

## Authorship and Ownership:

Everything is fanfiction and the  
illegality of copywriteright law

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Radboud University



## Authorship and Ownership

Everything is fanfiction and the  
illegality of copywriteright law

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Dedicated to my dad

The sun to my moon

“There is no justice in following unjust laws.”

-

Aaron Swartz, 2008

## **ABSTRACT**

Authorship and Ownership - Everything is fanfiction and the illegality of copyright law:  
This thesis investigates the connection between authorship and ownership and whether it is sufficient to justify it as a foundation of the current U.S. copyright law, the alleged purpose of which is to promote, not chill, creative production. It will build a case against CR law's treatment of genres like fanfiction with the help of narratological and linguistic evidence that reveals how the legally defined author is indicative of its lack of insight into the creative process, specifically the writing process and why we should accordingly look at alternatives that can ultimately replace it altogether. This thesis, then, tells the entire story of protecting stories, and why it is relevant that it does so now as well as in the case of fanfiction.

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## Introduction

See? I told you not to worry. The title page was an exception and the rest of this thesis will all be typed in the glamorous Times New Roman font. The content page kind of gave that away already and should have eased your mind. But how did I know you *were* worried (but not *you* for instance)? How do I know that you probably think this is a very unorthodox and strange start to a thesis and you suspect that either a) I am not taking this serious or b) this is going to be a very weird and slightly psychedelic read that's going to give you a massive headache. Wrong. This admittedly slightly eccentric kick-off does, in fact, pretty much strike at the core of what this thesis is all about: I, supposedly, own this paragraph, the preceding content list and cover page and the not yet read (unless this is not your first time reading this in which case don't you have something better to do?) pages upon pages stretching out before you even though you can't see them, all of it. Let's assume this text does exist in its entirety, so including the parts you're not reading right now, no, not now, just now, then, I mean now- Well, you get the point. It's a fair assumption that this means that the continuation and regular usage of I is going to make you connect that I with me, that is, the writer of this thesis whose name can be found in all its incriminating non-anonymity on the title/cover page. But is that me? And, in turn, are you you? Take that italicized you between brackets at the beginning of this paragraph for instance. Performing basic reading comprehension steps it could be deduced that this you refers to all the yous who weren't worried by the deviating font type used for the title (looks cool, btw, doesn't it?), and thus can't refer to the you that was/were worried (or experiencing a reaction similar to worry, no need to be *that* nitpicky). Then again, reading that particular you, I felt addressed too the moment I reread it after typing it. But how can a you become an I? How can you but not you become me?

With all this potential pronoun confusion, caused by the deictic nature of language alone it seems, how would we define something like authorship? Do I determine the meaning of this thesis? Where does that leave you? Are we, in fact, the same in that we both consume and produce simultaneously? What are the dynamics between the triad of text/reader/writer? Do they fulfill separate roles or are they interchangeable as well as interdependent on one another? And if both reader and writer engage with the text in order to activate it, would we still be referring to the same text when it could potentially hold different versions and interpretations exactly because they require this individually (perhaps even inter-individually) differing activation? How about all the other texts embedded in one text? Can a text ever be singular or is it always inevitably plural? And if texts are inherently derivative because of



their intertextuality, how can we possibly define originality and, perhaps more importantly, defend its relevance or very existence even? If the author is not the only creator, if she is but a social construction, then whose story is it and what does it contain exactly? Are narratives direct representations of objective and intrinsic meanings found in the extra-narrative world or are they indirect imitation and subjective interpretations of it? And is, or can, a story at once be externally present and internally (re)constructed when both states are required? Is it ultimately, considering all of these and related questions, possible to subsequently equate or even link authorship with ownership?

This thesis will argue that it isn't. It will do so framed in direct response to the current U.S. copyright law which is based on this very connection but which offers no relevant evidence to back this claim up nor that its overly protectionist stance is conducive to its supposed goal of promoting creative production. This stance has led to genres like fanfiction being liable to litigation for its overt intertextuality and blurring of the lines between writer/reader/text. At the core of this is that fanfiction reveals, or rather makes extremely visible, a type of authorship that is in direct opposition with the single author as owner definition that CR law relies on (and thus feels threatened by anything that exposes this to be a false foundation). This 'new' authorship that can be identified with fanfiction is, in fact, not exclusive to it but applies to all writing (creativity). I feel reluctant to insert a definition of fanfiction here seeing that most definitions, used by both its defenders and opponents, distinguish it by its seeming borrowing of characters and story elements or plot which are currently copyright protected, when in fact it is this obvious derivativeness that exposes how all writing is in fact fan fiction.

Wonder out loud for a moment, like Sheenagh Pugh in her book *The Democratic Genre – Fan Fiction in a literary context*, how it is possible that although the material used by all writers are generally and historically speaking considered to belong to everyone and yet a notion persists that what fanfiction writers do is materially different from what 'professional' writers do. (Pugh, 9-11) Pugh accordingly goes on to say that to base the distinction between fan fiction and fiction on unpaid and paid "is not very satisfactory from a literary point of view, because it has very little to do with any difference in genre" (11). Moreover, she also points out that, just like writing's intertextuality and derivativeness, when it comes to writing 'original' characters and characters based on these, "how much actual difference is there in the two processes?" (17). Francesca Coppa in her book *The Fanfiction Reader: Folk Tales for the Digital Age* also underlines the artificial division between fanfiction and 'professional'

fiction and how, due to the erroneous notion of authorship used in CR law, “[T]he average person is-in the Marxist sense-alienated from the process of storytelling” (6-7) for “[I]t is only in such a system-where storytelling has been industrialized to the point that our shared culture is owned by others-that a category like “fanfiction” makes sense” (6-7). The arbitrariness of this enforced division is made more explicit when she remarks how “[a] definition of fanfiction that only emphasizes its continuities with the literary tradition does not explain why *Rosencrantz and Guildenstern Are Dead* launched Stoppard’s theatrical career and *Pride and Prejudice and Zombies* was a huge publishing success while most fanfiction has had to fight for its right to exist, let alone be recognized as valuable” (6-7).

