transformation.

A work that is meaningfully transformative is less likely to substitute for the original, and the presumption of market harm becomes more difficult to sustain. In the case of parody, the Court noted that such works rarely serve as economic substitutes for the original, as they typically target different markets and serve different expressive functions. This reasoning can similarly apply to fanfiction.

Fanfiction does not seek to replace the original; rather, it caters to a niche audience of highly engaged fans who are already familiar with and invested in the original universe. These readers are unlikely to view fanfiction as a replacement. Instead, they often consume it in addition to the official material, driven by a desire for expanded perspectives, alternative scenarios, or emotional continuations. Even in cases where fanfiction achieves commercial success, it remains unlikely to erode the core market for authorised sequels,

spin-offs, or licensed adaptations produced by the original copyright holder.

The only plausible market conflict that a rights holder might argue is the potential disruption of the licensing market—specifically, the right to authorise derivative works. However, this argument assumes that all transformative fanworks, regardless of their intent, form, or dissemination model, should be subject to licensing—a claim that has not been supported by empirical evidence. In most cases, fanfiction is non-commercial, shared freely online, and produced outside the structures of traditional publishing and commercial licensing.

In conclusion, as long as fanfiction does not function as a substitute for the original work or its licensed derivatives, the fourth factor is unlikely to weigh decisively against the fanfiction author. Taken together, the fair-use analysis suggests that transformative fanfiction, especially when non-commercial, minimal in appropriation, and produced for expressive rather than economic purposes, can meet the criteria for protection under U.S. copyright law.

4.3 The Approach of the Canadian Legal System

In Canada, fair dealing operates as a user right under copyright law and forms an integral part of the statutory framework. Prior to the enactment of the Copyright Modernization Act (CMA), Canadian copyright law already provided for fair-dealing exceptions. However, recent legal and legislative developments—most notably the Supreme Court of Canada’s (SCC) landmark decision in *CCH Canadian Ltd. v. Law Society of Upper Canada*—have significantly expanded the scope and interpretation of these exceptions.

The *CCH* decision established that fair dealing is not merely a defence but a user’s right, and must be interpreted in a broad, purposive manner. The Court clarified that fair dealing serves as a balancing mechanism between the rights of copyright holders and those of users. In doing so, it set out a non-exhaustive list of fairness factors to guide courts in assessing whether a particular use qualifies as fair. This marked a clear shift from the traditionally narrow construction of fair dealing in Canadian law.

Following *CCH*, the enactment of Bill C-11—the Copyright Modernization Act—in 2012 introduced several important additions to the list of permissible fair-dealing purposes. These now include education, parody and satire, and non-commercial user-generated content (UGC), in addition to the original categories of research, private study, criticism or review, and news reporting. These legislative reforms were accompanied by five key rulings from the SCC, often referred to as the “copyright pentalogy,” which reinforced the central principles of technological neutrality and the need to maintain equilibrium between user and creator rights in the digital age.

While these developments have enhanced the adaptability of Canada’s fair-dealing regime, questions remain about its application to fanfiction. The first step in any fair-dealing analysis, as clarified in *CCH*, is whether the use aligns with one of the statutorily recognised purposes. Even with a liberal interpretation, this

threshold may exclude a considerable portion of fanfiction.

As Reynolds observes, fanfiction that is publicly distributed—such as that found on fan websites—is unlikely to qualify as “private study.” Only those works kept confidential or shared within closed networks might plausibly meet this standard. Similarly, although “research” need not be conducted in solitude, it is uncertain whether fanfiction created for skill development or personal growth qualifies as a form of legitimate research. While some fanfiction authors may argue that their work constitutes literary research or a tool for creative development, this rationale may not be universally applicable across the spectrum of fan works.

The categories of criticism and review appear more promising. Some fanfiction contains critical or reflective elements aimed at exploring, challenging, or expanding upon the original source material. However, Reynolds points out that such works may more accurately be classified as parodies, which may have fallen outside the original scope of the criticism exception. The creation of a separate parody and satire exemption in the CMA suggests that Parliament may have intended to address this gap explicitly, rather than assuming that parody could be accommodated under criticism or review.

That said, fanfiction is not uniformly parodic or critical. Many fan works exist not to critique the original, but to extend, celebrate, or reimagine its world. In such cases, they may not satisfy the definitional requirements of criticism or review. Jurisprudence has indicated that a “review” typically involves an evaluative commentary or judgment on the original work. While some fanfiction may contain such commentary, others do not, and those that lack analytical or evaluative content would likely fall outside this category.

Ultimately, even with a liberal reading of the statutory categories established in CCH, many forms of fanfiction are difficult to square with the existing fair-dealing purposes. Publicly available fanfiction is unlikely to qualify under private study or research. While some works may fall under criticism or parody, others—particularly those that aim to celebrate rather than critique the original—do not. Similarly, most fanfiction is clearly not intended as news reporting, nor is it always educational in the conventional sense envisioned by the statute.

While the introduction of parody, satire, and non-commercial UGC exceptions through Bill C-11 marks progress, the Canadian fair-dealing framework may still fall short of fully accommodating the range of creative and expressive purposes underpinning fanfiction. As such, additional clarification—either through jurisprudence or legislative reform—may be required to ensure that Canadian copyright law adequately reflects the realities of modern digital creativity and participatory culture.

4.3.1 Recent Modifications in Fair-Dealing Considerations and Exemptions: The Implications for the Creation of Fanfiction

Before assessing the relevance of newly introduced fair-dealing exemptions, it is important to revisit

the fairness considerations established in *CCH Canadian Ltd. v. Law Society of Upper Canada*. These considerations—though not exhaustive—may, in practice, prove more adaptable to fanfiction than the enumerated fair-dealing purposes themselves. While categorising fanfiction under the original statutory purposes remains challenging, a thorough application of the CCH fairness factors could offer more favourable ground for legal protection, assuming a court proceeds to that stage of the analysis.

This distinction highlights a key difference between Canada's fair-dealing doctrine and the United States' fair-use framework. Under U.S. law, fair use does not depend on whether the work aligns with a predefined category of use. Rather, courts directly assess the fairness of the use through a four-factor test. As Rebecca Tushnet has argued, fanfiction is frequently considered fair use in the U.S. due to its transformative character, non-commercial nature, and limited risk of market substitution.

Canada's fair-dealing system is more restrictive in its initial step, requiring that the use fall under one of the specified purposes, even though the fairness analysis itself remains flexible. That said, the recent expansion of fair-dealing categories through the Copyright Modernization Act—particularly the inclusion of parody and non-commercial user-generated content—may allow more fanfiction works to pass the threshold requirement and reach the fairness assessment stage.

Once that threshold is crossed, the fairness considerations set out in CCH offer a useful framework for evaluating fanfiction. These factors include the purpose of the dealing, the character of the dealing, the amount of the work taken, available alternatives, the nature of the work, and the effect of the dealing on the work. Though not tailored to digital creative practices like fanfiction, these criteria provide scope for courts to weigh the transformative and expressive qualities of such works.

While speculative, it is possible to imagine courts applying these fairness factors in ways that support a fanfiction defence. For example, where the use is non-commercial, engages with the original work critically or creatively, and does not substitute for the market of the original, the balance may tip in favour of the fan writer.

Thus, although Canadian fair dealing retains certain structural limitations not present in U.S. fair use, the evolving interpretation of both the statutory purposes and the fairness criteria suggests that the legal environment for fanfiction in Canada is becoming more permissive. A future court willing to engage with the CCH framework in full may find legitimate space for certain forms of fanfiction within Canada's copyright regime.

The Canadian Copyright Act (CCA), as interpreted by the Supreme Court of Canada (SCC) in *CCH Canadian Ltd. v. Law Society of Upper Canada*, outlines six key factors for assessing fairness under the fair-dealing defence. These are: (1) the purpose of the dealing, (2) the character of the dealing, (3) the amount of the work taken, (4) the availability of alternatives, (5) the nature of the work, and (6) the effect of the dealing on the original work. These considerations—though non-exhaustive—provide a flexible framework for

evaluating user-generated content such as fanfiction. Moreover, subsequent decisions, including those from the “copyright pentology,” have further refined these factors and offer relevant guidance.

