



## Between Fandom and Copyright: Navigating the Maze of Fan Fiction Commercialization

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Fanfiction is a creative narrative set in an amateur capacity by fans featuring characters and settings of popular novels, TV series, movies, games or even podcasts. However, this form of creative expression by fan communities have transformed by a hobby to a thriving subculture with commercial potential owing to the rise of digital platforms like Wattpad. This research examines the intricate relationship between fanfiction and copyright law. It focuses on key aspects such as fair use, transformative works, and potential copyright infringement while assessing how copyright principles may be applied to fan-created content. This paper evaluates a fanfiction through a legal lens of the four factor test which includes purpose, nature, the amount of copyrighted work used, and the market impact. The findings indicate that while fanfiction often qualifies for the “fair use” exception, its derivative nature conflicts with the exclusive rights awarded to the original author by the law, raising legal as well as ethical concerns. This research proposes an adaptive framework suggesting clearer guidelines that could offer a balanced approach that addresses copyright of original creators and fan communities driving digital creative innovations/ practices in contemporary media.

**Keywords:** Copyright Law, Fair Use, Fan Creativity, Fanfiction, Four-Factor Test, Infringement

Human creativity manifests itself through a diverse range of artistic expressions, such as the masterful brushstrokes of a painter or the captivating melodies of a musician. Shakespeare’s immortal plays, Illayaraja’s soul-stirring songs, Leonardo Da Vinci’s eternal masterpieces, or the engrossing stories made by filmmakers like Mani Ratnam are just a few examples of creations that transcend time and place to become legendary cultural treasures.<sup>1</sup> However, even the most innovative and unique artistic creations are no exception from being influenced by other pre-existing sources.

Artists often derive inspiration from a rich tapestry of human experiences and the vast repertoire diverse of artistic works, which significantly contribute to the creation of their own distinctive works of art. Such as Pink Floyd’s album *The Wall* was partially inspired by George Orwell’s novel *1984*, blending dystopian themes with the struggles of isolation and control or Mussorgsky’s *Pictures at an Exhibition* was directly inspired by the artworks of Viktor Hartmann, with each musical piece representing a different painting. It is evident that due to the interconnected nature of creativity, timeless works of art serve as muses for new artistic expressions.

Creativity, in its multifaceted forms, not only inspires new works but also leads to the emergence of

collaborative and participatory cultures. One such culture, known as “fandom,” thrives by reshaping and expanding upon the artistic foundations of beloved works. Fandom refers to a realm wherein passionate fans go beyond simply consuming professional creations by crafting their own narratives and interpretations thereby transforming their admiration and unique perspectives into original expressions inspired by existing art.

These interpretations that are imbued with inspiration manifest in diverse forms, encompassing fascinating visual artwork, mesmerising audiovisual presentations, thought-provoking short films, and inventive narrative writings. These creations are collectively known as “fanart” (visual depictions of fandom elements such as illustrations or comic strips) and “fan videos” (videos integrating content from the original material).<sup>2</sup> When fans use their imagination to create original works of fiction that are inspired by their favourite franchises, one ventures the enthralling world of “fanfiction.”

Fanfiction is a literary genre where fiction is written in an amateur capacity by fans involving popular fictional characters. It arises from an abundance of love and steadfast dedication towards a certain fandom. The motivation to write a fanfiction does not stem from a desire for monetary profit, but

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rather, it flourishes in synergy with the original sources that serve as its source of inspiration.

Fanfiction authors typically work under the assumption that their audience possesses a comprehensive understanding of the original content, hence allowing them the liberty to delve into alternate perspectives, unexplored storylines, or adventurous fictitious scenarios. It originates from a vast range of source materials, such as movies, TV series, novels, anime, and music bands, which in turn attracts a global and multicultural community of writers. The domain of fanfiction provides an enormous space for storytelling, whereby the confines of creativity are thoroughly explored. Authors have the ability to make nuanced modifications to the storyline, reconfigure the results of crucial plot twists, address chronological gaps in the story's progression, or provide readers novel perspectives by recounting events from the standpoint of supporting characters. The potentialities are as limitless as the faculty of imagination.

While fanfiction serves as a vibrant testament to the transformative power of fandom, it often operates within a legal gray area, presenting a collision between the rights of original creators and the freedoms of fan communities. The reliance of fanfiction on copyrighted works introduces complex legal and ethical dilemmas about originality, derivative use, fair use doctrines, copyright's role in protecting original content, the boundaries of creativity, ownership, and authorship.

Indian copyright law, under Section 14 of the Copyright Act, 1957, grants exclusive rights to authors over their works, including the right to authorize adaptations, which directly places fanfiction into a precarious position as a potential infringement. However, India lacks specific provisions for transformative use or exceptions akin to the fair use doctrine in the United States, which often provides fanfiction writers some degree of leeway by interpreting such works as transformative, non-commercial contributions to creative culture. Globally, jurisdictions vary in their approach, with some embracing broader interpretations of creativity and others imposing stringent restrictions, leading to inconsistent legal safeguards for fanfiction creators.