Again, at the heart of CR law’s (and those who support it) treatment of fanfiction, as Anne Jamison phrases it perfectly in her book *Fic – Why Fanfiction Is Taking Over The World*, storytelling has always been collective, intertextual and palimpsest in nature (Jamison, 13-14), which is why “fic can be uncomfortable for writers who believe they create autonomously in a void” (14). After all, fanfiction demonstrates how “[t]he author is not dead; the author is *legion*” (13). And even though “fan writers call it “playing in someone else’s sandbox” or “borrowing someone’s toys.” I [i.e. Jamison] call it “writing.” Opponents call it “Stealing”-and I call that bullshit” (17) because since “the Dawn of Time (...) people have been (...) [r]eworking an existing story, telling tales of heroes already known (...), [and it] was *the* model of authorship until very recently” (18). Fanfiction, then, despite the fact that “[a] good deal of the literary theorizing of the past half-century has been devoted to dismantling the ideology of the single, autonomous work of art as a literary standard” (14), interestingly never “*pretends* to be an autonomous work” (14). It is important to add, though, and Jamison herself doesn’t neglect to do so, how “the world of fanfiction is not all happy anarchy. Academics tend to emphasize fanfiction’s potential for collaboration, nonhierarchical relations, dissent, and resistance. (...) but [fanfiction] communities (...) can police these worlds and their boundaries with tremendous vigilance” (20). Still, this doesn’t take away from the fact that “taken as a collective, [fanfiction is] changing how we see commercial culture and literature in general-how we see authors, readers, producers, and consumers” (23).

And there is definitely a need for this changing view for the derision and stigmatization that fanfiction has been and still is being subjected to is baseless and should be addressed. Despite fan studies growing as a field and the steady increase in research revolving around fanworks like fanfiction, the polarizing and potentially undermining language initially

used to describe this phenomenon persists. Think of Henry Jenkins' term of textual poachers to refer to ficcers, for instance, which Mafalda Stasi is rightfully critical of in her article *The Toy Soldiers from Leeds: The Slash Palimpsest*: "His [i.e. Jenkins'] use of De Certeau's metaphor of poaching is incomplete and misleading: poaching is an illegal appropriation, a theft (...) I fear that the notion of theft may be misconstrued to indicate an inherent disparity between original text" (36) and a fic. This, in turn, obscures "the key point that there is no "legitimate" text (as opposed to "pirated" ones)" (38). For this reason, and I fully support this suggestion, Stasi proposes "a new metaphor (...): that of a rich intertextual *palimpsest*" (134).

Still, although being a huge sucker for fanfic as well as contributing to its incredibly diverse pool myself whenever RL spares me a moment, this doesn't mean I'm going to go easy on proponents of it. It's not my intention to pose fanfiction as *the* example of perfect authorship but to show how, as is the case for all writing, it is just as *imperfect*. It undermines as well as upholds the idea of 'the author'; it merges readers and writers' roles but not necessarily removes the traditional hierarchy between the two; and simultaneously maintains and revises canon. What's more, and Louise Ellen Stein and Kristina Busse draw attention to this in their co-authored essay 'Limit Play – Fan Authorship between Source Text, Intertext, and Context', "although OTW [Organization for Transformative Work: the largest online fan works archive] is dedicated to archiving fan works in all of their repetition and multiplicity, the name itself suggests a valorization of the transformative aspect of fan creativity, integrating the ideologies of originality that are at the heart of popular culture discomfort with fan authorship" (139). What fanfiction does undeniably do, despite these potential pitfalls, is that "[a]s part of their mediated authorship, fans emphasize and foreground the intertextuality of their creative work (...) [and] embrace repetition as a central mode of creative production" (121). Busse adds to this in chapter five 'May the Force Be With You – Fan Negotiations of Authority' of her book *Framing Fan Fiction – Literary and Social Practices in Fan Fiction Communities*, that "the writers of any given fandom collectively create a space that resurrects all potential meanings and interpretations and allows them to coexist. (...) they generate an ever-expanding body of texts that chart potential variations rather than foreclosing interpretations with a voice of authority" (119-120).

In order to challenge fanfiction's ambiguous legal position due to this persisting voice of authority or at least the illusion of it, I'm not going to attempt to fit it into the current CR law (specifically within the fair use clause exempting it from persecution which most scholars tend to go for), but instead will reveal, in case you didn't suspect or knew this already, how it

is void as a construct and it is not fanfiction that needs to prove its legality but CR law that needs to defend my claim of its illegality. Chapter one will accordingly gather as much narratological and linguistic theories to this end, so that in chapter two these can be applied to CR law's dealing with and defining of all those elements that make up authorship. Chapter three will then offer some alternatives to CR law after we have successfully declared it dead. In conclusion, this thesis will offer some ideas for further research and why this would be relevant.

