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# Diving into the Realm of Fan-fiction and What it Means for Copyright Law

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## ABSTRACT

*Fan fictions are exactly what the name itself suggests – fictions or stories written by fans on the basis of pre-existing original work. This original work can be anything – books, movies, TV Series, Anime, and so on. Fanfictions are not a modern invention, and can be seen across the world, with various websites to promote the same as well. However, the legality of fanfictions can be questioned because of copyright laws across jurisdictions.*

*Fanfictions are plentiful in existence, and so is copyright for various artistic works. The interplay between the two particularly in the legal sphere is of importance. In this context, it has to be kept in mind that fanfictions are written pieces only. Any inspired drawings or music or films do not fall under the realm of fanfiction. They fall under the specific head called “fanart,” which cannot be equated with fanfiction.*

*The author attempts to bring in an in depth understanding of what fanfiction is, and its connection with copyright law in the Indian scenario. This connection would be explored across foreign jurisdictions such as USA and UK too. The legality of fanfiction, whether it falls within any exemptions granted under copyright laws, whether the law can be changed to allow for the same are all points which this paper seeks to address. The scope of this paper is restricted to fanfiction alone. The research will be purely non-doctrinal, using both primary and secondary sources.*

**Keywords:** Copyright Act 1957, Copyright, Fan Fiction, Fictional Characters

## I. INTRODUCTION

There are multiple ways in which one chooses to express themselves – be it art, comic strips, videos, songs, films, stories – the list is endless. While the work that the creator produced is theirs in every sense of the term, one can never say that their work is without inspiration. They would have gotten the idea for the end product from somewhere and ultimately, the end result is theirs in entirety. Some of those creations have become immemorial and hugely popular – such as the plays of Shakespeare, the songs of Illayaraja, the art work of Leonardo

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Da Vinci, the movies of Mani Ratnam, the Harry Potter books and so on. Based on these pieces of art, there are various fans who have their own take on the same. These “takes” are expressed in various forms once again – through art, videos, short films, stories, etc. All of them together for one particular base comprise the fandom – such as the Harry Potter fandom, or the Game of Thrones fandom, and so on. Each of these modes of fan expression are called different things such as fanart (artwork or comic strips that depict the various aspects of the fandom) and fan videos (videos shot by fans using aspects from that fandom). When the expressions are in the form of stories, they are referred to as fanfictions.

Fanfictions are written because of the love or obsession that one has with the fandom. They are not a source of income for any of the authors who indulge in it. It has to be understood that fanfictions are dependent upon the fandom work for their existence. A fanfiction writer would be writing the same on the basis of certain presumptions that the readers of the fanfictions know the fandom, but want to understand the other perspectives that might have been as well. The basis upon which fanfictions are written are not necessarily stories, although fanfictions themselves are stories. It can be based on movies, TV shows, books, Anime, music bands, and so on. There are numerous people across the globe who indulge in writing fanfics.

Some examples of fanfic premises would be that of Harry Potter not being the Boy-Who-Lived, Tony Stark not letting the world know that he was Iron Man, Derek Shepherd not dying in Grey’s Anatomy and so on. Some other examples of fanfictions include those that try to bridge the timeline gaps in the stories, such as narrating the incidents that might have taken place in the nineteen years between the ending of the Harry Potter books and the epilogue. Ultimately, it can be said that there are various ways and means to write a fanfiction – slight modifications to the plot, changing the outcomes of the plot-twists, exploiting the time gaps, narrating in the perspective of the other characters in the story – the list is endless.

Another concept has been given birth to in the fan universe is that of crossovers. Crossovers in their essence refer to a scenario where more than one worlds are combined through characters. A classic example seems to be a combination of the Harry Potter Series and the Twilight books by virtue of actor Robert Pattinson playing a role in both the movie versions.

The link between fanfictions and law, specifically intellectual property law, is that of copyrights. Copyrights refer to that piece of intellectual property right that protects any artistic work, regardless of its form. In its essence, a copyright grants immediate protection to the creator of books, plays, poetry, paintings, photographs, movies, songs, and so on.