The research gap lies in the limited discourse addressing the interplay between copyright protection and transformative creativity in Indian law. While global interpretations extensively debates the fair use doctrine, moral rights, and the balance between

protection and innovation, Indian interpretations has not adequately examined how fanfiction could be accommodated within its copyright framework without undermining the rights of original creators. Additionally, the absence of judicial precedents on fanfiction in India highlights the uncertainty for both fan creators and rights holders.

The proliferation of fanfiction underscores the tension between the strictures of copyright law and the evolving nature of participatory culture, calling for a nuanced analysis of how legal frameworks can accommodate grassroots creativity.

### **Commercialization of Fan Fiction**

Fanfiction, initially a mere medium for creative exploration, has matured into a prominent segment of digital literature, where fans craft narratives inspired by established characters, settings, or plots. Historically non-commercial in nature, fanfiction has begun to shift toward monetization, spurred by its growing popularity and the rise of platforms enabling creators to profit through crowdfunding, self-publishing, or licensing arrangements.<sup>3</sup> Non-commercial fanfiction, in contrast, thrives within fan communities, where works are freely shared, fostering creativity and collective engagement without financial motives. The movement toward monetizing fanfiction reflects a broader cultural evolution, redefining it from an informal creative pursuit to a legitimate avenue for professional growth and income generation.

This shift raises significant copyright concerns, as commercial fanfiction challenges traditional notions of ownership, authorship, and derivative use within Intellectual Property (IP) law frameworks.

### **Rising Popularity of Self-Publishing Platforms**

The introduction of digital platforms like Wattpad, Patreon, and self-publishing services have transformed fanfiction from a niche creative activity into a commercialized literary genre. These platforms have had a significant impact on the creative landscape by enabling fanfiction writers to transition from hobbyists to professional authors.

Wattpad, widely recognized for its role in democratizing access to publishing, provides a platform for writers to share their works with a global audience. It has also facilitated opportunities for commercialization, as evidenced by the success of works like *After* by Anna Todd, which originated on the platform and achieved mainstream commercial success.<sup>4</sup>

Whereas, Patreon offers creators a subscription-based patronage model, allowing them to monetize their content through direct financial support from their audience.<sup>5</sup> This decentralizes traditional publishing structures, giving writers autonomy and financial agency. Similarly, platforms like Amazon Kindle Direct Publishing (KDP) and Smashwords enable authors to self-publish e-books, reaching wider audiences with reduced costs.

While these platforms have democratized publishing and created financial opportunities, they have also raised significant copyright concerns. The commercialization of fanfiction, often derived from copyrighted works, challenges legal norms as these derivative works are commonly unauthorized, leading to disputes over Intellectual Property Rights (IPRs).

#### Perception of Fanfiction from Fan-Driven Activity to Commercial Value

Historically, fanfiction thrived within the bounds of non-commercial fandoms, functioning as a collective expression of shared passion for original works. This participatory culture encouraged creators to share transformative works freely on online platforms, reinforcing community bonds rather than economic gain.<sup>6</sup> However, the commercialization of fanfiction signals a broader societal shift in valuing creative labor and IP, reshaping its role in literary and cultural ecosystems.<sup>7</sup>

The success of fanfiction adaptations, such as *Fifty Shades of Grey*, highlights its capacity to transcend niche communities and achieve mainstream commercial success. This phenomenon has legitimized fanfiction as a potential pathway to professional authorship.<sup>8</sup> Additionally, the internet's expansive reach has enabled fanfiction creators to cater to a global audience, with platforms like Patreon and self-publishing offering financial independence and creative autonomy.<sup>9</sup> These innovations challenge traditional publishing paradigms, redistributing power within the literary marketplace.

However, the commercialization of fanfiction also raises ethical concerns. Critics argue it undermines the communal code of fandoms, transforming collaborative spaces into profit-driven enterprises.<sup>6</sup> This shift risks exacerbating inequalities, as access to exclusive content becomes monetized, alienating segments of the fanbase unable to participate economically.

#### The Impact of Digital Evolution on Commercialization of Fan Fiction

The digital evolution has significantly transformed the landscape for commercialization of fanfiction,

offering new opportunities for creators and reshaping traditional storytelling and distribution methods. Fanfiction has benefited from digital platforms that amplify accessibility, enable monetization, and foster community engagement, though this progress raises complex legal and ethical concerns.

