



# Negotiating copyright in online creative spaces: how Canadian fan writers navigate and learn about law

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# Introduction

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- Fan fiction a form of second-generation creativity that draws on or ‘remixes’ earlier, often copyrighted, media.
- Like other amateur creative remix, it is growing online, but may highlight disengagement between creators and copyright frameworks.
- While there is a body of scholarship addressing fan fiction’s legality – especially under US fair use – there is less empirical work on fans’ legal knowledge and information behavior.
- Fans outside the US, including Canadian fans, are underrepresented.

# Definitions

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- Remix culture: “the taking of “cultural artifacts [to] combine and manipulate them into new kinds of creative blends” (Knobel, Lankshear, 2008, p. 22).
- Fan fiction: stories “based on any identifiable segment of popular culture”, typically shared in amateur, non-profit online fan sites (Tushnet, 1997).
- Fandom: the underlying source text inspiring fan fiction, and the ensemble of fan sites, works, and communities around that text.
- Information behavior: “the totality of human behavior in relation to sources and channels of information, including both active and passive information seeking and information use” (Wilson, 2000, p. 49).
  - Not necessarily purposive seeking of information.

# Research questions and methods

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- Research questions:

1. To what degree are fan fiction writers aware of objective intellectual property (IP) law (primarily copyright) concepts which could either discourage or defend fan fiction? Are there factors that appear to affect fans' legal awareness?
2. How do fan fiction writers perceive relevant intellectual property laws? Are there factors that appear to affect fans' perceptions of the law?
3. Do fan fiction writers self-report seeking legal information, or other information behaviour related to intellectual property laws? If so, what information behaviour do they report?

# Research questions and methods

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- Research is qualitative, using semi-structured interviews lasting ~ one hour.
- Fan fiction writers chosen because of personal experience with the genre – facilitating recruitment and, eventually, engagement.
- Data analysis involves coding for themes with a priori codes from research questions and literature review and emergent codes from the data.
- Participants recruited through theoretical sampling and snowball sampling on social media sites, acquaintances of the researcher, and a fan fiction podcast.

# Background

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- Considerable literature on fan fiction's legality (Christian, 2013; Katz, 2014; Peaslee, 2014; Reynolds, 2010; Schwabach, 2011; Tushnet, 1997).
- Much scholarship considers whether fan fiction fair use in US law (see e.g. Christian, 2013; McCardle, 2003; Nolan, 2006; Tushnet, 1997).
- Some scholars consider whether laws elsewhere could exonerate fan fiction (see e.g. Katz, 2014; Lim, 2015; Peaslee, 2014; Reynolds, 2010).
- Less empirical work: Fiesler et al have found that fans share intuitions, misconceptions about law, turn to each other & to fan social norms (Fiesler, Bruckman, 2014; Fiesler et al, 2014; Fiesler et al, 2015).
- Freund (2014) investigated fan vidders' copyright literacy and experiences, finding baseline knowledge of fair use, & a variety of strategies to cope with complaints.

# Current Findings

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- Many benefits to fan fiction; varied motivations for writing it – a valuable practice for Canadians.
- Legal disengagement: a perception of personal safety generally exists alongside limited legal research or understanding and passive information behavior.
- Greater recognition of American fair use than Canadian fair dealing.
- Varied information behavior, with discrepancies and idiosyncrasies between interviewees (in pilot study as well as in interviews for full-scale dissertation research).

# Current findings

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- *Many benefits to fan fiction; varied motivations for writing it – valuable.*
- Motivations include a desire to improve writing skills; “be part of the conversation” about or critique the source text (interviewee RS); have fun; seek distraction or a new kind of intellectual stimulation (RS).
- Benefits include fun; receiving critique and feedback; improving one’s writing.

“I feel like we were almost a class of [Canadian] writers that came up together”  
(EW)

- Interviewees also reported forming friendships and romantic relationships; improving academic skills and opportunities; improving other skills e.g. leadership by moderating fan spaces (SP).