The first consideration requires courts to assess the purpose behind the use of the copyrighted material. In CCH, the SCC stressed that this factor should be interpreted broadly and that both commercial and non-commercial dealings may qualify for the defence. While commercial purposes may weigh against fairness, they do not automatically exclude a claim of fair dealing. Conversely, non-commercial and personal uses are generally viewed more favourably.

In the case of fanfiction, most works are produced and shared without profit motive and often serve expressive, creative, or community-oriented goals. While these may not align precisely with traditional categories such as research or private study, the inclusion of parody and satire under the Copyright Modernization Act opens the possibility that certain fanfiction—particularly those that reinterpret or critique the original—could fall within these new categories. Even when parody is not clearly present, the non-commercial intent and transformative nature of many fanfiction works support their potential classification as fair dealing.

The second factor concerns how the work is dealt with—specifically, the method, scale, and context of its use. In CCH, the Court provided examples such as the creation of multiple copies or widespread dissemination, which may weigh against fairness, versus single-use or temporary copies, which may suggest fair dealing.

Fanfiction presents a nuanced case here. Although it is often shared publicly and read widely online, it typically does not involve redistribution of the original copyrighted work itself. Rather, it involves the creation of new narratives that may reference, but do not replicate, the underlying material. Fanfiction rarely replaces the original in function or form and is often reliant on the reader’s familiarity with the source. These factors, when viewed alongside the norms of fan communities—such as attribution, respect for canon, and non-commercial publication—could lend support to a finding of fairness.

One challenge is the lack of clear precedent in Canadian law regarding whether courts should assess the character of the dealing from the standpoint of the fan community or rely solely on traditional publishing and copyright industry norms. If courts were to take into account the internal practices and values of fan communities—including transformative purpose, proper attribution, and the absence of financial gain—this could favour a finding of fair dealing.

This factor assesses both the quantity and qualitative significance of the material used. The SCC in CCH recognised that small or trivial uses may fall outside the scope of copyright altogether, rendering a fairness analysis unnecessary. This is especially encouraging for fanfiction creators who rely minimally on source material—such as using only side characters or isolated narrative settings—while contributing substantial original content.

However, even the use of substantial portions of a work, or entire works, may still be fair, provided that such use is justified by the purpose. Courts must consider the amount taken in relation to the original work as a whole and evaluate whether the portion used was necessary for the transformative aim of the new work. For instance, the use of recognisable character names or key scenes may be permissible if it serves a new expressive function within the fanfiction, particularly one that diverges meaningfully from the original narrative.

Subsequent case law has reinforced the idea that proportionality is key—what matters is not just how much is taken, but how and why it is used. If the fan work merely replicates or closely mimics the original without substantial creative input, it may fail this test. However, if the borrowed elements are used as a springboard for novel narrative developments or critical engagement, the amount taken may be deemed fair.

The application of fair-dealing considerations to fanfiction is highly fact-specific. Each narrative must be assessed on its own terms, making generalised predictions difficult. That said, certain patterns emerge which help to evaluate how fanfiction may fare under Canadian copyright law.

The third fair-dealing factor—the amount and substantiality of the original work used—requires analysis not only of the volume of material reproduced, but also its qualitative importance. While some fanfiction may appear to draw heavily on the source material, most fan works do not replicate entire texts. Rather, they borrow characters, settings, or premises and reimagine them through original plots, perspectives, or interpretative frameworks.

For instance, fanfiction based on a character like Harry Potter might explore new adventures, perspectives, or genres, even if the character remains central. Courts could ask whether using a familiar figure—without reproducing the original storylines—constitutes a minor use within the broader context of the Harry Potter franchise. It might also be worth considering whether the length or narrative scope of the fan work dilutes the proportional significance of the borrowed elements. A lengthy fanfiction that borrows only a few core elements may, in this sense, be seen as more transformative than one that merely retells an existing plot with minimal modification.

Still, predicting how courts will assess this factor remains complex, as each fanfiction narrative presents its own unique combination of borrowed and original material.

The fourth factor considers whether reasonable alternatives were available to the user that could have avoided the use of copyrighted material. Rights holders might argue that fanfiction authors could simply invent original characters and worlds, thereby avoiding infringement. However, this view ignores the cultural, expressive, and intertextual value of engaging with shared stories and established characters.

In post-CCH jurisprudence, Canadian courts have recognised that the availability of theoretical alternatives does not necessarily undermine a claim of fairness. In *Alberta (Education)*, the court held that

educators need not purchase multiple manuals when only a small excerpt is required. Similarly, in *SOCAN v. Bell*, the Supreme Court rejected the argument that album art or return policies were viable substitutes for music previews, affirming that fair dealing allows users to pursue their specific purposes—such as research or critical engagement—even when alternatives exist.

Applying this to fanfiction, courts may find that referencing a well-known narrative is not only appropriate but necessary when the user's goal is to critique, honour, or expand upon a cultural work. Substituting with wholly original content would undermine the very intertextual engagement that defines fanfiction. Thus, insisting on such alternatives would be inconsistent with the user-centric approach established in *CCH* and subsequent decisions.

The fifth factor examines the nature of the original work—whether it is published, unpublished, well-known, obscure, factual, or imaginative. According to *CCH*, the dissemination of previously unpublished material with proper attribution may weigh in favour of fairness, as it contributes to the broader availability of cultural works. However, fanfiction typically derives from well-established and widely distributed fictional texts, such as *Harry Potter*, *Twilight*, or *Star Wars*.

Although these source materials are already well known, fanfiction may still serve the purpose of deepening engagement, expanding interpretative possibilities, and introducing new audiences to the original works. While it remains unclear whether Canadian courts would differentiate between fan works based on obscure versus popular source material, doing so may appear arbitrary or unfair to fan creators. A fan-written sequel to an independent film may be no more or less justified than a similar continuation of a major franchise, especially if both are non-commercial and transformative in purpose.

Moreover, fanfiction can serve promotional or pedagogical purposes, increasing interest in lesser-known works or reinvigorating mainstream franchises. The fact that such contributions enhance cultural dialogue and public engagement may favour a finding of fairness under this consideration.

The final and often most scrutinised factor concerns the effect of the dealing on the market for the original work or its derivatives. While market harm is relevant, *CCH* and later decisions have clarified that this factor is not determinative and must be considered in the broader context of the fairness analysis.

In most cases, fanfiction does not function as a substitute for the original work. Readers of fanfiction are typically enthusiastic consumers of the primary texts; they seek more—not less—content related to the source material. It is unlikely that a reader would forgo purchasing or reading the original *Harry Potter* series in favour of reading online fanfiction. Moreover, the informal, non-commercial, and often amateur nature of fanfiction further reduces its likelihood of competing with or replacing the original work.

While rights holders may argue that fanfiction undermines potential licensing opportunities, this claim is difficult to substantiate. Courts are unlikely to accept speculative economic harm, particularly in the absence

of clear evidence of market substitution. On the contrary, fan communities can act as valuable promotional ecosystems that sustain and even increase interest in a franchise over time.

When evaluated through the lens of Canada's CCH-derived fair-dealing considerations, fanfiction exhibits many features that align with principles of fairness: it is typically non-commercial, creatively transformative, limited in its appropriation of source material, and unlikely to cause economic harm. While certain legal uncertainties remain—particularly around the applicability of statutory categories—the fairness factors offer a framework through which fanfiction could plausibly be recognised as a legitimate form of user-generated expression under Canadian copyright law.

While it is possible that some individuals may conflate fan-created works with original source materials or develop negative associations with canonical works based on exposure to disliked fanfiction, such occurrences are rare and unlikely to have a significant impact. Although the Supreme Court of Canada has not yet addressed this issue directly, U.S. jurisprudence has engaged with similar concerns under the framework of fair use—particularly in relation to critical and satirical works.