As a quick side note, I initially wanted to explore all of this by analyzing fanfiction at the textual level, but then I realized that this thesis is already a text and that this is really all I need to demonstrate the arguments I'm going to make. I will refer to elements that are, again, not exclusive, but characteristic for fanfiction whenever relevant. But, in case you were wondering and getting semi-annoyed with the overt and annoyingly intrusive I that has popped up a lot already, this is done *on* purpose and *has* a purpose. It is to demonstrate throughout the entire thesis the ambiguity of distinguishing between narrators and characters, to speak of readers and writers, and the respective diegetic levels we're supposed to reside in and stick to. This, in turn, also reflects how fanfiction, and by extension all writing, all creativity, holds this same ambiguity. And even though this overly present (in your face) I behaves, *is*, far from detached and objective as it should (but can't be) in an academic work (or any other work), this over-emphasis does not close this text. It still requires you after all. Like all texts do. We might even prove to be one and the same. In that sense, this thesis itself is very much its own case study. It is, to use Roland Barthes term for it, a writerly as opposed to a readerly text, which, as Karen Hellekson and Kristina Busse explain it in the introduction to their book *Fan Fiction and Fan Communities in the Age of the Internet*, "invites the [reader] to enter, interpret, and expand the text" (11), and most of all expressively encourages and permits, despite this obnoxious I that keeps addressing and influencing you, a very much "shared authorship" (11).

## Chapter 1

*A text, a reader, and a writer walk into a bar...*

### Authorship

The first, and most important step to dissect authorship in order to examine its connection with ownership is to research the components that are its foundation or at the very least the components that should determine (or *redetermine*) its definition. These components are not so much separate parts that put together make one, well-oiled and smoothly operating machine, but rather an integral part of an organism in which they coexist in a sort of symbiotic but also mutually destructive way. At the core of these components, and thus of authorship, is the triad of text-reader-writer. Seeing how, as Anne E. Soccia put it in ‘The Rebirth of the Author: The Construction and Circulation of Authorship in English Culture’: “Conceptions of authorship have originated from different socio-historical and epistemic contexts that in turn have theorized the necessity of reconfiguring our understanding of the literary text and the mechanisms out of which the text itself is generated” (1), it makes sense to make this our launchpad, throw the reader and the writer into the mix and before you know it this rocket’s off the ground! After all, a painter is not a painter without a brush and paint and last (?) but not least an audience admiring (or condemning) the result on the canvas. And so, we need to take a closer look at the tools that shape so-called authorship to be able to say anything useful about it. This includes the main element that binds all of them together: language (and by extension the effect this has on the narrative structures: a.k.a. narratology).

A lot of people have had a lot to say about our three main suspects; who they are, how they behave, if it really was the butler with the candelabra in the living room and whether said butler, as a ‘fictional’ character, can be held accountable for committing murder in the first place when it could only have been the writer’s and reader’s mind that ultimately conjure up the mental act of murder with the physical text being a passive (?) and inadvertent accomplice. We will alternately or simultaneously slide narratological, linguistic and maybe even semi-philosophical lenses into our looking glasses to investigate whether authorship’s legal connection with ownership is justified in that it deems it inseparable, provable and absolutely necessary (\*Spoiler Alert: it isn’t!\*). Also, Trigger Warning: although I divided this chapter into over a dozen subthemes, which might suggest logic or hierarchy even, the order is pretty random seeing that their overlap is equally haphazard and, if anything, are a symptom of the continuous permeation and fluidity of the entities themselves as well as the borders we

imagine between them. In other words: Cornish pixies do not like to be put in cages. You say: ‘Chaos!’, I say: ‘Welcome to the wondrous world of words!’.

~R-W-T Triad~

Let's be good little sheep, for the time being, and start with the two men everyone seems to start with when discussing authorship. The slightly misleading title of Roland Barthes' 1968 essay 'The Death of the Author' offers to rid us of the problem of defining her altogether, the author is declared dead after all, but it seems that exactly half a century later we're still very much talking about her, whether it is to bring her back to life or to perform a perpetual autopsy on her remains. According to Barthes, at any rate, her death has essentially lead to our birth. All of us. It's just that we are indistinguishable from one another: "It will always be impossible to know, for the good reason that all writing is itself this special voice, consisting of several indiscernible voices, and that literature is precisely the invention of this voice, to which we cannot assign a specific origin: literature is that neuter, that composite, that oblique into which every subject escapes, the trap where all identity is lost, beginning with the very identity of the body that writes" (2). A trap, then, in which the author disappears like every one else for "it is language which speaks, not the author (...) [and] linguistically, the author is never anything more than the man who writes" (3). As a result, Barthes stresses, writing is "performative" (4) rather than "an operation of recording, of observing, of representing" (4) seeing that "the modern writer (...) is born simultaneously with his text; he is in no way supplied with a being which precedes or transcends his writing, he is in now way the subject of which his book is the predicate; there is no other time than that of the utterance, and every text is eternally written here and now" (4). In other words, the writer, "detached from any voice, borne by a pure gesture of inscription (and not of expression), traces a field without origin-or which, at least, has no other origin than language itself, that is, the very thing which ceaselessly questions any origin" (4). Barthes effectively kills both the author but also the critic with this view for the latter engages in the erroneous and useless activity of discovering the author in a text and equating this with the meaning of it when, in fact, "writing ceaselessly posits meaning but always in order to evaporate it: it proceeds to a systematic exemption of meaning" (5). (Barthes, 5) The text, for Barthes, is "a tissue of citations," (4) and "the writer can only imitate a gesture forever anterior, never original", it is "a tissue of signs, a lost, infinitely remote imitation" (5). But even though "no one, that is no "person", utters" (5) a

sentence and therefore “its source, its voice is not to be located; (...) it is perfectly read; this is because the true locus of writing is reading” (5). Which is why Barthes concludes that “there is one place where this multiplicity is collected, united, and this place is not the author, (...), but the reader” (6).