(i) **Enhanced Accessibility:** Platforms such as Archive of Our Own (AO3) and Wattpad democratize fanfiction publication, breaking traditional publishing barriers and allowing global creators to showcase their work. This accessibility has fostered creative diversity and empowered some writers to transition to commercial success.<sup>10</sup>

(ii) **Audience Engagement:** The integration of fanfiction with digital and social platforms enables direct interaction between creators and their audiences. Real-time feedback and community participation support fan loyalty and enhance creative refinement.<sup>11</sup>

(iii) **Revenue Streams:** Digital technologies facilitate varied monetization avenues such as e-book sales, crowdfunding, and subscription-based models, enabling fanfiction writers to leverage fan interaction as a source of income.<sup>12</sup>

(iv) **Hybrid Commercial Models:** Innovative models like Wattpad's publishing partnerships bridge the gap between fanfiction writers and copyright holders, identifying commercial potential in fan works while ensuring compliance with IP laws.<sup>9</sup> However, original creators frequently invoke copyright to challenge unauthorized derivative works, while digital platforms lack robust mechanisms to address these disputes.<sup>13</sup>

Although fanfictions were present before the development of digital technology, their creation frequently required fans to incur certain expenses. However, the advent of the internet brought about a significant transformation in this paradigm. Online platforms such as "Fanfiction.net" have emerged as prominent digital sanctuaries for aficionados of fanfiction, hosting an immense quantity of stories crafted by devoted fans.<sup>14</sup>

#### Stoner Cats- A Non-Fungible Token (NFT) Fanfiction: A Case Study

The NFT project Stoner Cats, created by Ashton Kutcher and Mila Kunis, illustrates the intersection of fanfiction, commercialization, and copyright challenges in the digital era. This NFT-linked animated series allowed fans to buy tokens to access exclusive episodes, raising \$8 million within its initial

sale.<sup>15</sup> The innovative model turned fans into stakeholders, enabling them to engage deeply with the content creation process while monetizing their participation.

However, the project faced significant legal scrutiny when the U.S. Securities and Exchange Commission (SEC) classified the NFTs as unregistered securities, leading to enforcement action.<sup>16</sup> This reflects a broader issue where digital platforms blur the lines between creative fan participation and commercialization, sometimes at odds with copyright and securities laws.

From a copyright perspective, NFTs like those in Stoner Cats may inadvertently encourage the creation of derivative works inspired by the series, raising questions about the IPRs of original creators and fan participants. This case highlights how digital technologies that enable fanfiction commercialization also amplify regulatory and copyright-related complexities, necessitating clearer legal frameworks.

The widespread availability of these online platforms has diminished the reliance on traditional publishers, hence potentially heightening the likelihood of instances of plagiarism and violations of copyright. This transition gives rise to intricate inquiries regarding copyright, the ownership of creative works, and the intricate equilibrium between fan expression and economic concerns. As the lines between fanfiction and original content blur, necessitating a comprehensive examination of the legal intricacies involved.

### **The Impact of Commercial Fanfiction on Original Creators' Copyrights**

The genre of fan fiction, hitherto marginalised within popular culture, has had a notable evolution in the era of digitalization, exerting a substantial impact on both fan communities and the commercial sector. The present section of the paper delves into the diverse effects of commercialization on fan fiction at a global scale. Specifically, it examines the intricate interplay between fan fiction and official merchandise, the competition it poses to spin-offs and adaptations, and the genuine concerns expressed by copyright holders.

### **Significance of Fictional Characters in Shaping Fan Fiction Narratives**

In fan fiction, fictional characters often occupy the central role, acting as catalysts for narrative

reinterpretations. Fanfiction writers frequently reimagine these characters, deviating from the original author's intentions to explore alternate storylines or character developments. Characters that embody complex human traits resonate more with audiences compared to abstract or less relatable figures. For instance, iconic literary characters like Sherlock Holmes and James Bond inspire extensive fan fiction due to their layered personalities and cultural significance, whereas purely animated figures like Mickey Mouse or Bugs Bunny garner less narrative expansion.

From a legal perspective, fictional characters, although central to storytelling, are not inherently protected under Indian Copyright Law. As per Section 14 of the Indian Copyright Act, 1957, copyright extends to the expression of a character in a literary, dramatic, or artistic work but not to the idea of a character itself. This distinction was emphasized in *Detective Comics Inc. v Bruns Publications Inc. (1939)*, where the court ruled that specific attributes making a character unique—such as identifiable traits, backstory, and personality—can receive copyright protection. However, the protection is limited to the expression of these traits within the work, not the character per se.<sup>17</sup> For example, while the Harry Potter novels enjoy copyright protection, the character Harry Potter does not independently hold copyright.<sup>18</sup>

The degree of protection varies by medium. Cartoon characters, with their distinct visual traits, often enjoy stronger copyright protection compared to literary or cinematic characters. This is due to their heightened originality and recognizability, as seen in *Walt Disney Productions v Air Pirates (1978)*, where Disney's cartoon characters were protected against unauthorized use.<sup>19</sup> Conversely, live-action portrayals face ambiguity, as their visual and performative nature introduces uncertainties regarding ownership.