Countries across the world have laws to protect Copyrights, and the Indian law is known as the Copyright Act, 1957. It is worth mentioning in this junction that there is jurisprudence on this matter in the USA, and not much in India. Nevertheless, this paper seeks to analyse the link between copyright and fanfiction, in the Indian context.

## II. FANFICTION & FICTIONAL CHARACTERS

One of the reasons for the rise of fanfictions and fictional characters is that of the internet. Prior to the internet too fanfictions existed, but there used to a certain sum of money that had been invested into the same by the fans, which now ceases to exist because of the internet <sup>2</sup>. Through the advent of the internet and its resounding use and popularity across the world, these fanfictions ended up being published in various websites as well at almost no cost for the fans. One such famous website is that of “Fanfiction.net,” where there are almost innumerable number of fanfictions have been published. In this website, Harry Potter has approximately 800K fanfiction <sup>3</sup>, the Star Wars movies has 50.7K fanfiction <sup>4</sup>, and Supernatural TV series has 121K fanfictions <sup>5</sup>. There are some elements of popular culture (or pop culture as it is more commonly known) that are so immeasurably popular that there are specific websites for the publication of fanfictions for those fandoms. Some of those include harrypotterfanfiction.com for Harry Potter, asianfanfics.com for Anime fanfictions, tvtropes.org for TV Series fandoms, and so on. The existence of these websites means that the entire idea of a publisher is done away with, which can increase plagiarism in works and hence also infringe on copyright is another argument too.

A point to note here is the fact that as far as fanfiction is concerned, each character is malleable to suit their whims and fancies. Sometimes the fanfiction writers do try and stick to what the original author had intended as the character arc for some persona, but most of the time they tend to add their own perceived elements to the character in question as per their story.

In the context of fanfictions, the fictional characters are important. This is because the characterisation of these entities is what appeals to the masses to the extent that they write fanfictions about them. Most of the popular fandoms in pop culture depict the story of one or few people, cataloguing all the important moments in their lives. This makes some characters

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<sup>2</sup> Megan McCardle, *Fanfiction, Fandom, and Fanfare: What's All the Fuss?*, 9 B.U. J. Sci. & TECH L. Law 443, 446 (2003)

<sup>3</sup> Harry Potter Fanfiction, <https://www.fanfiction.net/book/Harry-Potter/?&srt=1&r=10> (Nov. 20, 2020 8:00 PM)

<sup>4</sup> Star Wars Fanfiction, <https://www.fanfiction.net/movie/Star-Wars/?&srt=1&r=10> (Nov. 20, 2020 8:00 PM)

<sup>5</sup> Supernatural Fanfiction, <https://www.fanfiction.net/tv/Supernatural/?&srt=1&r=10> (Nov. 20, 2020 8:00 PM)

appealable than the others as well. All fictional characters are not equally important in the context of fanfictions. There seems to be more of a resonance with characters across fandoms, who seem to reflect the facets of human nature, rather than just fictional characters. To elaborate, a Sherlock Holmes or a James Bond will have more fanfictions based on them, as opposed to a Mickey Mouse or a Bugs Bunny.

Here, who a fictional character in the legal context is has to be determined. A fictional character, like any character would possess a name and identity, physical as well as mental traits<sup>6</sup>. The identity would refer to the type of character that they are, that is, a human being, or an animal, or some mythical character, and so on. The physical traits are self-explanatory; the mental traits refer to the characterisation given or the character arc in the story. In the case of *Detective Comics Inc. v. Bruns Publications Inc.*<sup>7</sup>, it laid out that the characterisation had to be made in such a way that made the character unique. The idea of a character possessing super-strength was aptly identified as an idea, but at the same time, the other traits that had been ascribed to Wonderman had been in close similarity with that of Superman and hence Wonderman was deemed to be a copyright infringement in the instant case<sup>8</sup>.

