

**50 Shades of Copyright Law**

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### Abstract

Fanfiction is one of the easiest ways for fans of a work to show their appreciation. Writers can use characters, settings, and even plotlines from the source material to build off of an existing story or create an entirely new one. In recent years, however, the legality of fanfiction has come into question as some writers begin to leave the safety of the internet and publish their work commercially. Copyright law and fair use provide writers with a degree of legal support, but oftentimes these statutes condemn the actions of fanfiction writers. Despite this, writers continue to create fan-works as homage to the source material they love.

*Keywords:* Fanfiction, fanfic, fandom, DMCA, Digital Millennium Copyright Act, Copyright Law of the United States, Copyright, fair use

### 50 Shades of Copyright Law

The current record holder for the longest English written work of fiction is a work of fanfiction. ‘*The Loud House: Revamped*,’ based off the 2016 Nickelodeon series ‘*The Loud House*,’ is comprised of 1388 chapters and features a combined word count of 9,507,359 words as of April 2021 (Jamesdean5842, 2017). For context, the seven original *Harry Potter* books span 1,084,170 words – a mere 11.4% of ‘*The Loud House: Revamped*’s awe-some breadth. This is only one of several fan-works with word counts in the millions; some have even grown so popular that they became official publications. This spike in popularity and potential for monetary gain lead to one crucial question – just how legal is fanfiction?

### Background

In order to understand fanfiction, it is important to first understand fandom. The Cambridge Dictionary defines ‘fandom’ as a “group of fans of someone or something, especially very enthusiastic ones,” (Cambridge Dictionary, n.d.). By this definition, anything from sports teams to religion can be considered ‘fandom.’ More often than not, however, the term is used to refer to fans of a book series, videogame, TV show, music group, or film.

Fanfiction can be defined as, “...stories produced by fans based on plot lines and characters from either a single source text or else a “canon” of works,” (Thomas, 2011).

Fanfiction – or ‘fanfic’ as it is colloquially known – has skyrocketed in popularity since the term was first used by science fiction fans in the 1920’s and 30’s (Thomas, 2011). Fanfiction provides young or inexperienced writers with a jumping off point to practice their craft. With pre-existing characters and universes, they can focus more on honing their writing skills. Online forums like Archive of Our Own, Wattpad, and Fanfiction.net have provided aspiring authors with a platform to archive their fanfiction, allowing for ease of access and maximizing audience engagement.

## Fair Use and Copyright Law

The Digital Millennium Copyright Act, or DMCA, has made the creation and archiving of fan works more difficult. Signed into law in 1998, the act aimed to combat online copyright infringement while the internet was still in its infancy. Because online activity is difficult to police, the act places the responsibility on online service providers to remove or block infringing material (US Copyright Office, 1998).

This is not to say that fanfiction writers have no legal fallback. Section 107 of U.S. Copyright Law outlines ‘fair use,’ which allows for the use of copyrighted works for such purposes as criticism, commentary, research, and education (US Copyright Office, 2020). The limitations of ‘fair use’ vary depending on the type of work, how much of the copyrighted work is being used, the effect the use would have on the market value of the copyrighted work, and, most notably, the purpose of its use.

When ‘*Fifty Shades of Grey*’ was first published, few people knew that it had originally been released as a ‘Twilight’ fanfiction. Author E. L. James only needed to replace the character and location names before building her empire. Just three years later, Anna Todd would follow in James’s footsteps by publishing ‘*After*,’ originally a ‘One Direction’ fanfiction (imaginat0r1D, 2013). While the work of E. L. James appealed to older audiences, *After*’s publication and subsequent movie deal captured the imaginations of young writers. Wattpad, the fanfiction forum where *After* was originally published, capitalized on this success by advertising its platform more toward writers who wish to see their work adapted for the screen (Wattpad, 2006).

## Case Law

Many publishers acknowledge that fanfiction represents positive fan interaction with the source material, so they turn a blind eye to the legal grey area. Organizations like the

Organization for Transformative Works strive to provide legal advocacy to writers in the event that they are targeted (Organization for Transformative Works, 2020). Nonetheless, several notable cases have cropped up over the years regarding fanfiction and copyright.

Fanfiction authors are at risk not only of facing legal action by much more powerful entities, but also of having their work stolen, given that they cannot copyright it themselves. This situation played out in 1989, when a fan of the *Rocky* franchise wrote a treatment for ‘*Rocky VI*,’ which had yet to be conceptualized at the time. The fan, Timothy Anderson, presented the treatment to MGM under the impression that he would be paid for his contribution to the film, which was released without crediting his ideas in 1985 (*Anderson v. Stallone*, 1989). The court ultimately ruled that, because it involved characters from the previous films, the treatment itself was an ‘unauthorized derivative work’ and so was not entitled to protection (*Anderson v. Stallone*, 1989).

There have also been cases in which the fanfiction author emerged victorious. The 2001 case of *SunTrust v. Houghton Mifflin Co.* resulted from a published parody of ‘*Gone with the Wind*.’ This parody, ‘*The Wind Done Gone*,’ followed the same storyline as its predecessor, but from the perspective of one of Scarlett O’Hara’s slaves. In this case, the court ruled in favor of Houghton Mifflin, surmising that “[*The Wind Done Gone*] is principally and purposefully a critical statement that seeks to rebut and destroy the perspective, judgments, and mythology of *GWTW*, ” (*SunTrust v. Houghton Mifflin Co*, 2001) and thus is protected under fair use.

The 2010 case of *Salinger v. Colting* resulted in a different ruling. The defendant, Fredrik Colting, had published an unauthorized sequel to J.D. Salinger’s “*The Catcher in The Rye*,” resulting in a lawsuit. In this case, the court ruled that Colting’s novel was not protected by fair use, as it was derivative of Salinger’s novel (*Salinger v. Colting*, 2001).

*Conclusion.*

Is fanfiction legal? Given that it is a derivative medium by nature, technically it is not, as it infringes on copyright. Fair use extends to works that comment on or critique the source material, and most fanfiction does not fit that criteria. Most fanfiction writers avoid lawsuit by keeping their works in online archives where they gain no commercial value. Those authors who do decide to publish their fanfiction are forced to change any copyrighted details to avoid legal repercussions. In the end, however, most original creators support fanfiction as one of the major pillars of fandom.

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