In U.S. law, the fourth fair-use factor evaluates the commercial nature of the use and its potential market impact. Commercial uses are generally presumed to cause market harm, whereas personal or non-commercial uses shift the burden to the copyright holder to prove a likelihood of financial injury. Transformative uses, including satire and parody, are often presumed not to be market substitutes, and even when they negatively affect demand—such as by prompting criticism—they do not typically constitute economic infringement.

This distinction is important for understanding how Canadian courts might approach fanfiction under the newly introduced fair-dealing exceptions for parody and satire. While some fanfiction may negatively influence readers' perceptions of the original work, such an effect should be treated in the same way as negative reviews or critical parodies: as an expression of opinion, not as an economic threat to the original copyright holder.

Nevertheless, the Canadian fair-dealing exemptions for parody and satire remain underdeveloped in terms of judicial interpretation. Although these categories were formally introduced by the Copyright Modernization Act (CMA) in 2012, the statutory language provides little guidance on their scope. The terms “parody” and “satire” are not clearly defined, leaving uncertainty about which second-generation works qualify for protection.

As Graham Reynolds notes, courts in Canada and the United States have traditionally viewed parody as a humorous or exaggerated imitation intended to mock or criticise the style, themes, or conventions of a particular author, genre, or literary movement. The Quebec Court of Appeal, for instance, has referenced definitions that align with the Oxford Dictionary of Literary Terms, which characterises parody as imitation with comic or critical intent. However, not all fanfiction fits within this narrow framework. Many fan works

lack explicit humour or critique, instead offering reverent or exploratory continuations of beloved narratives.

A notable case in this context is *Avanti Ciné Vidéo v. Favreau*, in which the court rejected a claim that an adult film based on a popular Quebec sitcom constituted a fair-dealing parody. The court found that the imitation lacked any meaningful critique and was intended primarily to capitalise on the popularity of the original series. The decision reflects a more restrictive understanding of parody—one that prioritises intent and recognisable satire—which could present challenges for fanfiction authors whose works do not convey clear critical messages.

The *Avanti* ruling predates both the CCH decision and the 2012 legislative amendments and thus may carry limited precedential weight in future Canadian cases. However, it highlights the risk that courts may adopt a narrow interpretation of parody, requiring fanfiction to be overtly satirical or critical to qualify for protection. This could exclude fan works that aim to expand or reimagine canonical narratives without engaging in direct commentary.

The same concerns extend to satire. Traditionally defined as writing that exposes the flaws of individuals, institutions, or societies through ridicule, satire—like parody—requires intent and execution that go beyond homage or adaptation. While some fanfiction may serve satirical functions, such as critiquing gender norms or power structures embedded in popular media, most fan stories are unlikely to meet this threshold.

The structural limitations of the fair-dealing defence compound these challenges. Like fair use in the U.S., Canadian fair dealing operates reactively. It must be raised as a defence to an infringement claim, rather than invoked preemptively. Fan creators cannot declare their work fair in advance, nor can they follow a specific checklist to guarantee protection. Each case requires a contextual analysis guided by the six CCH fairness factors, which must be applied by a court on a case-by-case basis.

While the author of this paper contends that most non-commercial fanfiction is likely to qualify as fair dealing under the CCH framework, this remains a speculative conclusion. The absence of legal certainty—combined with the ambiguous scope of the parody and satire exceptions—means that many fanfiction authors remain legally vulnerable.

Given these limitations, it is necessary to consider alternative legal avenues for Canadian fan creators. One such possibility lies in the recently introduced user-generated content (UGC) exemption, codified in Section 29.21 of the Copyright Act. This provision—discussed in the following section—may offer a more inclusive and practical defence for non-commercial fan works, particularly those that fallout.

CHAPTER-5: EXAMINING FANFICTION'S TRANSFORMATIVE POTENTIAL: BALANCING DERIVATIVE WORKS AND COPYRIGHT INFRINGEMENT, CLAIMS

A substantial body of scholarship explores the legal status of fanfiction and its potential classification under the fair-use doctrine in the context of copyright infringement. Past instances, including the cooperative stance taken by Warner Brothers and J.K. Rowling toward specific fan works, have shaped the current understanding of the legal boundaries surrounding this form of cultural production. Case law has indicated that fan-created fiction may fall within the scope of fair use when it is non-commercial or functions as parody. Despite this, much of the fanfiction circulating online remains vulnerable to takedown notices. A cease and desist letter from a copyright holder—while not a final legal determination—often results in the immediate removal of the content, discouraging creators from asserting a fair-use defence in court due to the cost and complexity of litigation.

This situation illustrates the persistent tension between the participatory, retelling-based nature of fanfiction and the proprietary aims of modern U.S. copyright law. However, framing fanfiction as transformative—rather than derivative—offers a legal and cultural resolution. This framing affirms both the rights of original creators and the broader societal benefit of reinterpreted storytelling.

This study proposes that fanfiction, irrespective of its specific relationship to parody or direct derivation, should be recognised as a form of transformative critique. Drawing on literary theory and the functions of myth, the argument shifts focus from legal technicalities to the cultural and expressive value of fan works. This chapter will explore the relationship between fanfiction and myth-making, examine the role of authorial intent, and evaluate how literary reinterpretation can support a robust fair-use defence. It will also address and refute common objections to classifying all fanfiction as transformative.

Copyright law's potential to conflict with free speech and the public interest is well established, particularly in light of First Amendment concerns. Nathaniel Noda, writing in the *Journal of the Copyright Society of the U.S.A.*, argues that when authors publish their works and engage the public imagination, certain interpretive rights are implicitly transferred to the audience. He suggests that the public acquires limited rights to appropriate elements of these works—characters, narratives, and worlds—as part of an ongoing cultural dialogue. From this perspective, access to storytelling is not simply a legal issue but a cultural necessity that enables myth to evolve in a contemporary setting.

Mythology, as scholars of anthropology and literature observe, functions as a collective narrative framework that embodies core societal values, ideologies, and moral principles. Myths are not merely stories—they are vessels through which communities understand their world, navigate moral complexities, and give meaning to life's transitions. Joseph Campbell, a foundational thinker in the study of mythology, advanced this idea in *The Hero with a Thousand Faces*, where he outlined the universal structure of the hero's journey across cultures.

In *The Power of Myth*, Campbell goes further, asserting that myths play an essential psychological and social role. Myths help individuals cope with mortality, derive meaning from personal and collective experience, and connect with the eternal. According to Campbell, myths are necessary tools through which human beings grapple with existence. They offer a language for expressing inner truths, for facing life's challenges, and for understanding our place within a broader narrative.

Fanfiction, in this context, performs a mythic function. By reinterpreting, extending, or reimagining existing fictional universes, fan authors engage in the same cultural practice that has shaped oral traditions, folklore, and literary movements across centuries. These reinterpretations may involve direct commentary on

the source material or provide alternative pathways for beloved characters, giving readers new frameworks for understanding familiar themes such as identity, loss, heroism, and belonging.

This myth-making function strengthens the argument that fanfiction is inherently transformative. Even when it draws heavily from original characters or settings, fanfiction often introduces new meanings, emotional perspectives, and social contexts. In doing so, it aligns closely with the core objective of the U.S. fair-use doctrine: to promote the advancement of the arts and knowledge by enabling new creative expression.

This chapter therefore posits that the fair-use defence should be interpreted expansively to accommodate fanfiction's role in cultural and literary discourse. Legal decisions that rely narrowly on commercial intent or market harm may overlook the deeper societal value of transformative fan works. By foregrounding fanfiction's mythic and interpretive dimensions, copyright law can evolve to better serve both creators and the communities that engage with their works—not as passive consumers, but as active participants in ongoing cultural narratives.