### **Fan Fiction and Official Merchandise**

Fan fiction exists alongside official merchandise, often navigating a precarious balance between creative expression and commercial interests. Official merchandise, ranging from books, films, and collectibles constitutes a significant revenue stream for copyright holders. For instance, the Harry Potter franchise, encompassing theme parks, apparel, and collectibles, thrives commercially while simultaneously inspiring a robust fan fiction community. Fan fiction, though typically non-

commercial, expands upon the wizarding universe, adding depth to the fan experience. Similarly, the Star Wars franchise sees fan fiction as a creative supplement, enriching the audience's engagement with action figures, video games, and novels.<sup>20</sup>

However, fan fiction's impact on official merchandise sales remains contentious. While some argue that it enhances fan engagement and promotes official products, others suggest it diverts audience attention. Copyright holders face the challenge of fostering fan creativity without compromising their economic interests, especially when fan fiction blurs boundaries with monetized works. The Indian Copyright Act does not explicitly address fan fiction, leaving its legal standing ambiguous.<sup>21</sup>

### Competing with Spin-offs and Adaptations

Fan fiction's accessibility and popularity have positioned it as a competitor to official adaptations and spin-offs. Writers often create alternative storylines, character arcs, or speculative narratives, challenging the exclusivity of derivative works authorized by copyright holders. This dynamic raises concerns about the commercial viability of licensed adaptations.

For instance, the Sherlock television series, a modern adaptation of Sir Arthur Conan Doyle's works, inspired extensive fan fiction that explored unexamined character relationships and storylines. Similarly, the Star Trek fan-produced series *Star Trek: New Voyages* earned critical acclaim for its fidelity to the original franchise, attracting audiences comparable to official productions.<sup>22</sup> Such cases highlight how fan-generated content can compete directly with authorized works, complicating the delineation between fan fiction, licensed adaptations, and spin-offs.

In the Indian context, fan fiction's legal standing under Section 52(1)(a) of the Copyright Act is debatable. This provision permits fair use for research, criticism, and review but offers no clear protection for transformative works like fan fiction. The absence of explicit legal guidelines creates friction between fan creativity and copyright enforcement, prompting a need for clarity in addressing derivative works and fan fiction's proliferation.<sup>21</sup>

### Copyright Concerns of Fan Fiction

Fanfiction under Indian Copyright Law presents significant legal challenges due to its derivative

nature, potential infringement of moral and economic rights, and the ambiguities surrounding fair use. Section 14 of the Indian Copyright Act, 1957, grants the copyright owner exclusive rights over their work, including adaptations, which makes fanfiction, as a derivative work, susceptible to infringement claims. Moral rights, protected under Section 57, can also be violated if fanfiction distorts or modifies the original work, thus affecting the author's honor or reputation. While Section 52 provides exceptions for fair use, its applicability to fanfiction remains unclear, as most works are not for criticism or review but are transformative reinterpretations. This legal uncertainty creates a conflict between protecting creators' rights and enabling fan-driven creativity within India's copyright regime.

Table 1 showcases the Read Counts of Classics compared to several Teen Fiction works that have much greater Read Counts on Wattpad. For instance, the renowned literary work, *Pride and Prejudice*, has accumulated a Read Count of 7,400,000. On the other hand, "The Bad Boy's Girl," a well-liked Teen Fiction novel, has a far greater Read Count of 197,000,000. This data clearly demonstrates the impact fanfiction has over the original works establishing the need for clear copyright regulations to protect the copyrighted work from infringement as well as protect fan-fiction. This section of the paper aims to not only comprehend the legal complexities but also to acknowledge the wider cultural and ethical aspects that include fanfiction within the domain of copyright law.

### Derivative Nature of Fan Fiction

Within the expansive realm of creativity and innovation, derivative works occupy a distinctive and frequently contested position. These works originate from pre-existing creations but have been endowed with novel interpretations, elicit thought-provoking questions pertaining to the realm of copyright. In the context of India, a country renowned for its diverse and vibrant arts and culture, the implications surrounding derivative work copyright assume heightened significance. According to the provisions outlined in U.S. copyright law, a derivative work is precisely characterised as a creative output that is founded upon one or more pre-existing works.<sup>24</sup> This includes various forms of artistic expression, such as dramatization, fictionalisation, or any other means by which the original work can be reimagined, altered, or modified. In accordance with the copyright legislation