Similar to Barthes exclaiming the author to be dead, Michael Foucault likewise considers the author to be murdered by the text she writes in his 1969 essay ‘What Is an Author?’. To him writing is “an interplay of signs, regulated less by the content it signifies than by the very nature of the signifier. (...) Thus, the essential basis of this writing is not the exalted emotions related to the act of composition or the insertion of a subject into language. Rather, it is primarily concerned with creating an opening where the writing subject endlessly disappears” (116). Moreover, Foucault questions, how can we determine what should be included when we talk about the work of an author? Does it include all her notes scribbled in the margins of the many drafts that became the novel? Should the desk where it was written and all the candy wrappers, crumpled up notes and to do lists scattered over its surface also be considered a part of it? How can we determine the boundaries of what constitutes a particular author’s work when this very author’s presence is inevitably effaced from her work? Foucault finds anchorage in the author’s name, for this, he says, “remains at the contours of texts-separating one from the other, (...) The author’s name is not a function of a man’s civil status, nor is it fictional; it is situated in the breach” (123). (Foucault, 117-123) This conclusion might appear less easily reconciled with the case of fan fiction, however, seeing that every fan fiction author uses a pseudonym to separate their online identity from their real life one and thereby anonymizing that name supposedly hovering in the gap between author and text. Still, according to Foucault this problem wouldn’t be unsurmountable, or even a problem, for the author’s name can still perform its main function even in its pseudonym guise as “a variable that accompanies only certain texts to the exclusion of others” (124). Seen from this angle, the fan author’s pseudonym, as a (social) construct, now seems a perfect fit with Foucault’s vision. He does acknowledge, however, that texts do bear some traces of the author (not the writer) but that markers of this, like pronouns in a foreword or the name on the cover, are in most cases clearly not referring to the writer and that it would also be wrong to search for a link between writer and author like some would seek it between writer and narrator. Somehow this separation between author-writer and writer-narrator sounds a whole lot easier in theory than it would potentially turn out to be in practice. (Foucault, 129) In addition, Foucault clarifies that the author can mainly be characterized by a “plurality of egos” (130) that are

socially constructed (a.k.a. ‘the author function’) and their degree of traceability depends on the type of text more so than these grammatical markers. Meaning that a textbook screams author more than a fictional novel would. Considering that authors often promote their work by explicitly linking themselves to their work and whatever image they constructed around themselves, as well as the fact that some literature classes end up honing in more on the author than the work itself, considerably weaken this argument.

Going back to Barthes again, apart from distinguishing between writer and author and placing the latter’s authority in the reader’s hands, he further separates work from text in his essay, strap yourself in for this one, ‘From Work to Text’, in which Mr. Uninspired-Title declares that “[t]he Text is not to be thought of as an object that can be computed. It would be futile to try to separate out materially works from texts” (2) but that “[t]he difference is this: the work is a fragment of substance, occupying a part of the space of books (in a library for example), the Text is a methodological field. (...) the one is displayed, the other demonstrated” (2). The text, then, becomes, or rather always has been, an experience, a reaction to the signs it consists of and “the *infinity* of the signifier refers not to some idea of the ineffable (...) but to that of *playing*” (3). Just like “[t]he intertextual in which every text is held, it itself being the text-between of another text, is not to be confused with some origin of the text” (4) for the text is like language in that “it is structured but off-centred, without closure” (3) as well as “an *irreducible* plural” (3) and this process of play “requires that one tr[ies] to abolish (or at the very least to diminish) the distance between writing and reading, (...) [not] by intensifying the projection of the reader into the work but by joining them in a single signifying practice” (5).

So in this play that is writing a writer is a reader at the same time and the reader is simultaneously a writer, or rather their roles always inevitably merge: a.k.a. the Wreader is born! A/N: too bad our little Frankendoodle isn’t distinctly different from reader, phonetically at least, still works on paper though...screen...um..visually, it works visually, okay?! So read it but don’t mentally pronounce it. Which is impossible. Seriously. Try it. Guaranteed failure. ~~Like my academic career.~~ Which is the point of all of this. Maybe it’s better to go for a verb instead of a noun seeing it would better reflect the performativity of the ‘wreading’ process, and better include the text too this time, how about: I wrex, you wrex, we wrex...*wrexting*. Doesn’t have that much of a ring to it yet. Suggestions are welcome. Feel free to share them with the rest of the class when your muse did a better job than mine. Also, something to think about real quick, the I in this paragraph is pretty darn (for an uncensored version see any other version but the one I have to submit for grading, i.e. *all* other versions) obtrusive and



personalized (*the* academic no-no), but is that because it is me, the writer, even though, together with Barthes and Foucault, we've just declared that to be impossible? Am I hijacking this I more than you are? Why? Because I wrote it? I thought we just said that this can't possibly be me??!

Preventatively cutting short a potential and collective identity crisis, let's consider the pleasure of the text for a possible answer, as Barthes discusses it in -again, a bit of a shocker- 'The Pleasure of the Text' which he says lies in "the possibility of a dialectics of desire, of an *unpredictability* of bliss: the bets are not placed, there can still be a game" (4) for "the author (...) cannot choose to write *what will not be read*" (11). Moreover, language itself makes the writer a plaything of it, a ghost-presence forever adrift in her collapsing consistency. (Barthes, 21-35) Okay, that didn't do our identity crisis a whole lot of good, but it does change, or rather reveals the inaccuracy of, the roles traditionally assigned to reader and writer (and by extension author) which coincidentally still form the basis for the current copyright law. According to Barthes "there is not, behind the text, someone active (the writer) and out front someone passive (the reader)" (16). Linguistically alone it seems impossible to claim that the text-reader-writer triad is that of an object, a sender and a recipient. Just like language might be practically hierarchical and therefore closed, look at sentence structure for instance, theoretically it is always open. (Barthes, 50)