These fictional characters in themselves do not possess copyrights, that is to say that although the Harry Potter books are copyrightable, Harry Potter as a character does not possess any copyright protection<sup>9</sup>. A certain extent of protection exists for cartoon characters<sup>10</sup>, lesser for literary characters<sup>11</sup>, and the protection provided for movie characters is much lesser<sup>12</sup>. The last one is so because there a real personality embodies the role of a fictional character and that is ultimately viewed by the public as movies, TV shows, or videos. This variance is because of the level of imagination at play. Although the description of a character can be done literally down to the exact specifications, the character gets the feel only when it can be visually seen. This puts cartoon characters or comic characters<sup>13</sup> at a higher pedestal. The same is however not quite true for characters played by real life actors on the big screen, because it again becomes difficult to delineate the character played and that of the person playing the character. The variance can be seen in the legendary Sherlock Holmes, who had his origins in the literary format after which the books had been made into a series of comic

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<sup>6</sup> Michael V. P. Marks, *The Legal Rights of Fictional Characters*, 25 COPYRIGHT L. SYMP. 35, 37-38 (1980).

<sup>7</sup> *Detective Comics, Inc. v. Bruns Publications, Inc.*, 111 F.2d 432 (2d Cir. 1940).

<sup>8</sup> *Id.* at 7.

<sup>9</sup> Leslie A. Kurtz, *Fictional Characters And Real People*, 51 UNI LOU L. REV., 435 (2013).

<sup>10</sup> Cathy J. Lalor, *Copyrightability of Cartoon Characters*, 35 IDEA 497 (1995).

<sup>11</sup> *Id.* at 10

<sup>12</sup> Rosemary J. Coombe, *Authorizing the Celebrity: Publicity Rights, Postmodern Politics, and Unauthorized Genders*, 10 CARDOZO ARTS & ENT. L.J. 365, 368 (1992).

<sup>13</sup> *Walt Disney Prods. v. Air Pirates*, 581 F.2d 751, 754 (9th Cir. 1978).

strips by Charlton Comics in 1955, and the same have been seen as movies and as a BBC TV series. Through various cases in different courts, it is clear that the copyrightability of fictional characters plays an important role in determining the dispute between fanfiction writers and authors of the fandoms.

### III. LEGALITIES INVOLVED IN FANFICTION AND COPYRIGHT

There is no doubt that the creators of the fandoms possess copyrights for the works, be it a book, movie, TV show, anime, or what not. A question that has to be in this junction is whether there is a violation of the said copyright by the fanfictions and other such fan expressions. The other question that needs to be tackled is that of whether the fanfiction authors themselves possess copyright or not. Clearly, the authors of the original works have more rights as compared to that of the fanfiction writers. To answer the question of whether the fanfiction writers themselves have copyright, the original work that the fanfiction writer has added to the story is to be kept in mind. The fanfiction authors do not possess copyright over the characters of the story, unless it is an original character that they have brought in.

But for the author of the fandom to possess a copyright over the character, the test of “character delineation” is one of the few important and relevant tests at hand. According to this test, the development of the character will be the decision maker in terms of whether the creator of the fandom possesses copyright over the character or not. For example, in the Harry Potter Series, JK Rowling would possess a stronger copyright over Harry Potter, Voldemort, or Severus Snape, but she would not possess as much of a copyright for her other characters such as Theodore Nott, Gabrielle Delacour, or Walburga Black to name a few. This test had been laid down in the case of *Nichols v. Universal Pictures Corp.*<sup>14</sup> There were three important parameters made out for the test to be carried out<sup>15</sup> – (1) the characterisation, (2) the cross-border recognition of the characters<sup>16</sup>, and (3) unique elements of expression which the public is aware of. The usage of this test alone had its drawbacks, as was highlighted in the US case of *Burroughs v. Metro-Goldwyn Mayer*<sup>17</sup> regarding the character of Tarzan, where it was proved that the usage of the test would be extremely subjective, particularly because the test made it difficult to alienate the character from an idea. The basic tenets of copyright is that ideas are not copyrightable, only expressions of such ideas are.