# Current Findings

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- *Legal disengagement*

Some interviewees expressed a sense that copyright complaints against fan fiction are a thing of the past:

“I think I joined post copyright paranoia... So to me I haven't really thought about the legal aspects at all” (SD).

“I wasn't writing fan fiction during that storied period when people were getting letters from lawyers like cease and desist letters. And so I have an understanding that that is a thing that happened in the past but it seems ... very unlikely to affect me as a fan writer now”(EW).

- Greater interest in ethics, norms, than letter of the law?

# Current Findings

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- *Legal disengagement*
- Commerciality held up as a ‘bright line’, barring significant transformations.

“As far as I know as long as you're not making money off of it then you're good to go...” (SD)

- Character ownership also held up as more clear-cut than it is.
- Yet participants engaged with ethical issues, e.g., respecting creators’ feelings (JD); potential copyright overreach (SP); ‘nothing new under the sun’ (SP; EW; RS); fandom as non-capitalist ‘economy’ (RS); intent of fan writers (KW)

# Current Findings

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- *Greater recognition of American fair use than Canadian fair dealing.*
- Even fans showing some knowledge of copyright issues from professional experience (e.g., careers in academia or the music business in Canada) unlikely to recognize ‘fair dealing’.
  - Some had not heard of fair use, either, but recognition of fair dealing particularly low.

“I have never heard of this term in my life. Fair dealing? [...] I don’t think I know about that at all. Unfortunately, I think, in fandom, when copyright comes up, it’s really only referring to American copyright laws – maybe sometimes British...” (SP)

“I’ve never heard that term actually - fair dealing? Hm, no...” (EW)

- Lone US participant in the pilot study had greatest knowledge – several reasons.

# Current Findings

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- *Varied information behavior.*
- Lone US participant suggested a ‘rich-get-richer’ approach to legal research: this participant had extensive experience with law, writing, and a desire to publish works professionally - and was most engaged with legal research.
- However, later interviews suggest more complex situation: one subject had transformed a fan fiction work into an original novel and published it; another participant planned to – neither indicated much legal research.
- Professional experience involving law, motive to publish, did not seem to legal clarity or confidence of Canadian fans.

# Current Findings

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- *Varied information behavior.*
- Information behavior often involved observation and socialization among fans.

“I have not done a ton of questioning on that. [...] I really have just kind of acquired knowledge as it goes past [...] like in discussions.” (RS)

- Some participants expressed confidence in fan fiction’s legality thanks to Organization for Transformative Works (OTW) legal advocacy, and expressed that OTW “fandom lawyers” are a source they would consult if needed.
- Lawyers in one’s social circle were also raised; so were non-fan non-lawyers.
- JD, in pilot, stated she avoids legal information for fear she will find she is doing something illegal *or* hurtful to the first-generation author.

# Discussion

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- Pilot study suggested ethical – not necessarily legal – engagement; US sources > Canadian ones; the ‘rich-get-richer’ with legal research and comfort.
- More recent interviews suggest engagement with ethics (varied concern) and intuitive norms, such as commercial gain being problematic while non-commercial work shouldn’t be.
  - Assumption that this moral intuition maps onto copyright law.
- US sources and fair use continue to overshadow Canadian law and fair dealing.
  - This is true even of participants who have relevant professional experience.
  - This finding concerning from the point of view of public engagement with Canadian law, law reform.

# Contributions, limitations, future work

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- Canadian perspective.
- Greater variety of legal information behaviour than previous literature.
- Disengagement from legal information.
- Confirms reliance on community norms seen among fans, other remixers.
- Small-scale qualitative study; rich data, but cannot claim generalizability.
- Small networks in which I have recruited fans (so far).
- Demographically similar sample in terms of language, age, race, gender (so far).

# Questions?

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Thank you!



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