In her article, 'The Author, the Text, and the Reader', Clarissa Lee Ai Ling is on a similar quest to understand this corky trio of text-reader-writer. She discusses, among others, the literary scholar Wolfgang Iser and how he "speaks of the text as a virtual character that cannot be reduced to the reality of text or to the subjectivity of the reader, and that it derives its dynamism from that virtuality" (this is an online article, by the way, so no page numbers...cue sad trombone sound effect!). In other words, "if the text is an object which the subject creates, there is no way one can differentiate the text from the reader. The paradoxical situation that we are encountering now is that there exists no 'text' before there is a reader". So not only do the writer and reader, or at the very least the roles they have been assigned, merge, they are the necessary agents to activate and bring into existence the text. But, without a text, can there still be a reader/writer (a.k.a. the Wreader)? Even if the text would have no agency in itself, does it only exist in its actualized state when it can be said to already exist as a general concept and/or an expectation created by its intertextuality even before it is read and afterwards continues to exist in someone's thoughts and imagination even when it is not being read anymore or at a given (current) moment? Are these three components interdependent and

is there no difference in the degree of dependence between them? Are all three equally necessary ingredients and more importantly *agents*? Oh. Maybe this is also the right moment to point out that this thesis was sponsored by Euripides' motto: 'Question everything. Learn something. Answer nothing.' But don't let that stop you from reading on.

So how does this 'activation' of the text by the Wreader (I guess that's really a thing now huh?) work? For Marie-Laure Ryan the key word here would be immersion. She writes in her article 'Narrative as Virtual Reality: Immersion and Interactivity in Literature and Electronic Media' how this "immersive experience is based on a premise so frequently invoked in literary criticism that we tend to forget its metaphorical nature. For immersion to take place, a text must offer an expanse to be immersed within, (...) a textual world" (90). Not just a text but a textual *world* then which implies "a distinction between a realm of language, made of names, definite descriptions, sentences, and propositions, and an extralinguistic realm of characters, objects, facts, and states of affairs serving as referents to the linguistic expression" (91). It is the reader (which we call the Wreader but I'll stop adding that every single time because word count) who accordingly constructs this textual world and transforms it through "cognitive models, inferential mechanisms, real-life experience, and cultural knowledge, including knowledge derived from other texts" (91). This last point is very interesting and insightful for it again expands the definition of text to being inevitably more than the work it constitutes, it is in itself a process that goes well beyond the words on a page, it entails mental construction and its intangible, untraceable existence between and in other texts as well as the morphing influence of someone's personal experiences and the surrounding culture that has informed her. This also means, as Ryan argues in another article called 'On the Theoretical Foundations of Transmedial Narratology', that narratives have, in a way, an interactive relation with the medium that shapes them but which they ultimately can extend and transcend to cross over into other media. (Ryan, 20-21)

Closely related to immersion, if not essentially the same thing, Melanie C. Green, Timothy C. Brock and Geoff F. Kaufman discuss their "Transportation Theory" and its role in the reading process in 'Understanding Media Enjoyment: The Role of Transportation Into Narrative World'. They describe this process of transportation as a "flow-like state" (317) which involves identification with characters, evoking emotions, imagery and attention which in turn can be obstructed by "[f]actors external to media (...) and (...) other stimuli that attract attention to the real world rather than the media" (321). This describes the immersion into a textual world as a fragile one which is never solely internal but influenced externally too. In

addition, and what might also be of interest to us, Green and co claim that “poorly constructed narratives do not help readers enter the story world” (320) whereas the more detailed a story is the more it facilitates transportation into this world. Then again, I would argue that too much information can also distract and leave nothing for the reader to imagine and thus obstruct or demotivate at least the process of transportation into the narrative. It all depends on what game someone plays all at once as the producer, product and recipient.

Just to very briefly update our situation and show just how confusing a jumble it already is (and we’ve only just started too!): we have an author reduced to the social construct of ‘author function’; we have a triad (text/reader/writer) that needs each individual and effectively untraceable component to be realized; we have a consequent merging of at least two possibly all three which makes it hard if not downright impossible to distinguish them as separate entities; and we now have the text and its activation as a simultaneously internal and external process.

#### ~Intentional Fallacy~

So far the attempt to trace and define /writer/text/reader is already proving to be complicated, and that would be a serious understatement. Let’s go back, for a moment, to where we started: the author. Perhaps one of the most controversial issues linked to the author and authorship is the presence (or absence) of the author’s intention in the text. It’s this issue in particular that either gives or robs the author of a certain degree of if not *the* sole authority over how her text and its meaning is to be interpreted and/or judged; essentially, the clearer the intended message is conveyed by the text the more successful it allegedly makes both the text and its author. Contrary to the sidelined author of Barthes and Foucault, author in this instance is much more closely related to the, traditionally speaking, creator of the text: the writer.

In their groundbreaking article ‘The Intentional Fallacy’, published near the end of the first half of the 20<sup>th</sup> century (I could have given you the exact year but it is far more entertaining to imagine squinting eyes and scrunched up noses when you try to do the math yourself against your better judgement, only to still be left guessing at the exact number), Beardsley and Wimsatt argue that “the design or intention of the author is neither available nor desirable as a standard for judging the success of a work of literary art” (468) and that “to

insist on the designing intellect as a *cause* of a poem is not to grant the design or intention as a *standard*" (469). By extension, closing a poem off entirely to fit only one, exclusive interpretation would make the poet (author) and the critic its gatekeepers (sounds eerily familiar, doesn't it?) when it really "belongs to the public. It is embodied in language, the peculiar possession of the public, and it is about the human being, an object of public knowledge" (470). Doesn't look like the author will survive Beardsley and Wimsatt's treatment any more than Barthes and Foucault's. They also pose the practical question of how a critic (or indeed the author herself?) can discover this intention; if successful it should be found in the work, if not successful it must be sought outside of the work (interview with the author?). (Beardsley & Wimsatt, 469) This would leave the text (never mind the reader, she doesn't even seem to come into play at all) in a super awkward position in which it is apparently nothing if the author's intention can't be found; then what is it? The text still exists regardless, doesn't it? Even if it were possible for the author's intention to be traced in the text, connecting the assessment of a work solely to its author would disenfranchise both the text and the reader and discard especially the latter's response to a work as a valid and equally important means of assessment. That is not to say that Beardsley and Wimsatt don't tumble headfirst into another pitfall by simply shifting authority/responsibility from the author to the 'speaker': "We ought to impute the thoughts and attitudes of the poem immediately to the dramatic *speaker*" (470). This entire thesis will hopefully show just how much of a Mission Impossible this instruction masquerading as a solution is.