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<sup>14</sup> *Nichols v. Universal Pictures Corp.*, 45 F.2d 119.

<sup>15</sup> Pranjali Dixit, *Can a fictional character be copyrighted: India and the US (Part 1 of 2)*, APPRENTICE (Nov. 20, 2020 8:00 PM) [https://www.theapprentice.in/blog/ipr/153/can-a-fictional-character-be-copyrighted:-india-and-the-us-\(part-1-of-2\)](https://www.theapprentice.in/blog/ipr/153/can-a-fictional-character-be-copyrighted:-india-and-the-us-(part-1-of-2))

<sup>16</sup> *BBC Worldwide Ltd. and Anr. v. Patty Screen Printing Ltd. and Ors.*, 1998 FSR 665.

<sup>17</sup> *Burroughs v. Metro-Goldwyn-Mayer, Inc.*, 519 F. Supp. 388, 391 (S.D.N.Y. 1981).

Another test, called as the “story being told test” had been spelled out in the case of *Warner Bros. Pictures v. Columbia Broadcasting System*<sup>18</sup>. This test had laid out that the relation of the character to the story is an essential consideration in reference to the copyrightability of a character. It had been held in the case of *Universal City Studios v. Kamar Industries*<sup>19</sup> that the name of the character (E.T.) had become so intrinsic to that of the character at hand that one could not separate the two without attention being drawn to the story. Both the tests (character delineation and story being told test) had been applied to the famous character of James Bond, and the Courts had held the character to be copyrightable<sup>20</sup>.

The case of *Warner Bros. Entm't Inc. v. RDR Books*<sup>21</sup> provides a certain level of direct understanding regarding the issue. The case was about the website called the Harry Potter Lexicon, maintained by one Mr. Steven Vander Ark. This website provided an almost in depth analysis into the Harry Potter World, which was even used frequently by Ms. Rowling herself while writing her books. But this all changed when RDR Books, the defendant publishing house announced its decision of selling copies of the Lexicon caused both Rowling and Warner Bros. to sue both, citing copyright infringement. The important point to note here is the fact that Rowling had argued this case saying that she was losing control over the series which she had toiled over for so long<sup>22</sup>. The author believed that the fanfiction would have the power to sway the money that she was making out of the books.

To understand copyright, particularly in the Indian Jurisdiction, the Copyright Act of 1957 as well as the Copyright (Amendment) Act of 2012 must be referred to. According to the provisions of this Act, it is clear that exclusive protection is granted to the authors of the works, which also prevents others from using the works unjustly. If any person on whom the copyright is vested in, encroaches in the rights of that person, then that person is said to have infringed the copyright<sup>23</sup>. The Copyright Act does not provide explicitly on the question of the copyrightability of the fictional characters. However, the Courts have provided for some understanding of the same.

One such test that has been purported by the Indian Courts states that the copyright is given to a substantial portion of the work<sup>24</sup>. It is worth mentioning here that the substantial portion is not to be taken literally as a huge portion of the work; rather, it is to be considered as

<sup>18</sup> *Warner Bros. Pictures, Inc. v. Columbia Broadcasting System, Inc.*, 216 F.2d 945 (9th Cir. 1954).

<sup>19</sup> *Universal City Studios v. Kamar Industries*, 217 U.S.P.Q. 1163 (S.D. Tex. 1982).

<sup>20</sup> *Metro-Goldwyn-Mayer v. American Honda*, 900 F. Supp. 1287 (C.D. Cal. 1995).

<sup>21</sup> *Warner Bros. Entm't Inc. v. RDR Books*, 575 F. Supp 2d 513 (S.D.N.Y.) 2008.

<sup>22</sup> Viktor Mayer-Schonberger & Lena Wong, *Fan or Foe: Fan Fiction, Authorship, and the Fight for Control*, 54 *IDEA* 1 (2013).