Table1 — Read count Comparison of Classics and Teen Fictions<sup>23</sup>

S. No. Classic Books	Read Count	Teen Fiction Books	Read Count
1. <i>Pride and Prejudice</i>	7,400,000	<i>The Bad Boy's Girl</i>	197,000,000
2. <i>Romeo and Juliet</i>	3,100,000	<i>I Sold Myself to the Devil for Vinyls . . . Pitiful I Know</i>	92,900,000
3. <i>Wuthering Heights</i>	1,700,000	<i>She's With Me</i>	102,000,000
4. <i>Jane Eyre</i>	1,600,000	<i>The Hoodie Girl</i>	58,000,000
5. <i>Alice's Adventures in Wonderland</i>	1,100,000	<i>The Last Virgin Standing</i>	61,900,000
6. <i>The Picture of Dorian Gray</i>	1,000,000	<i>My Brother's Best Friend</i>	114,000,000
7. <i>Emma</i>	1,200,000	<i>The Cell Phone Swap</i>	100,000,000
8. <i>Great Expectations</i>	1,300,000	<i>The Bad Boy, Cupid &amp; Me</i>	64,000,000
9. <i>Little Women</i>	498,000	<i>Mr. Popular and I</i>	99,000,000
10. <i>Anna Karenina</i>	1,100,000	<i>My Wattpad Love</i>	47,200,000
11. <i>Dracula</i>	290,000	<i>Breaking the Bad Boy</i>	29,100,000
12. <i>Anne of Green Gables</i>	389,000	<i>Stay With Me</i>	25,800,000
13. <i>The Adventures of Sherlock Holmes</i>	454,000	<i>Bad Boy's Game</i>	52,000,000
14. <i>A Tale of Two Cities</i>	300,000	<i>Must Date The PLAYBOY!</i>	100,000,000
15. <i>Macbeth</i>	125,000	<i>Growing up (MWL's sequel)</i>	23,500,000
16. <i>The Importance of Being Earnest</i>	134,000	<i>The Quirky Tale of April Hale (Quirky Series #1)</i>	43,200,000
17. <i>A Midsummer Night's Dream</i>	112,000	<i>Silently Falling</i>	24,300,000
18. <i>Demian</i>	79,600	<i>The President's Daughter</i>	42,900,000
19. <i>Hamlet</i>	140,000	<i>Started With a Lie</i>	49,800,000
20. <i>Oliver Twist</i>	280,000	<i>Just A Friend?</i>	36,300,000

in the United Kingdom, a derivative work is defined as a creative output that is fundamentally based on a preexisting work.<sup>25</sup> However, Indian copyright law, unfortunately, lacks a precise delineation of derivative works within its framework. The definition in question can be derived from legal precedents, such as the notable case of *Eastern Book Company & Ors v D.B. Modak & Anr.*<sup>26</sup> An in-depth analysis of the Eastern Book Company judgement provides valuable insights into the legal framework surrounding derivative works within the context of Indian copyright law. Based on this ruling, it can be inferred that a derivative work encompasses the incorporation of original creative material into an already existing work, leading to the alteration, modification, or adaptation of the latter. Upon careful examination of the provided definitions, it becomes evident that fan fiction can indeed be classified as derivative works according to the framework established by copyright law.

It is of utmost importance to note that the author retains the exclusive authority to oversee the original work. This statement suggests that the author holds the necessary rights and control to restrict others from producing derivative works based on their original creation, unless explicit permission is granted.

Moreover, the author possesses the authority to initiate legal proceedings in response to any occurrences of copyright violation. This serves to emphasise the significance of upholding these exclusive rights within the domain of derivative works. Fan fiction, due to its fundamental characteristics, is inherently derivative. It flourishes via the process of creatively reinterpreting and expanding upon pre-existing literary, cinematic, or other forms of media. Within the framework of Indian copyright law, the inherent derivative nature of fan fiction gives rise to a number of significant inquiries and deliberations.

The purpose of creating fan fiction is a crucial aspect to consider. Indian copyright law, similar to copyright laws in other nations, emphasises the intent and essence of the use of copyrighted material. Fan fiction that is non-commercial, transformative, or educational in nature has a higher likelihood of conforming to the principles of fair use or fair dealing. These principles permit certain uses of copyrighted material without violating the rights of the original author. If fan fiction is primarily intended for commercial purposes, it may encounter greater legal obstacles related to copyright law. Fan fiction's influence on the original work's market is another

significant factor to consider. Fan fiction, if it acts as a replacement for the original work and competes in the market, has the potential to adversely affect the interests of the copyright owner. However, if fan fiction enhances the original work, contributes to the fan community, and has minimal impact on the market for the original, it may have a more compelling case for fair use or fair dealing. Furthermore, the copyright law in India acknowledges the significance of originality. Derivative works, such as fan fiction, can obtain copyright protection if they demonstrate a degree of originality that surpasses the borrowed content from the original work. It also implies that fan fiction authors must incorporate significant and original elements into their stories in order to establish copyright protection for their derivative works.