Moreover, the murky territory that is the author's intention, is made even more complicated when considering whether a text is dependent on meaning (regardless whether we are talking about the one meaning as representing the author's intention or all possible meanings it could have) to exist as a text, or if a text can simply *be* regardless of meaning; in short we have tripped over the good old riddle of whether or not a tree falling down in a forest still makes a noise when there is no one around to hear it. In other words this relates back to the autonomy and ontological attributes of a text: is the story contained in a book and made up of words and sentences scattered over a random number of pages still a story when the book is closed or maybe even shoved on a shelf behind other books or just simply out of sight (in another room for instance)? Is it even a story when the book does lie opened in your lap (or when the file is opened on your computer or accessed through an internet tab on your phone)? Is it a story when you are in the middle of reading/writing it when this story is never really the

same in both the literal (printed) text form and the form it assumes internally for every and the same reader/writer?

We did it again. Unintentionally (pun intended?) moved away from author to text and reader. They are all so intricately linked that it is impossible not to. Not that we won't try again. With Dario Compagno's help let's take a look at how the author fares in his article 'Theories of Authorship and Intention in the Twentieth Century' in which he gives a handy and historical overview of notions about authorship. To explain the divide between text and intention, work and author, Compagno mentions the philosopher Edmund Husserl who theorized that "[w]ords have a meaning-intention (...) that is autonomous from the speaker's intention" (39) or more plainly put "the experiences of those who speak and write are not the same thing as the meanings of the words used" (39) and consequently the meaning-intention of words can differ from an authorial intent exactly by the fact they have this 'own' inherent meaning. Compagno then points out, however, that others like Jacques Derrida and Roland Barthes disagree with Husserl in that there is no ideal meaning which is independent of intention.

Unlike Husserl, who sought the objective meaning of a work instead of the subjective intention, Barthes looked for "an ever-changing meaning, (...) not the pure will of the *conscious* subject (...), but rather the traces of its unconscious" (41) and "it is language that structures the unconscious" (41). With this Barthes essentially implies that "writing is as messy as real thought" (42) and not in any way more objective or indeed cohesive than the other forms language assumes such as speaking and thinking. With the consequent death of the author as well as the demise of Husserl's transcendental subject who is able to find objective meaning, Barthes here blurs the distinction between meaning and intention which in turn indicates "the end of an ideal consciousness that says only what it wants to say" (42). Similarly, for Derrida "*There are no ideal and objective meanings*, and there is no ideal consciousness able to grasp them" (42). (Compagno, 41-42). Overall, then, Barthes and Derrida's "Deconstruction neglects any stable core of meaning (...) and puts on the same level of relevance what the author *did* want to write and what the reader adds" (43) so that, and Compagno quotes Sean Burke's 'The Death and Return of the Author' here, "the text is opened to an unlimited variety of interpretations" (43) instead of containing the one objective meaning to be distilled by an ideal subject or a subjective authorial intention.

Which brings us and Compagno (back) to Foucault. We have already discussed how he somewhat revives the author again, textually at least, in developing the author-function as

a function of discourse (simplistically put a function at the text level and thus of the writing itself) which deemphasizes the single human entity that is the author as the person that writes. This view, Compagno elaborates, is born out of Foucault's recognition of the "need of having a person next to the text" (44); a construct of this being we can refer to as the author and who embodies who (we think) is speaking for "structure alone does not speak: without an effective author we could not give any meaning to texts. *The author-function is the sum of all constraints to writing*" (45). Wayne Booth, in his turn, talks about the implied author: found within and outside of the text the author is the total of choices she makes (conscious or unconscious) with meaning neither being ideal nor an impossible representation of the unconscious seeing language can be consciously steered by a subject. (Compagno, 44-45) Overall then, both Booth and Foucault place the "author on the border between consciousness and the unconscious" (45).

Compagno then moves on to Ludwig Wittgenstein who, by focusing mainly on the linguistic side of the case that is the author and her intentions, declares "the subject's intention completely public and sharable" (46) on the basis that "We are what we are because we are put into a certain form of life by language" (45) thereby denying "that the immediacy and the private nature of somebody's conscious contents can justify (...) the knowledge s/he has of these" (45-46). This view is strongly linked to "twentieth-century theories of subjectivity" (46) which points out "*the semiotic nature of intention*, the fact that even what is most intimate in man is made of signs, and therefore lives a public life. There is no hidden 'real author', no inaccessible subjectivity hidden from language and from others" (46). This argument for the public nature of an author's (by extension every human being's) intention and its expression (whether conscious or unconscious) is important to keep in mind when we will investigate the basis that forms the copy right holders' claim to those exclusive, private rights in chapter 2.

