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## CREATIVE RIGHTS IN DIGITAL ERA- INTELLECTUAL PROPERTY BATTLES IN FAN MADE ART AND AI GENERATED WORKS.

~ *Gauri Rajeev*

### INTRODUCTION

For most of us, our childhood and even now it is full of fictional world involving Hogwarts, Anime, Sherlock Holmes, Superheroes like Ironman, Batman and many more. Everyone is divided into fandoms where each one of us could find themselves surrounded by likeminded fans who share the same interest and sometimes is part of more than one fandom.

As a form of appreciation to these fictions, fans started creating fan made arts. As digital era paved its way into everyone's life, the accessibility and reach of such fan arts started growing and eventually they got immensely popular. This kind of art made the fans feel more connected to the fictional characters and that is not until the emergence of Artificial Intelligence (AI) that with just a prompt one could be part of their favourite fictional universe or even get polaroid type of image with you and the characters as if it were for real.

Fan art and AI generated images has been quite engaging and trending among fans, which has now posed a very important question about the ownership and who truly owns these arts and images? When such arts which are created by inspirations and they cross the line leads to copyright infringement. This article explores the main question regarding ownership in such creation and the line which makes an inspiration into infringement of copyright owner. It also throws light on whether the existing copyright framework is limiting creation.

### FAN'S CREATION AND ITS SECONDARY USE

Fan made art is not something that emerged in the last few years instead it has since ancient times, when admirers of Greek and Roman mythology created illustrations of their favourite gods. Fan made art or fanfictions has been prevalent since the existence of fan culture.

During the 19<sup>th</sup> century as Sherlock Holmes became a household name, fans started creating their own fictional stories featuring the detective. Creation of such fan made arts shoot up in the 20<sup>th</sup> century when science fiction attracted large number of fans irrespective of the age group<sup>1</sup>. The term fan fiction gained its meaning when the Star Trek fandom released Spockanalia which was a magazine distributed amongst the Star Trek fans<sup>2</sup>. In 21<sup>st</sup> century, due to advent of digital era with fan theories, fan fictions and fanarts, edits started receiving more popularity through platforms like YouTube, Instagram, TikTok, Reddits and many other<sup>3</sup>.

Fans create such fanfiction and fan art inspired by the original work. These fan creations have played a vital role in even reliving series that has stopped being on-air years ago and, in some cases, it has also led revivals where Zack Synders's version of Justice league in 2021 was released by fan's initiated Synder Cut Campaign<sup>4</sup>. As fan arts are formed out of copyrighted work it also depends upon the authors perspective too to see it as an infringement or not where on one hand authors like George R. R Martin who is a profound author of Song of Ice and Fire inspired the well-known series of game of thrones openly disapproves the fanfiction as he believes that it infringes authors creative rights and intellectual property and "*authors should focus on creating there on own worlds rather than borrowing them*"<sup>5</sup>. Another author who is a critic of such fanfictions is Stephenie Meyer who was the creator of Twilight series where she was discomfited with the alterations of her characters through fan fiction in a way she never would have envision them<sup>6</sup>. On the other hand, there are also Authors like J.K Rowling through many of her tweets has conveyed that she finds these fanfictions, "*flattering*" and even refer them in her works<sup>7</sup>.

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<sup>1</sup> Dayna Mortimore, A history of fan art Ozzie Collectables, <https://www.ozziecollectables.com/blogs/the-ozzie-blog/a-history-of-fan-art> (last visited Oct 6, 2025).

<sup>2</sup> Fanfiction, fan-culture , fan art, and copyright law, Fanfiction, Fan-Culture , Fan Art, and Copyright Law | IPLINK ASIA, <https://www.iplink-asia.com/article-detail.php?id=372> (last visited Oct 6, 2025).

<sup>3</sup> Athira Subin & Jeena Ann Joseph, Rewriting narratives, reimagining communities: Fanfiction as a beacon of social connection in the Digital Era ISHAL PAITHRKAM, <https://ojs.ishalpaithrkam.info/index.php/ishal/article/view/291> (last visited Oct 6, 2025).