### **Potential Copyright Infringement**

It is essential for the authors of fan fiction to acknowledge and respect the exclusive rights awarded to the authors of the original work while they embark upon their creative journey. According to section 13 of the Copyright Acts of 1957 delineates the rights bestowed upon the individual or entity possessing the copyright, including the exclusive authority to reproduce, modify, make adaptation of the work and communicate their creation to the general public. Fan fiction often involves the imitation of characters, settings, and elements from the original source material, which can be seen as a breach of the original author's exclusive right to create derivative works. Publicly sharing or publishing fan fiction leads to the distribution of copyrighted material. Further more, fan fiction can also encompass public performances or displays, such as fan-made videos or live readings, which can potentially infringe upon the author's exclusive rights. Additionally, fan fiction frequently entails the adaptation, reshaping, or reimagining of elements from the original work. When fan fiction is used for commercial purposes, such as selling fan-created merchandise or charging fees for gaining access to fan-authored stories, it directly competes with the original work and infringes upon the author's exclusive right to profit from their creative work. Therefore, when a fan fiction is created without proper authorization from the author of the original work, it may infringe upon these economic rights awarded to the copyright holder. Moreover, Moral Rights empower the authors of the art against, wrongful

attribution, protection of integrity, protection from distortion. These rights are inalienable and hence cannot be waived or transferred. Moral Right, strictly speaking, empowers authors to object any further interpretation of their art in mediums such as fanfictions. It protects them from wrongful attribution, a possibility in fanfictions, as believed.

### **Complexities of Fair Use for Fan Fiction**

In the context of Indian copyright law, Section 52(a) of the Copyright Act presents a potential avenue of optimism for those engaged in the creation of fan fiction. This section provides an overview of the concept of fair dealing, which establishes that the use of any work for personal reasons, study, criticism, review, or reporting of current events would not be considered a violation of copyright. The terms listed in Section 52(a) are deliberately wide and inclusive, making it difficult to firmly determine whether a certain application fits under these exclusions. As a result, courts frequently assume a crucial role in establishing the legitimacy of these applications. Nevertheless, upon closer examination of fan fiction under this particular paradigm, certain issues become apparent. Due to its inherent characteristics, fan fiction does not readily conform to the parameters of fair dealing as outlined in Indian copyright legislation. Fan-written stories are not considered to be for private use due to their widespread dissemination on the internet, which makes them readily available to the general public. The exclusion of research and reporting on current events renders criticism and evaluation as the sole viable alternatives. However, the primary objective of fan fiction is to enhance and elaborate on the original work, rather than to provide a critical analysis or evaluation of it. The disparity in objectives poses challenges in categorising fan fiction within the scope of fair dealing, as per the parameters outlined by Indian copyright legislation.

### **The Four Factor Test to Determine Infringement of Copyrighted Works**

The four-factor test was first articulated in the landmark U.S. case *Folsom v Marsh*, 9 F. Cas. 342 (1841), where Justice Story emphasized the need to balance the competing interests of creators and public benefit. Later this test was codified in Section 107 of the U.S. Copyright Act of 1976, is a critical framework for determining whether a use constitutes "fair use" and thus avoids infringement. This test

balances the rights of copyright holders against the public interest in fostering creativity, education, and expression. It has gained significance not only within the United States but also in shaping international copyright jurisprudence. Scholars have noted its influence on “fair dealing” frameworks in jurisdictions like India, despite key differences in scope and application.<sup>27</sup>

In India, the Copyright Act, 1957 does not explicitly adopt a “fair use” doctrine but provides exemptions under Sections 52(1)(a) and 52(1)(b), allowing uses such as criticism, review, and reporting. While narrower than the U.S. framework, the Indian provisions embody similar principles of balancing creativity and rights.<sup>28</sup> The U.S. four-factor test is particularly instructive in analyzing cases involving derivative works or reimaginings, such as fanfiction.<sup>29</sup>

The test evaluates: (1) the purpose and character of the use, emphasizing whether it is transformative; (2) the nature of the copyrighted work; (3) the extent and importance of the portion used; and (4) the market impact on the original. Courts holistically weigh these factors without assigning any one factor determinative weight, enabling nuanced adjudication of disputes in rapidly evolving creative industries.<sup>30</sup>

#### **Factor 1: Purpose and Character of the Use**

This factor assesses the “purpose and character of the use,” focusing on whether the new work is transformative. A transformative work adds new expression, meaning, or value to the original, distinguishing itself from mere replication. This factor heavily influences fair use determinations, as established in *Campbell v Acuff-Rose Music, Inc.*, 510 U.S. 569 (1994), where the U.S. Supreme Court emphasized the centrality of transformative use in weighing fair use defenses. Transformative works, such as parodies or reinterpretations, are deemed more likely to contribute to public discourse rather than infringe upon the original work’s market or purpose.<sup>31</sup>