<sup>23</sup> Copyright Act, 1957, §51, No. 14, Acts of Parliament, 1957 (India)

<sup>24</sup> *Barbara Taylor Bradford v. Sahara Media Entertainment Ltd.*, 2004 (28) PTC 474 Cal.

something integral to the work in question<sup>25</sup>. So, it can be inferred that if the character can be deemed to belong such a part, then that character possesses a copyright, although there has not been case to this effect<sup>26</sup>. This test has also been used in the USA. The USA case of *Anderson v. Stallone*<sup>27</sup> is of importance here, although it does not bear any relevance to fanfiction directly. Anderson, the screenplay writer, had prepared a script for the Rocky IV movie, which had not been taken up, but when the movie released, he realised that there were major common elements between the two and hence sued for copyright infringement. The Court held that there was no case for copyright infringement because the plaintiff had created a derivative work based on the work of Stallone, that too without permission. The Court also held that there was no substantial commonality between the two scripts, which also negated the copyright infringement claim.

Another test purported by the Indian Courts is that of the lay observer test, wherein the perspective of the lay observer was used to ascertain the infringement of copyright, if any. In the context of fictional characters, the Delhi HC applied this test in the case of *Raja Pocket Books v. Radha Pocket Books*<sup>28</sup> and had stated that there was a copyright infringement, because even though there was a certain distinctiveness to them both, the characters looked similar, had similar sounding names, and similar characterisation. This would confuse the lay observer and he would not be able to differentiate between the two, thereby resulting in the copyright being infringed by the defendants.

In this dispute between the actual authors and the fanfiction writers, the latter to a certain extent have the “fair-use doctrine” to protect themselves. The fair use doctrine is a US doctrine, which is based on four questions – (1) what is the purpose of the use, (2) what is the nature of the copyrighted work, (3) whether there has been usage of substantial part of the work and (4) what is the effect of the use of the work so created on the market of the copyrighted work<sup>29</sup>. With reference to fanfictions, the first question is based on the reason of indulging in writing fanfictions. Fanfictions are generally not written for commercial reasons; rather, they are written because of the love and near obsession that the fanfiction writers have for the fandoms, which hence makes the use personal. The second question applies to fanfiction written on the basis of copyrighted and published works, as opposed to that written for unpublished works because the choice that had been present with the creator regarding

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<sup>25</sup> RG Anand v. Delux Films, AIR 1978 SC 1613.

<sup>26</sup> R. Gaurav Natarajan, *Stuck in Limbo: Fictional Characters and Copyright Law*, 3 MIPR, 129, 133 (2017)

<sup>27</sup> *Anderson v. Stallone*, 1989 U.S. Dist. LEXIS 11109.

<sup>28</sup> *Raja Pocket Books v. Radha Pocket Books*, 1997 (40) DRJ 791

<sup>29</sup> US Code, title 17, Chapter 1, S. 107

when to come to the public with his work had been infringed on<sup>30</sup>. The answer to the third question has already been provided in this chapter. The fourth question is probably the most important question that needs to be answered, for it is based on the economic viability of the fanfiction. In the event of the fanfiction being commercialised, the fair use doctrine is not applicable, because it is competing with the contents of the actual fandom,<sup>31</sup> the copyright infringement can be claimed by the author of the fandom.<sup>32</sup>

In the context of determining fair use, the transformative works are also to be considered. Fanfictions are considered to be derivative works in some aspects, but it could also be considered to be transformative in some other aspects. Transformative works are considered to be a subset of derivative works<sup>33</sup>. All derivative works are not copyrightable, but those that are copyrightable are considered to be transformative works.<sup>34</sup> Fanfictions are considered to be derivative works because they take elements from the base work and improves upon the same by virtue of the originality contributed by the fanfiction author. But they can also be considered to be transformative because superficial changes are not made to the story; rather, there are structural changes that are made to the story.<sup>35</sup> Deep insights into the fandom base are required to be able to pull off a fanfiction story successfully. If the fanfiction is granted redressal under the fair-use doctrine, then it means that the transformation is copyrightable.<sup>36</sup>