<sup>4</sup> Author Frank, The growing popularity of fan-created content in entertainment - (2025), <https://cordwainerproductions.com/the-growing-popularity-of-fan-created-content-in-entertainment/> (last visited Oct 6, 2025).

<sup>5</sup> Pritinanda Behera, 8 renowned authors who hate fanfiction Times Now (2024), <https://www.timesnownews.com/lifestyle/books/features/reowned-authors-who-hate-fanfiction-photo-gallery-116705984> (last visited Oct 6, 2025).

<sup>6</sup> Supra note 5

<sup>7</sup> Pritinanda Behera, 8 renowned authors who hate fanfiction Times Now (2024), <https://www.timesnownews.com/lifestyle/books/features/reowned-authors-who-hate-fanfiction-photo-gallery-116705984> (last visited Oct 6, 2025).

## WHO REALLY OWNS AI GENERATED WORK?

Fan arts are created by the fandom with love and passion towards the original creator's fictional world where again the true owner can be still be traced but when it comes to AI the question regarding who really owns them still is a disputed area. As per an article, open AI launched AI service platform which was popularly known as ChatGPT, in just 2 months gained approximately 100 million users<sup>8</sup>. This AI bot with the help of proper instructions and a well curated prompt can create any image, video edits and even create AI music in a known singer's voices and many more. It is not just ChatGPT but over the years many other generative AI such as Perplexity, Google Gemini has all paved its way in this digital era which gave creativity a completely new outlook. AI generated images and prompts started becoming trending amongst the crowd through social media platform where people are seen posting photos with their favourite fictional character or making edits and videos from the Manga strips and many others.

From the lens of Copyright laws, if the content is fully generated by AI it falls under the given category of either public domain or a derivative work used to train the AI<sup>9</sup>. In a popular case known as Monkey Selfie case, it was ruled by the court that copyright protection is for humans or legal person and animals does not come under the ambit of the said law.<sup>10</sup> which further crystalizes the fact that for a copyright to be protected it must have that human touch to such creation.

If a person in his creative process uses AI, then in that case the extent to which that person has a creative control deserves copyright for his work. As per the Copyright registration guidance in reference to AI guidance it is stated that, when AI is the one to determine the creative output then here a person would not get the ownership of the work but if the result of a work is culmination of sufficiently creative human arrangement and AI generated work a person can claim ownership or copyright to the extent of his own contribution.<sup>11</sup> As in the instance of

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<sup>8</sup> CHATGPT sets record for fastest-growing user base - analyst note | reuters, <https://www.reuters.com/technology/chatgpt-sets-record-fastest-growing-user-base-analyst-note-2023-02-01/> (last visited Oct 6, 2025).

<sup>9</sup> Jess Sawyer, *Who Owns AI-Generated Content – Originality.AI*, <https://originality.ai/blog/ai-content-ownership> (last visited Oct 6, 2025)..

<sup>10</sup> *Naruto v. Slater*, no. 16-15469 (9th cir. 2018) :: Justia, <https://law.justia.com/cases/federal/appellate-courts/ca9/16-15469/16-15469-2018-04-23.html> (last visited Oct 6, 2025).

<sup>11</sup> Federal Register/Vol. 88, no. 51/Thursday, March 16, 2023 ..., <https://www.govinfo.gov/content/pkg/FR-2023-03-16/pdf/2023-05321.pdf> (last visited Oct 6, 2025).

Zarya of Dawn, it was held that AI generated illustration in the graphic novel would not be copyrighted but human authored text was allowed to be copyrighted<sup>12</sup>.

### **COPYRIGHT FRAMEWORK: RESTRICTING OR PROTECTING CREATIVE FREEDOM?**

As per the Copyright Act, it protects original piece of literature and it may or may not be released in the public domain. Such work can be in the form of audiovisuals, books, movies, choreography, and many more. The law's main focal point is the level of abstraction in the creative process by the author and such creativity of the original piece is copyrighted and such copyright is especially significant to the owner since it gives an exclusive right to enjoy the economic benefit arising out of that piece of work<sup>13</sup> and therefore, opens a ground for dispute when it comes to subjects like fan fictions and fan arts.