Lastly, another important figure Compagno discusses is Umberto Eco who, in contrast to Derrida and Barthes, doesn't discard intention and states that "we need to look for and find an intention in order to recognize a work of art as such" (49) which makes "art (...) *always intentional*" (49) but at the same time, like Wittgenstein, poses that this is "an intention that is public" (49) and therefore Eco maintains that "[i]ntentions are semiotic realities, existing only within our public interpretation of actions and texts" (49). Compagno himself, contrary to some of the theorists that he discusses, does not seem to intend to completely dismiss the

author and focus solely on the text and/or reader instead, hinting at the fact that zooming in on the unintentional and unconscious forces behind writing should not mean a total exclusion of conscious, authorial intentions. I agree that acknowledging intention does not necessarily imply the inevitable success of this intention or that it somehow pervades and muddies the text and the reader. After all, it's going to end up diluted and just another possible interpretation not THE interpretation that's going to act like a cuckoo and push all other birds out of the nest that isn't even hers.

Speaking of cuckoos, of sorts, there is one more article I want to briefly go into before going down a slightly different path. In 'The Writer as Artist', Steven Earnshaw has an interesting observation that relates to one of the most if not the most dominant definitions of artist which is based on the Romantic but also paradoxical notion that "appears to make the individual something of a unique case, [but then] denies the notion of the artist as the origin of his or her creation, since the artist is merely the medium through which the work of art comes. It places artists in a paradoxical position: wanting to lay claim to possession of the fruits of their labour, yet avowing that the driving force is not theirs at all" (66-67). To make the case of the author even stranger, Earnshaw states that "[t]here is no such thing as individual identity, either for writers or for texts. In the poststructural view we, you and I, are 'subjects', constructed out of a myriad of historical and cultural forces. There is nothing unique about any of us, therefore there can be no unique individual called 'an author' to which or to whom we can refer if we want to understand what a text is saying" (72). He illustrates this by referring to Jorge Luis Borges' 'Borges and I' which ends with: "I do not know which of us has written this page'." (74) and it is "[t]his kind of writing [that] foregrounds the issue of authorship and subjectivity: the gaps between writer (the living, psychological and physical human being), the author (public perception and construct attached to the name of the writer), the artist (the wider, public role)" (74).

Another argument against, or one that follows the unveiling of the author as the gatekeeper to a single, exclusive meaning of a text, is that of aesthetic relativism: "the philosophical view that the judgement of beauty is relative to different individuals and/or cultures and that there are no universal criteria of beauty (...) [which] might be regarded as a sub-set of an overall philosophical relativism, which denies any absolute standards of truth or morality (...) [as well as] casts doubt on the possibility of direct epistemic access to the "external world", and which therefore rejects the positive claim that statements made about the external world can be known to be objectively true" ([www.artandpopularculture.com](http://www.artandpopularculture.com))

/Aesthetic relativism). In the case of the author, this would mean that her potentially intended meaning is essentially as subjective and individual as ‘her’ readers’ meanings are and can never have, therefore, any justified authority over these. This relativism does not, as many still hold, inevitably deprive all art (or anything really) of meaning when there is no inherent, objective meaning to unearth. All aesthetic relativism does is replace objective value with subjective value, not remove all possible value. It consequently points out the subjective nature of our appreciation *and* condemnation of one work over the other; the arbitrariness and artificiality of declaring the former ‘art’ and the latter ‘inferior, unoriginal imitation’; the promotion of the dominant culture’s aesthetics and how this is directly responsible for the repression of the creative expressions of voices underrepresented in this mainstream culture; how this, in part, creates the stigmatization of genres like fan fiction because they end up being viewed and judged as unsanctioned, unofficial deviations of the established, singular version.

Sadly, it is a denial (and/or misunderstanding?) of aesthetic relativism that still persists in a lot of cases in the academic world too, which often treats almost any form of personal and subjective expressions as pariah. This seems particularly erroneous in the humanities, where the illusion of a detached objectivity is often placed above any intimate and subjective input when, in literature studies for instance, that means telling only half the story and undervaluing or not even acknowledging that the (w)reading experience is the only angle through which we can, in fact, study our object of interest seeing the author has proven to be a fairly useless construct. Instead, a lot of curricula, at least based on my own experience with these, still revolve around how an author’s background has shaped his/her novel; how it represents and contains a message about a certain cultural/political/historical issue. This approach neglects the very nature of the object literary scholars claim to research, making them more like anthropologists instead. Literary studies attempts to examine anatomy by going merely skin deep. Analyzes narratives by barely paying attention to the very skeleton they are built on and instead perpetuates the disproportional emphasis on the author figure and ‘her’ work without investigating this alleged connection too closely or not at all. Of course, this might be due to an act of self-preservation, after all, without the author, the critic and literary expert as they have defined themselves and have spun a web among the three of them, will collapse, just like literature itself refers to a category that was never there to begin with. (End of rant)

There are of course some valid arguments to counter aesthetic relativism and which perhaps could be used to revive the author too or at least make it a useless argument to be



used against her. Probably the main refutation, as Andrew Bowie puts it in his online essay (with page numbers!) ‘Adorno, Pragmatism, and Aesthetic Relativism’, “relies on the argument that stating a relativist position always requires the absolute claim that there are no absolutes,” (34) and so paradoxically “it absolutely rejects the possibility of absolutes” (35). OK. Not gonna lie. There is no logical way out of this contradiction. I can only semi-counter it by considering how relativism is an *effacing* absolute which, ironically, denies itself as much as it denies all other absolutes. It remains a bit of a twilight zone and I haven’t found the light switch yet to be honest. Still, it seems to me that relativism at least contains an inclusivity that, although not theoretically, would practically speaking offer room for an infinite amount of positions that are always inevitably each other’s equal for the only absolute ends up being the absolute which declares all else relative.