At this juncture, the moral rights are also to be referred to. Moral rights are a part of copyright law which have been recognised in India through S57 of the Copyright Act, 1957, but they are not recognised in the USA. This is a fundamental difference that does have its own role to play in understanding copyright and fanfictions. According to S57, distortion of the work of the author would lead to the moral rights of the author being infringed. These distortions can happen in fanfiction when the entire premise of the fanfiction is completely and absolutely different from the fandom base. One of the examples in this regard would be writing a fanfiction of the Harry Potter series, where Voldemort is the hero, and Dumbledore is the villain. This is clearly diametrically opposite to what JK Rowling had intended in her

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<sup>30</sup> Kiran Mary George, *The Murky World of Fan Fiction and Copyright*, SPICYIP, (Nov. 20, 2020 8:00 PM) <https://spicyip.com/2015/01/14526.html>

<sup>31</sup> *Harper Row Publishers Inc. v. Nation Enterprises*, 85 L Ed 2d 588: 471 US 539 (1985).

<sup>32</sup> *Id.* at 29

<sup>33</sup> What is the Difference between a Transformative and Derivative Work in United States Copyright Law? <http://uspatentlaw.cn/en/what-is-the-difference-between-a-transformative-and-derivative-work-in-united-states-copyright-law/> (last visited Dec. 4, 2020).

<sup>34</sup> *Ibid.*

<sup>35</sup> Zainab Hussain, *Copyright & Copywrong: What are Derivative and Transformative Uses*, FOUNDRY LAW GROUP (Dec 4, 2020, 8:00 PM) <https://foundrylawgroup.com/copyright-copywrong-what-are-derivative-and-transformative-works/>

<sup>36</sup> *Ibid.*

books and written as well. JK Rowling could legitimately claim damages from these fanfictions if it can be proved that the fanfiction in question had been written by an Indian. This is however not possible in the USA.

The fair dealing doctrine must also be analysed in this context. This doctrine is an Indian version of the fair-use doctrine. There are differences between the two, which are – one, the latter doctrine is inclusive, and hence the scope is restricted<sup>37</sup>. The former doctrine however has allowed for the four broad questions to be answered in the affirmative for the said usage to be considered fair use. Attention was brought to these four tests in the Delhi HC case of *Chancellor Masters and Scholars of the University of Oxford v. Narendra Publishing House and Ors.*<sup>38</sup> This case seemed to use both the doctrines interchangeably and the four test method of the fair use-doctrine was referred to in this case. This case held that the books of the defendant in question, were transformative works and hence were eligible for protection as per the fair use doctrine.<sup>39</sup>

#### IV. FANDOM AUTHORS ON FANFICTION

As far as fanfiction is concerned, the parties to the issue are the owner(s) of the copyright and the fanfiction writers themselves. Very many authors have differing perspectives and takes on this issue. Generally authors of the fandom do not have many problems with the general public becoming fanfiction writers, because in their opinion it provided a sort of free marketing services for the fandoms, but recently there have been varied perspectives on this issue.

On the one hand, the curious case of the three part series of *Fifty Shades of Grey* is also worth discussing, because the author had initially made the series as a fanfiction for the *Twilight Series*, which was later taken down and made into a set of three books<sup>40</sup>. This is not the only book series that have made this sort of a transition. The authors Cassandra Clare, Cecilia Tan, Racheline Maltese and Erin McRae, have all made the transition from writing fanfictions to writing professionally, albeit writing different original stories<sup>41</sup>. It is interesting to note here that there are many fanfictions written for the *Fifty Shades of Grey* series as well as the *Mortal Instruments* series (by Cassandra Clare) as well. These authors do not bite the hand

<sup>37</sup> Copyright Act, 1957, § 52(1)(a)(i), No. 14, Acts of Parliament, 1957 (India).