Creators of the original work see such fan arts as a form of marketing strategies to keep the show or movie ongoing for long time with fan's engagement as they keep on creating fan theories, edits and arts which keeps the fandom alive. Impact of such fandom is that they try to enter the world of original artist and creates such fan arts keeping the same elements of the original work or even introduces another fictional character thereby expanding the universe<sup>14</sup>.

One of the defences available to the creators of fan art and even AI generated images is Fair use doctrine. All these fan creations even though are created wither creativity still comes from an original piece of work therefore it a derivative work but it can be still protected under the fair use doctrine. This doctrine determines whether the copyrighted work used by another person who is not authorised to do so by the owner of such copyright, is using their work for fair use and not to gain any economic benefit out of it. The four parameters that is checked to confirm such fair use is, purpose and character of the use, nature of the copyrighted work, amount and sustainability of the portion used and effect on the potential market. Such

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<sup>12</sup>Generative Artificial Intelligence and Copyright Law | congress.gov | Library of Congress, <https://www.congress.gov/crs-product/LSB10922> (last visited Oct 6, 2025).

<sup>13</sup> Supra Note 2

<sup>14</sup> Admin & Dr. Monika, The intersection of copyright law and fan made content The IP Press (2024), <https://www.theipress.com/2024/10/15/the-intersection-of-copyright-law-and-fan-made-content/> (last visited Oct 6, 2025).

parameters are checked either wholly or any criteria's fulfilment would be sufficient depending upon the case<sup>15</sup>.

Reproducing a fictional work in the form of fan art is considered as a freedom of speech and innovation of people. However, it crosses the line when such derivative work was created to gain economic benefits by merchandising popular characters. Usually, J.K Rowling is very supportive of fan creation and same was for Steven Jan Vander Ark where he tried to add on new vocabulary to Harry Potter Lexicons but the moment, he tried to gain commercial benefit a lawsuit was filed against him which led to paying penalties and taking down the work<sup>16</sup>. Another instance of merchandising in the name of fan art was the Demon Slayer Cake case where a woman was arrested as she started selling cakes with character of Demon Slayer's pen drawing which got her a profit of around 6.5 million yen. Additionally, she admitted to making and selling such cakes to earn profit and not as a form of fan art<sup>17</sup>.

## **CONCLUSION**

Interpretation of statutes and precedent, even if there are established rules and regulations its application varies from case to case. Copyright law's framework does balance out fan's creation and fair use of the original work while also protecting the copyright owner's exclusive rights. Nevertheless, there is still lack of proper guideline regarding the fan created arts which causes ambiguity. Restricting it too much hinders the spread of artist's work. Therefore, it becomes responsibility of the fans to respect and protect the fictional characters and their creators on rather than blurring the line from inspiration and infringement. While there are a lot of fan fiction which later on became a well-established movie like After, Fifty Shades of Grey, but here the common factor was that the lines were never crossed and the new creation by fans in fact had their own identity and originality.

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<sup>15</sup> Fair use doctrine in copyright law: Meaning, factors & examples, The Legal School: Law Courses for Legal Professionals & Students, <https://thelegalschool.in/blog/fair-use-doctrine-copyright-law> (last visited Oct 6, 2025).

<sup>16</sup> Breaking news, US News, World News and videos, The New York Times, <https://www.nytimes.com/> (last visited Oct 6, 2025).

<sup>17</sup> SoraNews24, Bootleg anime cakes? charges filed against Tokyo woman for selling unlicensed demon slayer sweets Japan Today, <http://japantoday.com/category/crime/bootleg-anime-cakes-charges-filed-against-tokyo-woman-for-selling-unlicensed-demon-slayer-sweets> (last visited Oct 6, 2025).