Fanfiction frequently operates in a nuanced space under this factor. It may achieve transformative status when it reimagines characters, explores alternative narratives, or critiques societal norms, thereby contributing original commentary or creative expression. For instance, fanfiction set in the Harry Potter universe that subverts traditional themes or delves into unexplored perspectives demonstrates the hallmarks of transformative use.<sup>32</sup>

However, the transformative nature of fanfiction is not universal. Commercial fanfiction, monetized on platforms, is subject to stricter scrutiny, as commercial intent may diminish its transformative character. Indian courts, while not explicitly addressing fanfiction, have highlighted the importance of original contributions in cases such as *The Chancellor, Masters and Scholars of the University of Oxford v Narendra Publishing House (2008)*, suggesting that derivative works must demonstrate substantial originality to qualify as fair dealing.<sup>33</sup>

Ultimately, transformative intent aligns with works that expand upon or critique the original, whereas unaltered reproductions or commercial ventures risk tipping the scale towards infringement.

#### **Factor 2: Nature of the Copyrighted Work**

The second factor of the test evaluates the nature of the original work, specifically whether it is factual or creative. Creative works, such as novels, films, and music, enjoy heightened copyright protection due to their inherently original and imaginative qualities. This consideration often weighs against a fair use finding in cases involving fanfiction, as such works typically rely on highly creative properties. Fantasy novels like J.K. Rowling’s Harry Potter series or George R.R. Martin’s *Game of Thrones* are quintessential examples where transformative or derivative works are scrutinized for substantial similarity to the original’s creative elements, including characters, plotlines, and world-building.

In *R.G. Anand v M/S Deluxe Films (1978)*, the Indian Supreme Court clarified that while ideas are not protected under copyright, the distinct expression of those ideas is. Thus, a fanfiction author’s work may avoid infringement if it uses general ideas or themes without replicating the specific expression of the original. However, substantial mimicry of protected creative components such as characters, dialogues, or settings typically undermines the transformative nature required for fair use, tipping this factor further against fanfiction creators.

By distinguishing between ideas and expression, this factor emphasizes the importance of transformative originality to justify unauthorized use of creative works.

#### **Factor 3: Amount and Substantiality of the Portion Used**

The third factor evaluates both the quantity and the qualitative value of the original work incorporated into the derivative work. This assessment focuses not only on the amount of material used but also on the

significance of the portion in relation to the copyrighted work as a whole. The U.S. Supreme Court, in *Harper & Row Publishers, Inc. v Nation Enterprises* (1985), emphasized that the unauthorized use of verbatim excerpts detailing President Gerald Ford's pardon of Richard Nixon constituted infringement because it appropriated the "heart" of the memoir—its most valuable and significant part. Even limited copying, if it includes critical or central aspects of the work, weighs against fair use.<sup>34</sup>

Indian jurisprudence similarly underscores the importance of this factor. In *Eastern Book Company v D.B. Modak* (2008), the Supreme Court of India held that copying substantial parts of judgments, including essential headnotes, without transformative input constituted infringement. The Court reasoned that the qualitative essence of the copied material—its utility and originality—was pivotal in determining infringement.

Fanfiction, as a derivative genre, faces challenges under this factor. The replication of central characters, iconic settings, or pivotal plotlines often involves the extraction of the creative "core" of the original work, making it vulnerable to claims of copyright infringement. Legal scholarship suggests that borrowing such elements without significant reinterpretation or transformation undermines the argument for fair use.<sup>35</sup> For example, the use of iconic phrases or detailed character arcs may fail to qualify as fair use due to their qualitative weight. However, transformative reinterpretations or subtle allusions, which recontextualize the borrowed elements, could potentially satisfy this factor.<sup>36</sup>

This factor thus requires a nuanced balance between the amount and significance of the material used, with courts scrutinizing whether the borrowed portion constitutes the "heart" of the original work and if its use serves a transformative purpose.

#### **Factor 4: Effect on the Market**

Herethe effect of the secondary work on the potential market for the original work, including derivative markets is examined. This factor examines whether unauthorized use negatively impacts the economic viability of authorized adaptations, sequels, or merchandise and whether such use acts as a substitute for the original work, reducing demand.<sup>37</sup>

For instance, in *Super Cassettes Industries Ltd. v MySpace Inc.* (2011), the Delhi High Court noted that

platforms hosting infringing content with embedded advertisements caused economic harm to authorized markets, demonstrating how such activities can undermine legitimate revenue streams.<sup>38</sup> Similarly, the U.S. Supreme Court in *Harper & Row v Nation Enterprises* stressed the importance of market harm by highlighting how unauthorized publication of excerpts from President Ford's memoir caused substantial damage to its market potential.<sup>39</sup>