5.1 To What Extent Have Myths Influenced Copyrighted Works?

When evaluating the influence of myth on modern copyrighted literature, it is essential to first examine the intertextual nature of many widely acclaimed and legally protected narratives. These stories frequently rely on archetypal structures and motifs drawn from a shared mythological tradition. Joseph Campbell's theory of the "monomyth," presented in *The Hero with a Thousand Faces*, identifies a recurring heroic structure composed of three primary phases: separation, initiation, and return. This narrative arc, according to Campbell, is foundational to storytelling across cultures and eras. He succinctly summarises the journey as one in which "a hero ventures forth from the world of common day into a region of supernatural wonder... wins a decisive victory, and comes back from this mysterious adventure with the power to bestow boons on his fellow man."

This monomyth is clearly illustrated in two of the most celebrated fantasy series in modern literature: *The Lord of the Rings* and the *Harry Potter* series. J.R.R. Tolkien's *The Lord of the Rings*, published in 1954, centres around Frodo Baggins, a humble hobbit who leaves the comfort of his home to undertake an epic quest to destroy a source of immense evil. Throughout his journey, Frodo is tested through increasingly perilous challenges, guided by an elderly, wise wizard who ultimately sacrifices himself to ensure the success of the mission. The narrative culminates in a return to essential human values—love, friendship, and selflessness—as Frodo overcomes darkness and restores order.

Similarly, in *Harry Potter*, the protagonist begins as a marginalised, orphaned boy unaware of his own identity. Upon discovering his magical heritage, Harry is drawn into a fantastical world where he, too, must face overwhelming evil. Like Frodo, Harry is mentored by a sagacious and eccentric wizard who eventually sacrifices himself for the greater good. Through his journey, Harry is shaped by a series of moral, emotional, and physical trials, and ultimately triumphs by embracing the very same virtues—loyalty, love, and compassion—that underpin Frodo's success.

Beyond the structural parallels, the two series share an abundance of similar narrative and symbolic elements: magical artifacts (e.g., cursed rings and horcruxes), mythical creatures (elves, goblins, giant spiders), enchanted weapons, and an overarching struggle between good and evil. While *Harry Potter* draws heavily from the mythic structure popularised by Tolkien, it is not a derivative copy. Rather, it represents a recontextualisation of the mythic hero's journey, adapted to reflect contemporary cultural and social values.

Notably, *Harry Potter* diverges from *The Lord of the Rings* by offering a broader range of significant female characters, each with complex identities and agency beyond their relationships with the male

protagonist. Moreover, where Tolkien's work reflects a Eurocentric worldview, with "good" characters aligned with the West and "evil" with the East, Rowling's series explicitly critiques elitism and racial purity. The motif of "pureblood" versus "mudblood" serves as a direct condemnation of supremacist ideologies, positioning Harry Potter as a contemporary retelling that challenges the problematic assumptions embedded in earlier fantasy literature.

Were a copyright claim ever raised by the Tolkien estate against Rowling, a compelling defence could be made that Harry Potter constitutes a transformative work. It does not merely reproduce Tolkien's intellectual property but reinterprets the mythic structure through a modern cultural lens. This process—of drawing on shared mythic frameworks to construct new narratives—is not uncommon and should not, in itself, be seen as infringing.

A parallel example is Hilary Jordan's *When She Woke*, a dystopian novel that has been favourably compared to both Nathaniel Hawthorne's *The Scarlet Letter* and Margaret Atwood's *The Handmaid's Tale*. Jordan's narrative centres on a woman punished for having an abortion by undergoing a procedure that changes her skin colour to red—a literal modernisation of Hawthorne's scarlet "A." At the same time, her portrayal of a repressive, theocratic society echoes Atwood's Gilead. Despite these strong influences, Jordan's work is not considered derivative. It is lauded as a contemporary reimagining that addresses current anxieties—such as state surveillance, the erosion of reproductive rights, and the intersection of religion and government—through the lens of existing literary themes.

In this light, *When She Woke* functions as a kind of published fanfiction—drawing inspiration from and responding to existing works, while transforming their central ideas to suit a new context. Just as Rowling adapts Tolkien's mythic blueprint to reflect modern concerns about race and gender, Jordan recasts the motifs of shame and control in *The Scarlet Letter* and *The Handmaid's Tale* to address the socio political landscape of the twenty-first century.

These examples highlight the fundamental role that myth and literary tradition play in shaping copyrighted works. Rather than undermining originality, intertextual engagement with prior works—whether mythological, literary, or cultural—can serve to enrich narratives, offer critique, and create meaningful reinterpretations. In doing so, such works exemplify the very purpose of the fair use doctrine: to foster new creative expressions that engage with, but do not replace, the original.

5.2 Does Fanfiction Contribute to the Creation of New Myths?

Just as widely celebrated copyrighted works may reinterpret elements of earlier literary texts to construct new cultural narratives, fanfiction serves a similar function—offering commentary, reconfiguration, and reimagination of canonical material. Scholars in literary studies have long recognised the potential of fanfiction to enrich the cultural fabric. It is often viewed as a continuation of the deeply human impulse toward storytelling, one that spans back to the oral traditions of antiquity, including the epic poetry of Homer.

Fanfiction provides a platform through which readers and writers collaboratively engage with existing narratives, often reshaping them to reflect contemporary values, identities, or social critiques. A notable example is the prevalence of queer pairings—particularly male/male relationships—within Harry Potter fanfiction, despite the absence of explicitly queer characters in J.K. Rowling's original series. This widespread narrative trend suggests that fanfiction communities are not merely recreating source material but are actively reinterpreting its themes, filling representational gaps, and reworking the traditional monomyth structure to better reflect their own experiences and expectations.

In this way, fanfiction can be understood as participating in the creation of new myths—collective, evolving stories that emerge from shared cultural engagement rather than singular authorship. Although copyright law continues to foreground the individual author as the legal originator of a work, this perspective has been challenged by literary theorists. Roland Barthes, in his influential essay *The Death of the Author*, critiques the privileging of the authorial voice and argues that meaning should reside not with the creator, but within the interaction between the text and its readers. According to Barthes, the act of assigning ownership and final meaning to a text limits its interpretive possibilities: “The birth of the reader must be at the cost of the death of the Author.” He contends that the modern concept of authorship—as synonymous with ownership—emerged alongside Western society’s emphasis on the individual, which in turn narrowed the broader cultural and communal nature of storytelling.

Karen Hellekson, writing on fanfiction and participatory culture, builds on this idea by emphasising that fanfiction blurs the line between reader and author. She argues that if the reader is freed from deferring entirely to the original author’s intent, they can become active participants in the development of cultural meaning. This collective approach to narrative creation enhances the richness of public discourse and contributes to the growth of shared knowledge and artistic expression.

One manifestation of this participatory creativity is the phenomenon of “alternate universe” (AU) or “fix-it” fanfiction, wherein fans consciously rework endings, character arcs, or plotlines from canonical works. These acts of narrative reimagination allow fans to assert agency over established texts, especially when they find canonical resolutions unsatisfying, exclusionary, or ethically troubling. Through this process, fan authors reclaim the narrative, forging a new version of myth that better resonates with their values, identities, and emotional truths.

Thus, fanfiction functions not only as commentary or homage but as a dynamic mechanism for communal myth-making. By reshaping stories that once seemed fixed, fan creators expand the narrative universe in ways that reflect shifting cultural norms and collective aspirations. Their works challenge the notion of narrative closure imposed by copyright and authorship, contributing instead to a living archive of reinterpretation—a twenty-first-century mythology authored by many.

5.3 The Intersection of Copyright Law, Myth, and Literary Theory

The preceding sections have explored how fanfiction contributes to the development of modern myths and the collective cultural narrative. The question that now arises is how these communal, transformative contributions align with the structure and objectives of copyright law. Building on the established literary and mythological value of fanfiction, this section further argues that fanfiction is not merely derivative but fundamentally transformative—and that it serves as a critical mechanism for cultural engagement within a legal framework that often prioritises individual ownership.