<sup>38</sup> *Chancellor Masters and Scholars of the University of Oxford v. Narendra Publishing House and Ors.*, 2011 (47) P.T.C. 244 Del

<sup>39</sup> Mihir Naniwadekar, *Guest Post: Delhi High Court on 'Originality' and 'Fair dealing'*, SPICYIP (Dec. 4, 2020, 8:00 PM) <https://spicyip.com/2008/11/guest-post-delhi-high-court-on.html>

<sup>40</sup> Hayley C. Cuccinello, *Fifty Shades of Green: How Fanfiction went from Dirty Little Secret to Money Machine*, FORBES (Nov. 20, 2020 8:00 PM) <https://www.forbes.com/sites/hayleycuccinello/2017/02/10/fifty-shades-of-green-how-fanfiction-went-from-dirty-little-secret-to-money-machine/?sh=2b005bfb264c>

<sup>41</sup> *Id.* at 33

that fed them previously, and hence do not have any problems with fans writing fanfictions on their works. Ms. Naomi Novik, the author of Temeraire Books as well as a fanfiction writer, is of the opinion that writing is writing and hence she does not differentiate between the two <sup>42</sup>. She is also the co-founder of yet another popular fanfiction portal known as ArchiveOfOurOwn (or AO3).

The older authors however, such as Stephanie Meyer (author of the *Twilight* series), Anne Rice (author of the *Vampire Chronicles* series) have all had their fair set of problems with fanfiction. Anne Rice even threatened to sue the fanfiction writers, if the fanfiction is not taken down, and now Fanfiction.net disallows the fanfiction of *Vampire Chronicles* too. It is quite evident that the issue of the legality of fanfictions is a problem that can only be dealt with on a case to case basis. The famous author George RR Martin had stated that writing fanfiction is “a lazy way out” because the material already exists <sup>43</sup>. He has instead encouraged people with aspirations to write to read and write other stuff extensively.

## V. CONCLUSION

The dispute in question here regarding whether fanfiction writers were infringing the copyright of the authors of the works has been dealt with in detail in this paper. The fanfiction writers do seem to be infringing upon the pre-existing copyrights with the characters in writing the fanfiction, in certain circumstances. They are not violating the copyright when the character arc taken by the fanfiction writers stick close to the pre-existing version of events and also if the fanfiction in question seems to explore the perspectives of the non-significant characters. But in the event of there being a major plot twist in the stories, to the effect of the whole plotline of the original story being reversed, such as Thanos being the good guy (in the Avengers movies), Luke not being the son of Darth Vader (in Star Wars), or something of that magnitude because this is clearly an indication of the entire expression changing, which attracts copyright infringement.

In this regard it has to be noted that there are certain works whose fanfictions when written and published cannot be disputed. This is because of the term of copyright expiring. Works of Shakespeare, and even Sherlock Holmes is now part of the public domain <sup>44</sup>. In these works, the fan work in any form, including fanfiction are all legal and permissible. The copyright on Mickey Mouse expires in 2023, making it a part of the public domain, free for anyone to

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<sup>42</sup> Mikaella Clements, *From Star-Trek to Fifty Shades: how fanfiction went mainstream*, THE GUARDIAN (Nov. 20, 2020 8:00 PM) <https://www.theguardian.com/books/2018/aug/08/fanfiction-fifty-shades-star-trek-harry-potter>

<sup>43</sup> GEORGE R.R. MARTIN, <https://georgerrmartin.com/for-fans/faq/> (last visited on Nov. 20, 2020)

<sup>44</sup> *Klinger v. Conan Doyle Estate*, 755 F. 3d 496 (7<sup>th</sup> Cir. 2014)

use<sup>45</sup>.

In the present, the only appropriate answer with regard to writing fanfiction is when the permission of the creator(s) is obtained and hence a license granted. Else, all the existing fanfiction might be on thin ice, as of now. The solution to this debate cannot be a change in the law, however. It can only arise from judicial decisions, which apply the pre-existing tests to the case in question to answer the question of infringement of copyright.

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<sup>45</sup> Id. at 14