Fanfiction often provides a nuanced case. Non-commercial fanfiction distributed on platforms like Archive of Our Own (AO3) may supplement rather than substitute the original, aligning with transformative use principles.<sup>40</sup> However, commercial adaptations of fanfiction risk displacing legitimate derivatives, which Section 51 of the Indian Copyright Act safeguards against by penalizing unauthorized commercial exploitation.<sup>41</sup>

Courts meticulously scrutinize whether the use complements or competes with the original market, protecting creators' economic and derivative interests against unjustified market harm.<sup>32</sup>

#### **Conclusion**

Through a deeper exploration of the intricate realm of copyright considerations in fanfiction, it is evident that copyright legislation notably lacks explicit provisions addressing this particular issue. The absence of clear legal regulations necessitates that makers and researchers turn to court rulings as authoritative sources of guidance inside this unfamiliar domain. Although the legality of fanfiction remains uncertain in the eyes of the courts, there have been a few notable instances that provide insights into their position on the matter. For instance, in the case of *Anderson v. Stallone*, wherein a screenwriter submitted a draft for the fourth Rocky film series, only to discover later that significant sections of his creative work were included into the final film without appropriate credit. In this particular case, the court determined that the draft was classified as an "unauthorised derivative" of Sylvester Stallone's work, therefore prompting significant inquiries on the convergence of creative expression and copyright law. This case serves as an illustration of a stringent interpretation of copyright laws, which, if implemented with great precision, has the potential to undermine the democratic principles associated with artistic expression and reinterpretation. Copyright

regulations have traditionally served as a fundamental safeguard for creative and artistic works and its various manifestations. However, the dynamic realm of fanfiction necessitates researchers to delve into the intricacies of copyright considerations from several perspectives.

The issue of commercialization of fan fiction poses a multifaceted dilemma within the framework of Indian Copyright law. The fan fiction community, known for its vibrancy and creativity, significantly adds to the success of established works. However, the commercialization of fan fiction raises concerns over potential copyright violation. In the light of these issues, it is imperative to establish a harmonious equilibrium that upholds the rights of primary creators while yet permitting fan fiction authors to persist in their artistic pursuits. The following amendments to the Indian Copyright Act, 1957 are suggested to mitigate the novel challenges posed by fan fictions:

#### **Section 52B: Regulation of Fanfiction**

##### ***Definition of Fanfiction***

Fanfiction refers to derivative works created by individuals, based on pre-existing copyrighted material, including literary, artistic, cinematographic, and dramatic works, without authorization, for non-commercial and transformative purposes.

##### ***Permitted Uses***

The creation and distribution of fanfiction shall not constitute copyright infringement if:

- (a) The work is non-commercial.
- (b) The work is transformative, adding significant original content or reinterpretation.
- (c) Attribution is given to the original creator, unless anonymity of the creator is legally required.

##### ***Prohibited Uses***

Fanfiction that:

- (a) Devalues or defames the original work or creator.
- (b) Confuses consumers as to the origin or endorsement of the derivative work.
- (c) Uses the fanfiction for any commercial gain without obtaining prior authorization.

##### ***Licensing Framework***

The Copyright Office may establish an optional Fanfiction Licensing Scheme, wherein creators can offer pre-approved licenses for derivative works under specified conditions.

#### **Section 31D(1)(d): Licensing of Transformative Derivative Works**

Insert a clause to allow authors of fanfiction to apply for licenses to create commercial adaptations based on pre-existing works, provided a reasonable royalty is paid to the copyright holder.

#### **Section 63C: Penalty for Unauthorized Commercial Use of Fanfiction**

Any person found commercially exploiting fanfiction without obtaining the appropriate license or authorization shall be liable for:

- (a) A fine ranging from ₹50,000 to ₹5,00,000; or
- (b) Imprisonment for up to 1 year; or
- (c) Both, depending on the extent of the exploitation.

#### **Section 52(1)(zz): Exceptions for Non-Commercial Derivative Works**

##### ***Add to the list of exceptions***

“Non-commercial transformative works, including fanfiction, that do not substitute or harm the market of the original work, and are in compliance with Section 52B.”

In addition to these amendments, it is imperative to have robust mechanisms for the surveillance and regulation of copyright violations pertaining to the realm of commercial fan fiction. The proposed measures might involve the establishment of reporting mechanisms and legal protocols aimed at protecting the rights of those involved in content creation. Utilise a contextually tailored methodology. It is important to continue evaluating commercial fan fiction on an individual basis, taking into account several factors such as the degree of modification, impact on the market, and adherence to rules of fair use. Adopting global best practises to investigate and implement successful worldwide methodologies for tackling the commercialization of fan fiction. It seeks to gain valuable insights from nations that have effectively dealt with comparable difficulties and include relevant techniques into the research.

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