Copyright law, as articulated in the U.S. Constitution, is intended “to promote the progress of science and useful arts” by granting creators exclusive rights to their works for a limited time. In a society that celebrates individualism, it is perhaps unsurprising that authors are legally recognised as the primary originators of creative works. However, the core aim of copyright is not to protect ownership for its own sake, but to incentivise creative production by assuring authors that their works will not be exploited unfairly by others.

Fanfiction, which is largely non-commercial, occupies a unique middle ground. It does not aim to usurp the original author’s market but to engage with their work intellectually, emotionally, and culturally. Fans who write alternative endings, construct romantic subplots, or reimagine characters are not infringing in the traditional commercial sense; rather, they are responding to the original work in deeply personal ways.

These responses—whether affirmative, critical, or speculative—fall outside the legal and economic rights granted to authors. Copyright protects the expression of the work, not the audience’s reaction to it.

In this context, fanfiction can be viewed as a cultural mechanism for reclaiming and democratising narrative authority. It challenges a copyright system that increasingly allows corporations, rather than communities, to control mythic structures and collective storytelling. Recognising fanfiction as inherently transformative would help strike a balance between the legitimate rights of copyright holders and the cultural need for reinterpretation and myth-making in an evolving society.

One key question is whether fanfiction can be universally considered transformative. In cases where fanfiction closely mirrors the narrative structure and tone of the original, it may reinforce the source text’s influence, implicitly affirming its core values. Yet, even in these instances, fanfiction functions as cultural reinforcement, sustaining the myth in a new context. More frequently, however, fanfiction diverges from the original by altering character arcs, reimagining plot developments, or expanding neglected subplots. These deviations serve as critiques—sometimes implicit, other times overt—of the limitations imposed by the original author or the broader media environment.

Such transformations foster new interpretive perspectives, allowing fan authors to construct personalised voices and alternative narratives. For example, fanfiction has become a platform for exploring identities and relationships that are underrepresented in mainstream literature. Scholar Sonia Katyal, in her analysis of queer representation in fan works, explains that readers can either accept the dominant reading of a text, negotiate it, or challenge it entirely by constructing an oppositional reading. In doing so, they contribute to an ongoing cultural conversation that both critiques and expands the scope of dominant narratives.

Online platforms such as Tumblr, LiveJournal, and Archive of Our Own provide spaces for these reimaginings, enabling users to engage with copyrighted material as part of a wider dialogue about identity, power, and inclusion. This digital participation fosters what may be described as modern myth-making: a collective retelling of cultural stories shaped by diverse voices and perspectives. These stories are not simply derivative—they are a form of literary inhabitation, through which fans rework existing texts to reflect their lived experiences and values.

A powerful example of this inhabitation is the recurring “Mary Sue” trope in fanfiction—an idealised, often autobiographical character inserted into an existing narrative. While frequently criticised for its lack of realism, the Mary Sue character can be understood as a mechanism of narrative self-insertion, particularly for female authors in a media landscape where women are underrepresented among professional writers. Through these characters, women reshape fictional worlds to centre female experiences, allowing for a kind of narrative agency unavailable in mainstream storytelling.

This same transformative logic extends to queer reinterpretations. Gender and queer theory scholar Eve Kosofsky Sedgwick has written extensively about how queer authors use storytelling to surface repressed desires, introduce queer characters into heteronormative spaces, and rewrite cultural scripts. Fanfiction exemplifies this dynamic. For instance, in the Harry Potter fandom, fan-authored “slash” fiction frequently depicts same-sex relationships between characters who are canonically heterosexual. In the absence of LGBTQ+ representation in the original novels, these stories allow for the creation of queer myths—reconfigurations of heroism, love, and identity that challenge dominant norms.

For many young readers, such reinterpretations may offer their first exposure to a gay protagonist. By placing this identity within the familiar and beloved world of Harry Potter, fanfiction lowers the threshold for engagement and understanding, subtly reshaping how readers conceptualise identity and heroism. These shifts

are not merely subtextual; they are deliberate reworkings of the mythic structures embedded in popular culture.

Whether informed by feminist, queer, or intersectional theory, fanfiction always involves a degree of commentary. Even the choice to pair two underdeveloped side characters or to explore an unlikely romantic arc between central figures can be seen as a critical reflection on the limitations of the source material. In this sense, reinterpretation itself constitutes critique.

Ultimately, fanfiction's transformative power lies not only in its legal defensibility but in its cultural function. It enables readers and writers—particularly those from marginalised backgrounds—to participate in myth-making, to centre their identities, and to reshape dominant narratives in ways that reflect their own truths. This participatory process enriches literature, fosters inclusivity, and aligns with the broader goals of copyright law: to promote creativity, diversity, and the advancement of knowledge.

5.4 Defending the Universality of Transformative Fanfiction: Addressing Counter Arguments

While this study argues for the recognition of fanfiction as a transformative and culturally significant form of expression, several objections are frequently raised to contest its legal and literary legitimacy. This section responds to three common counterarguments: (1) that fanfiction lacks literary merit and is therefore not sufficiently transformative; (2) that fan authors should seek permission from the original creators; and (3) that authors possess a moral right to control the portrayal of their characters. Each objection is examined and refuted in turn.

A frequently cited criticism is that much of fanfiction is poorly written and lacks the literary value required to be considered transformative. However, this argument fundamentally misunderstands the legal framework of copyright. The standard of quality is not, and has never been, a criterion for determining whether a work qualifies as fair use or is transformative under U.S. law. In *Campbell v. Acuff-Rose Music*, the U.S. Supreme Court explicitly rejected the notion that courts should evaluate the artistic merit of a work when considering a fair-use defence. The case involved a sexually explicit parody of Roy Orbison's "Oh, Pretty Woman" by the rap group 2 Live Crew. The Court held that even vulgar or commercially unpopular expressions may be transformative, and that it would be "dangerous" for judges trained in law—not art or literature—to serve as final arbiters of a work's value. Quoting Justice Holmes, the Court emphasized that public taste often evolves to appreciate works initially dismissed as obscure or offensive.

Fanfiction, regardless of its quality, often reinterprets source texts by offering new perspectives, exploring untold stories, or challenging implicit norms. These acts of reinterpretation constitute commentary, which lies at the heart of transformative use. Moreover, the value of fanfiction lies in its accessibility—it enables creators of varying skill levels and backgrounds to participate in cultural discourse, thereby expanding the diversity of voices in literary spaces. To dismiss such work on the basis of its polish is to overlook its function as a democratic literary form.

Another common objection is that fan authors should seek permission from copyright holders before producing derivative works. While this argument may appear reasonable, it is fundamentally incompatible with the legal principles underlying fair use. The fair-use doctrine exists precisely to allow certain uses that a copyright holder may not authorize, particularly in the realm of criticism, commentary, and non-commercial adaptation. If permission were a prerequisite for fair use, the doctrine would be rendered meaningless.

Fanfiction often exists outside traditional publishing frameworks and does not seek to compete economically with the original. Courts have long recognised that the fair-use doctrine serves to promote public discourse and creativity, particularly where the use is non-commercial and transformative. While some

authors issue cease-and-desist letters to remove fanfiction based on their work, such legal threats—though often effective—do not necessarily reflect enforceable copyright claims. Internet service providers and hosting platforms may comply out of caution, but doing so perpetuates a misunderstanding of the balance copyright law is meant to achieve between private ownership and public expression.

Copyright is not absolute, nor does it entitle creators to veto cultural engagement with their works. Expecting fans to obtain prior approval undermines the very freedoms that fair use was designed to protect and imposes a chilling effect on speech, creativity, and public participation in the evolution of cultural meaning.

A third and more philosophically grounded argument is that fanfiction infringes upon an author's moral rights—the right to preserve the integrity of their characters and protect them from distortion. While moral rights are recognised in various jurisdictions (especially in European legal systems), the United States does not afford them the same weight, particularly in relation to transformative, non-commercial reinterpretation.

Legal scholar Stacey Lantagne has observed that the moral rights argument mirrors, in structure, the rationale for protecting transformative works. The same concern—respect for artistic integrity—is used both to object to and to justify transformative reinterpretation. The critical distinction is that copyright law, as it currently stands in the United States, prioritises the public benefit of commentary, critique, and adaptation over the creator's personal attachment to their characters. To allow authors to block fanfiction on the grounds that it alters their characters would be to erase the legal recognition that transformation adds to public knowledge.

Importantly, if every literary creation were to remain forever under the exclusive narrative control of its original author, much of what we now consider classic literature and film would not exist. Numerous beloved stories are themselves adaptations, reinterpretations, or continuations of earlier works—from Shakespeare's borrowing of myth and folklore to modern retellings in cinema and literature.

In conclusion, while objections to the transformative nature of fanfiction often stem from concerns about quality, consent, or authorial control, these arguments fall short under legal scrutiny and literary theory alike. Copyright law, particularly through the fair-use doctrine, acknowledges the importance of enabling non-commercial cultural reappropriation. Fanfiction reflects this principle in action, allowing the public to respond to, challenge, and expand upon existing works in ways that enrich both literary discourse and cultural identity.

CHAPTER-6: LEGAL STANDING OF FANFICTION IN INDIA: CURRENT STATUS AND STRATEGIES FOR EFFECTIVE MANAGEMENT

In recent years, fanfiction has emerged as a widespread form of artistic expression, allowing enthusiasts to craft stories inspired by established fictional universes. As its popularity continues to grow, the legal status of fanfiction in India remains ambiguous and under-explored. This section examines the relevant legal framework, including copyright law, potential liabilities, the applicability of fair dealing, and the challenges faced by creators in the Indian context.

The governing statute in India is the Copyright Act, 1957, which grants copyright holders exclusive rights to reproduce, adapt, distribute, and publicly display their works. However, the Act does not contain explicit provisions addressing fanfiction. As a result, works that draw upon existing characters, settings, and plots—core components of most fanfiction—risk being classified as derivative and potentially infringing upon the rights of the original copyright holder.

The absence of specific legal provisions governing fanfiction under Indian copyright law creates substantial uncertainty. The Act does not clearly distinguish between commercial and non-commercial uses of copyrighted material, nor does it account for the transformative nature of many fan-generated works. Consequently, determining whether fanfiction constitutes fair dealing or copyright infringement is left open to interpretation.

Indian courts have attempted to clarify some aspects of derivative works and copyright through case law. For instance, Indian jurisprudence recognises that the copyright protection of a “substantial part” of a work need not rely on a purely quantitative assessment. The Delhi High Court, in its interpretation, has stressed that “substantial” refers to the qualitative essence of a work rather than its sheer volume. This principle has implications for character protection, suggesting that sufficiently distinctive fictional characters could be considered protectable even in the absence of specific legal precedent.

To assess infringement, courts have relied on the “lay observer test”, which considers whether an ordinary person would be confused by the similarities between two works. In a notable decision, the Delhi High Court found copyright infringement based on similarities in characters’ names, physical features, and personalities—elements deemed sufficient to mislead an average viewer.

The response of copyright owners to fanfiction in India and globally varies widely. Some authors and publishers view fanfiction as a valuable tool for fan engagement and free publicity, while others see it as a violation of intellectual property rights. In practice, some rights holders tolerate or even encourage fanfiction under certain conditions, while others issue guidelines, licensing terms, or cease-and-desist notices.

This divergence reflects the lack of legal clarity and the absence of industry-wide norms. In the absence of direct legal intervention, many fanfiction communities operate under informal codes of conduct—disclaiming commercial intent and giving credit to original authors—as a way of avoiding legal entanglements.

The doctrine of fair dealing under the Indian Copyright Act provides limited exceptions for the use of copyrighted content, such as for criticism, review, research, or education. While fanfiction is not explicitly covered under these categories, it may potentially qualify as fair dealing if it can be shown to be transformative—that is, if it adds new expression, meaning, or insights to the original work.

Indian case law provides some useful reference points. In *R.G. Anand v. Deluxe Films* (1978), the Supreme Court held that a derivative work could be permissible if it significantly altered the original and

introduced fresh perspectives. Similarly, in *Super Cassettes Industries Ltd. v. Hamar Television Network Pvt. Ltd.* (2009), the Delhi High Court ruled that parody or satire could fall under fair dealing, provided it did not adversely affect the commercial market for the original.

In *The Chancellor, Masters and Scholars of the University of Oxford v. Rameshwari Photocopy Services* (2016), the Delhi High Court emphasised the importance of access to copyrighted materials for non-commercial and educational use. Although this case concerned photocopying academic materials, the Court's recognition of transformative and non-commercial uses as permissible under fair dealing may have implications for the treatment of fanfiction.

Despite these examples, the legal status of fanfiction remains unsettled in India. Fan creators face the risk of copyright infringement claims, particularly when their work involves substantial borrowing from protected material. To reduce this risk, content creators may adopt a number of strategies:

- **Seek Permission:** While not legally required under fair dealing, obtaining permission from the rights holder may offer added protection.
- **Issue Disclaimers:** Clearly stating that a work is fan-made and non-commercial can help establish the creator's intent.
- **Follow Community Guidelines:** Adhering to platform rules and fan community standards can demonstrate good faith and minimise conflict.
- **Use Creative Commons Licences:** These licences allow creators to specify how others may use their work. Fanfiction authors can also use such licences to clarify the terms of their own contributions.

Fanfiction platforms also play a key role in promoting compliance with copyright norms. By offering spaces dedicated to user-generated content, and enforcing content policies that emphasise non-commercial use and respect for copyright, these platforms act as important intermediaries between creators and rights holders.

While Indian copyright law does not explicitly address fanfiction, existing legal principles on derivative works, fair dealing, and transformative use offer potential pathways for its defence. Case law suggests that if a fan work sufficiently alters the original and serves a non-commercial or critical function, it may fall within the scope of fair dealing. However, legal ambiguity persists. Until specific legislative or judicial clarification is provided, fanfiction in India will continue to occupy a legal grey area—one where artistic freedom, community norms, and legal caution must coexist.

6.1 Approaches That Can Offer Useful Insights for India

Comparative legal models offer valuable insights into how India might address the current legal ambiguity surrounding fanfiction. Various jurisdictions have adopted different approaches to balance the rights of copyright holders with the cultural and creative interests of fan communities. The experiences of countries such as the United States, Japan, Canada, South Korea, and Australia provide potential frameworks that India can adapt to its own legal, cultural, and technological context.

The United States offers perhaps the most expansive protection for transformative works under its fair-use doctrine, codified in Section 107 of the Copyright Act. U.S. courts employ a four-factor test to assess fair use, examining (1) the purpose and character of the use, (2) the nature of the copyrighted work, (3) the

amount and substantiality of the portion used, and (4) the effect of the use upon the potential market. This flexible and case-specific framework has enabled courts to treat many forms of fanfiction as lawful when they are non-commercial and transformative in nature. This model may serve as a reference point for India to develop clear guidelines for user-generated content that respects both the creativity of fan authors and the rights of copyright holders.

Japan provides an illustrative example of how a collaborative ecosystem can support derivative fan works. The production and distribution of *dōjinshi*—fan-made manga, novels, and other media based on existing intellectual property—are widely accepted in Japanese culture. While these works technically infringe copyright, many rights holders adopt a tolerant stance due to the promotional value of such fan labour. Events such as Comiket formalise this tolerance through semi-regulated markets that allow for the sale and circulation of derivative works under set conditions. This model highlights the benefits of structured licensing frameworks that permit fan creativity while maintaining copyright control. India could explore similar licensing solutions to foster legal clarity and support fan communities.

Canada's copyright system incorporates a fair-dealing regime that allows for the use of copyrighted content for research, private study, criticism, review, education, parody, and satire. Canadian courts have interpreted fair-dealing expansively, particularly following the landmark *CCH Canadian Ltd. v. Law Society of Upper Canada* decision, which affirmed users' rights as a key part of the copyright system. India could draw on Canada's adaptable fair-dealing model to introduce exemptions that explicitly recognise the transformative and non-commercial nature of fanfiction, thus providing clearer protection for fan creators.

South Korea offers a technology-driven solution through its webtoon platforms, which host digital comics and serialized narratives, often inspired by existing intellectual property. These platforms frequently collaborate with copyright holders through licensing agreements that regulate the creation and dissemination of derivative works. This platform-based model provides legal certainty to creators and ensures that copyright owners are compensated or acknowledged. India could similarly explore platform-led mechanisms that formalise fan contributions under transparent licensing agreements, balancing innovation with legal safeguards.

Australia's copyright legislation includes a specific fair-dealing exception for parody and satire, allowing creators to use copyrighted material in a humorous or critical context without infringing on rights. This recognition of creative reinterpretation aligns with the legal arguments in support of transformative fanfiction. India may consider adopting similar statutory language to offer protection to fan works that fall under parody, satire, or broader categories of transformative expression.

Each of these international approaches operates within a unique cultural and legal context. Therefore, any attempt to adapt these models in India must be carefully calibrated to reflect the country's distinct legal traditions, market structures, and creative ecosystems. A successful framework in India must strike a balance—protecting the legitimate interests of copyright holders while enabling fan creators to participate meaningfully in cultural production. This will not only reduce legal uncertainty but also encourage innovation, expression, and a participatory literary culture in the digital age.

6.2 Measures to Tackle the Legal Implications Surrounding Fanfiction in India

To address the current legal uncertainty surrounding fanfiction in India, a comprehensive, multi-pronged strategy is required. This strategy must balance the rights of copyright holders with the interests of fan creators, recognising the cultural and creative significance of fan works in the digital era.

A foundational step would be the amendment of the Indian Copyright Act, 1957 to explicitly address fanfiction and other derivative works. Such a reform should incorporate provisions that acknowledge the transformative, non-commercial, and limited nature of many fan creations. Introducing statutory exemptions or specific guidelines for user-generated content would enhance legal clarity and ensure better protection for creators engaging in fan-based storytelling.

Effective reform must be driven by inclusive stakeholder participation. This includes collaboration among copyright holders, fan communities, legal practitioners, scholars, and policy-makers. Mechanisms such as roundtable discussions, public consultations, and expert forums can facilitate a balanced dialogue, ensuring that legal frameworks address the legitimate concerns of rights holders while protecting the expressive freedoms of fan creators. The process can ultimately lead to the creation of equitable, context-sensitive policies.

India would benefit from developing clear and detailed fair-use or fair-dealing guidelines specifically for fanfiction. These guidelines should provide a framework for assessing the legality of fan works based on criteria such as:

- The transformative purpose of the fan work;
- Its non-commercial nature;
- The extent and substance of borrowed content; and
- The economic impact on the market for the original work.

Such a framework would serve as a reference point for creators, platforms, and courts in evaluating the legitimacy of fan works, reducing ambiguity and risk.

Awareness campaigns, workshops, and training programmes can play a crucial role in educating both fan creators and copyright holders about the legal boundaries and opportunities within India's copyright regime. These initiatives can encourage responsible creation, increase respect for intellectual property rights, and promote compliance with fair-use principles, all while supporting a thriving culture of creative reinterpretation.

The establishment of dedicated platforms or licensing frameworks for fanfiction can create a supportive and legally compliant space for fan creators. These platforms can collaborate with copyright owners to define clear terms of use, permissions, and licensing arrangements for derivative works. Such structures would empower fan authors to publish their work legally and transparently while offering rights holders mechanisms to monitor and engage with fan content.

A sustained commitment to empirical research is essential to inform policy. This includes studying the cultural significance, economic impact, and creative value of fanfiction in India. Such research can provide data-driven insights for lawmakers, copyright owners, and judicial bodies, helping them assess the broader implications of fan works and frame evidence-based policies.

India can benefit from international dialogue and knowledge exchange, learning from jurisdictions such as the United States, Japan, and Canada that have developed more defined approaches to user-generated content. Through bilateral and multilateral engagement, India can adopt best practices, contribute to global discourse on copyright reform, and work toward greater harmonisation of copyright protections for transformative and fan-driven works.

By pursuing this integrated approach, India has the opportunity to establish a balanced and forward-looking legal framework that recognises the legitimacy of fanfiction as a cultural and creative force, while also protecting the economic and moral rights of original creators. Legal reform, stakeholder dialogue, education, empirical study, and international cooperation together form a viable roadmap for navigating the complex intersection of copyright law and participatory creativity.



CHAPTER-7: CONCLUSION AND SUGGESTIONS

Fanfiction is a genre of literature that exhibits innovation and has not yet achieved widespread recognition. However, it retains its importance in the examination of fandom and literature, owing to its substantial contributions to the online community and its influence on the publishing industry. Fanfiction, due to its diverse reception in the field of literature, will continue to endure as a substantial influence, providing inspiration for avid fans, fandoms, and communities on a global scale. The enduring appeal of (subject) can be attributed to its ability to redefine boundaries, challenge established conventions, and prioritize originality, creativity, and the admiration it receives from devoted supporters. Irrespective of an individual's degree of familiarity with fanfiction, it is noteworthy that the fanfiction community exhibits inclusivity by extending a warm reception to individuals from diverse fandom backgrounds, on the condition that they are open to embracing and valuing this modern form of literary expression.

As fanfiction becomes more widespread, tensions between fan communities and copyright holders are expected to grow. It's crucial for fans to understand their legal rights—not just to defend themselves if legal action arises, but to avoid it altogether. At the same time, copyright holders must carefully weigh their priorities. Going after loyal fans, especially those active in fanfiction, without strong justification can appear shortsighted and counterproductive.

This is especially true when fanfiction causes no financial harm and where inaction poses no legal risk. Characters and settings often carry more emotional and cultural weight than plotlines. Brands and fictional figures can influence consumer behavior, provide comfort, and become meaningful companions in difficult times. Characters like Bugs Bunny or Luke Skywalker are so deeply embedded in popular culture that fans often view them as more than just fictional—they feel real. That emotional connection is often what drives people to write fanfiction in the first place.

Because of this, the commercial value of characters and worlds may outweigh that of plot structures, highlighting why they hold such importance in both fan and corporate spaces.

To reach a state where characters and settings are recognized as distinct creative elements worthy of protection, the original creator must have made meaningful artistic choices. In such cases, as seen in legal precedents like **Infopaq**, characters deserve legal recognition separate from plot or other structural elements.

One of the main challenges for copyright law in the digital age is its ability to manage social production—creative works made by fans, not corporations. A major issue is the legal gray area surrounding ownership of characters and settings. This ambiguity often benefits those with the financial means to navigate or manipulate legal interpretations, allowing copyright holders or licensees to assert control over elements that arguably belong in the public domain. As a result, access to these creative elements becomes restricted, even though they might ideally be shared resources.

Under UK copyright law, it's unlikely that fanfiction violates the right to adapt under Section 21 of the Copyright, Designs and Patents Act (CDPA). However, it is much more likely to infringe the right to reproduce, under Section 17. Therefore, if a fanfiction writer wishes to distribute their work—even without making money—they must either qualify for an exemption or obtain a license. This licensing process is important to many original authors, not just for financial reasons, but also due to emotional or reputational concerns. Many authors are reluctant to embrace user-generated content (UGC) in their creative spaces, driven more by personal attachment than purely by economic interests.

These concerns fall under the category of moral rights, as defined in Sections 77–80 of the CDPA. Yet, moral rights are often given less weight in court and are poorly protected in the U.S., where economic rights tend to dominate. This limited recognition of moral rights helps explain why authors often lean on economic arguments when contesting UGC.

In the U.S., the broader definition of derivative works makes it easier for authors to argue that fanfiction infringes both reproduction and adaptation rights. In contrast, UGC in the UK—while still likely infringing the reproduction right—is less likely to breach the narrower adaptation right.

Disclaimers, common in fan works, may reduce the chance of violating moral rights such as integrity or attribution, especially as courts tend to apply these rights cautiously. Given this landscape, the strongest legal route for authors to challenge fanfiction is through the reproduction right under Section 17, which covers the core action involved in creating fanfiction.

This legal perspective clarifies how fanfiction, even if non-commercial, often constitutes a technical breach of copyright in both the UK and the U.S. It also highlights how digital-age copyright law must grapple with the blurred lines between infringement and creative reuse. Many fanfiction works do infringe on reproduction rights, but some may qualify as fair use or fair dealing—especially when framed as criticism, commentary, or parody.

Fanfiction and similar derivative works can bring significant cultural and social value. Legal frameworks like fair dealing (UK and Canada) and fair use (U.S.) allow for a balanced consideration of these benefits. The existence of such provisions is vital to preserving freedom of expression and enabling meaningful reinterpretations of popular works.

Fanfiction also serves important functions: it gives underrepresented perspectives a platform, fosters critical discussion in digital communities, and helps new writers develop their craft. Copyright reform that supports non-commercial, transformative uses—like fanfiction—would protect these benefits.

Canada has recently taken promising steps in this direction. By expanding fair dealing to include parody, satire, and non-commercial UGC, Canadian law has created more room for fan creators. Though the long-term effects of these changes remain to be seen, the combination of legal reform and a permissive judicial approach suggests a more supportive environment for future fanfiction authors.

The addition of a specific exemption for non-commercial UGC is particularly promising. It offers creators a clearer path forward without depending entirely on case-by-case fair dealing defenses. In this context, Canada is emerging as a model for how copyright law can evolve to better accommodate transformative, non-commercial digital creativity.

Fanfiction, by its nature, is transformative and should qualify for protection under fair use in copyright disputes. It serves as a key avenue for public participation in the collaborative storytelling of popular narratives, effectively contributing to the creation of modern mythology. Fiction has long drawn on ancient stories and archetypes, and reinterpreting these themes in new contexts keeps them relevant for contemporary audiences.

Online platforms allow fans to reshape their favorite stories to match personal perspectives—altering timelines, exploring alternate outcomes, or placing familiar characters in new situations. These reimaginings often reflect a critical engagement with the original work, whether through the preservation or reworking of

its core elements. Labeling fanfiction as inherently transformative strikes a balance between protecting the rights of original creators and fostering cultural growth through public reinterpretation of existing works.

This article also examines the legal standing of fanfiction in India, where the Copyright Act of 1957 offers no clear guidance on the issue. This legal gap creates uncertainty for fan creators and complicates how fanfiction is treated under the law. The study explores the legal risks fanfiction writers face, the contrasting views held by copyright owners, and how doctrines like fair dealing and transformative use could offer protection.

Strategies to reduce legal risk include seeking explicit permission from rights holders and using Creative Commons licenses where possible. The article also advocates for changes to Indian copyright law that would recognize fanfiction's unique role and provide clarity and protection for its creators.

To develop an effective legal framework for fanfiction, key steps include engaging stakeholders, launching educational initiatives, building collaborative platforms, and relying on empirical research. The piece argues that India is well-positioned to build a balanced system—one that respects copyright while also embracing the creativity and cultural value of fanfiction.

7.1 Key Findings

1. Cultural Value of Fanfiction

Fanfiction plays a major role in understanding fandom and literature, with a strong impact on online communities and notable influence on the publishing industry. It thrives because it promotes inclusivity, creativity, and recognition of alternative literary voices.

2. Tension Between Fans and Copyright Holders

As fanfiction grows in popularity, conflicts between fan communities and copyright holders have intensified. Navigating this tension requires a clear understanding of the legal rights of both parties to maintain a balance between creative freedom and copyright protection.

3. Commercial Power of Characters and Worlds

Characters and settings from popular works often hold more commercial value than the original narratives themselves. Fanfiction writers and readers form emotional connections with these elements, which drive both engagement and creative output.

4. Legal Ambiguity and Unequal Access

Unclear legal protections for characters and settings create ambiguity that often favors those with greater legal resources. This results in the privatization of cultural elements that could otherwise be shared more broadly.

5. Differences Across Legal Systems

Approaches to copyright infringement and moral rights vary by jurisdiction. For example, the UK and US interpret the legal status of fanfiction differently, especially regarding economic versus moral rights.

6. Fair Dealing and Freedom of Expression

Fanfiction often falls within fair-dealing exceptions for research, criticism, or parody. These legal allowances reinforce the importance of protecting freedom of expression, even when derivative works are involved.

7. Progressive Reforms in Canada

Recent changes to Canada's Copyright Act reflect a more inclusive approach to fanfiction, offering legal clarity and opportunities for fan creators. These reforms are a positive sign for future generations of fanfiction writers.

7.2 Suggestions

The legal status of fanfiction remains ambiguous across many jurisdictions, frequently resulting in friction between fan communities and copyright holders. A coherent legal framework for fanfiction requires a balanced approach—one that recognises the inherently transformative nature of fan-created works, safeguards copyright interests, and promotes creativity within participatory cultural communities.

The following recommendations outline a structured approach that policymakers may adopt to create a supportive legal environment for fanfiction authors, while also preserving the legitimate rights of original content creators. These proposals aim to both protect artistic expression and contribute to the development of a vibrant and diverse literary culture.

1. **Recognise the Transformative Nature of Fanfiction:** Fanfiction should be formally acknowledged as a legitimate and transformative form of creative expression. By reinterpreting and expanding on established narratives, fan works contribute to cultural dialogue and literary diversity. Legal frameworks should reflect this recognition, thereby shielding fan creators from unwarranted legal action.
2. **Establish Clear Fair-Use/Fair-Dealing Guidelines:** There is a pressing need for explicit fair-use or fair-dealing provisions tailored to the context of fanfiction. These should consider factors such as transformation, non-commercial intent, and minimal market impact on the original work. Clear guidelines will assist creators in understanding the legal boundaries within which they can operate and reduce uncertainty in the application of the law.
3. **Encourage Voluntary Licensing Mechanisms:** To foster collaboration between fan authors and copyright holders, voluntary licensing programs should be promoted. These schemes would allow fan creators to legally license original works for derivative use. Priority should be given to making the licensing process accessible, affordable, and easy to navigate, encouraging lawful and constructive engagement.
4. **Implement Safe Harbor Protections for Hosting Platforms:** Legal protection should be extended to platforms that host fanfiction, provided they comply with takedown procedures and prevent monetisation of infringing content. Safe harbor provisions can help support the sustainability of fanfiction communities while balancing the enforcement of intellectual property rights.
5. **Support Collaborative Platforms and Creative Communities:** Investment in platforms that facilitate collaboration, critique, and sharing within fanfiction communities should be encouraged. Such platforms can promote responsible authorship, provide educational tools, and offer a space for writers

to hone their skills, engage with peers, and participate in legal and cultural discourse.

6. **Enhance Legal Literacy Among Fan Creators:** Creators should be provided with comprehensive educational resources on copyright, fair-use, and their legal responsibilities. Workshops, guides, and outreach programs can equip fan authors with the tools to make informed decisions, reducing the risk of unintentional infringement and encouraging compliance with legal standards.
7. **Promote Empirical Research on Fanfiction:** Rigorous academic study of the cultural, social, and economic dimensions of fanfiction should be supported. Empirical findings can inform legal and policy decisions, helping legislators and rights holders understand the motivations and needs of fan communities. Such research can also guide the formulation of fair and evidence-based regulations.
8. **Foster International Dialogue and Legal Harmonisation:** Cross-border cooperation between governments, copyright holders, and fan communities is essential for addressing the global nature of fanfiction. International dialogue can facilitate the exchange of best practices, reduce legal inconsistencies, and create a more unified global understanding of fan-generated content.

By adopting these recommendations, policymakers can take meaningful steps toward a legal framework that respects both the rights of original creators and the cultural value of fan communities. This dual recognition will foster an inclusive and sustainable environment for literary innovation and participatory creativity



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