Moreover, Peter Lamarque argues in his article ‘Aesthetics and Literature: A Problematic Relation’, that it would be equally erroneous to “reduce literature to language” (34) for that would also cause literary works to be considered “contextualized utterances akin to utterances in any form of communicative exchange” (34) so that “there is no difference *in principle* between writing a novel, writing a letter, or making a political speech. All manifest the same desire to convey meaning” (34). It strikes me as weird, though, to speak of reduction here. Technically, yes, there is no difference between writing this thesis and writing a grocery list. It is essentially the same act. But if writing has always been that way how can it be ‘reduced’ to its own natural state? I feel Lamarque mixes up the reduction of the gatekeepers’ job description with a reduction of what they are (wrongly) guarding. At any rate, he is obviously reluctant, or simply refuses, to board this linguistic reductionism train and maintains that the appreciation of a literary work is more than locating textual or utterance meaning; you can’t cut it off from a historic and cultural understanding of a work’s context. (Lamarque, 35) This context that Lamarque sees as vital is in fact a very problematic if not impossible notion. It implies that, regardless of the absence of intrinsic (aesthetic) value, the relation between our minds and the world around us is such that we all perceive it in the same way and, moreover, that we are capable of communicating these perceptions successfully and end up talking, and *knowing* that we are talking, about the same thing. There’s this little bug called intersubjectivity that messes this (and so much else) up.

### ~Intersubjectivity~

In their article ‘Language and the signifying object’, Chris Sinha and Cintia Rodríguez succinctly summarize one of the most if not *the* most puzzling riddle posed to all of us, and they formulate it by asking “how do I know that whatever it is that my neighbour believes in is what I think they believe in?” (358) for “[t]o know *that*, I have to be sure that what my neighbour’s mental content is about is *the same* as what my neighbour’s mental content *under my representation* is about” (358). In other words, Wendelin Reich’s words in her article ‘Three Problems of Intersubjectivity-And One Solution’ to be more precise, “If people are unable to look into each others’ minds” (40), then “intersubjectivity must be viewed as an accomplishment that is always fragmentary and fallible” (41). This is relevant to this thesis on multiple levels but in the case of authorial intention and aesthetic relativism it essentially means that I can never verify if the story I read is the story you read, it’ll always remain an approximation based on the assumption that the other’s internal organization is similar to your own. This is also true for the author and her potential intention. Even if she manages to imbue the text with an intention, tricky if not impossible considering the medium of language itself, there is no guarantee anyone else will receive that message. This strikes at the core of what we are investigating here, the writing/reading process, and how imperfect intersubjectivity alone makes it impossible that my Kylo Ren (hands off!) is your Kylo Ren regardless of us reading the exact same page or watch the exact same scene in which he features for we have no internal access to each other’s reading/viewing process.

### ~Language Displacement~

*Right....* Isn’t that a little too conveniently metaphysical? Right up there with the fairies? Yes. It totally is. But it gains more weight and relevance when we ground it in some pretty interesting linguistic and narratological theories (issues more like) that reflect and add to this problem. Marie-Cécile Berteau, for instance, discusses a linguistic phenomenon referred to as ‘displacement’, which, as she outlines in her article ‘On displacement’, is a “performative notion of language , (...) [in which] individuals are related to each other within and by virtue of an in-between” (442) called ““Space-time of language”” (442). Language, according to this viewpoint, is an instrument of mediation that allows “the subject [to] enter into the world of others, which is a world constituted *in* language and constituted *through* the actual language activity of others, an incessant performance of meaning-making activities,

manifested in ways of speaking and listening, of addressing and replying” (444). Berteau stresses with this how language is not a stationary product but an ongoing activity which, in turn, makes it impossible to diminish language to single acts nor to trace it back to an individual’s intentions. (Berteau, 444-445) There goes the author again, right out of the window with that last bit. But this in-betweenness and ceaseless movement of language also affects the text and the (w)reader just as much. After all, because of the “dialogical perspective of both language and the subject” (450) as well as the fact that language is always moving and “*is experienced as intersubjectivity*” (451), reading/writing, just like any other language activity, “result[s] in a specific drive between speaker, listener, and their reference” (453). Meaning of a text then is never fixed or predetermined, in a lot of ways it is always being made in its preproduction, production, and postproduction, effectively annulling the order and relevance of these linear and potentially hierarchical terms in the process.

#### ~Signified and Signifier~

This all-defining aspect of language is not adequately addressed in the traditional literary model, and Jane Tompkins discusses in ‘A Short Course in Post-Structuralism’ how, similar to the displacement effect, the post-structuralist model “instead of four discrete items in a row-subject [reader], method [interpretative framework], object [text], interpretation [the reading]-collapses all four of these entities into a simultaneity, into a single, continuous act of interpretation,” (733). Moreover, by referring to Ferdinand de Saussure, she also points out the “arbitrariness of the sign” (734) that is being constantly (re)interpreted and how, again according to Saussure, “there is no natural relationship between the concept [a.k.a. the signified] and the sound image [a.k.a. the signifier]” (734) that together make up the sign. It follows that what is true for common concepts such as grass (which isn’t grass because it *is* grass but because we use a certain combination of letters and accompanying sound(s) to refer to a certain subset of plants matching a certain description) is also true for literary concepts such as character, which greatly problematizes the assumption that when I’m talking about Yoda, I’m talking about your Yoda too. In addition, our similar but inevitably different Yodas never sit still either and are consequently constantly reinterpreted on an individual as well as intersubjective level. In other words, interpretation is based on temporary meanings and is itself also transient. (W)reading, then, to use Umberto Eco’s words, is an act of ‘unlimited semiosis’ in which there aren’t just multiple meanings but texts can be interpreted in infinite

ways” (1) and these interpretations differ from one individual to the next as well as for the same individual.

### ~Diegetic Levels and Mimesis~

OK. Time to put on our narratological goggles. In addition to that, let’s also quickly board a time machine to get a glimpse of ancient Greece, all the way to those three togaed, sofa-chilling dudes everyone apparently can’t stop quoting. This includes Gérard Genette and Ann Levonas in ‘Boundaries of Narrative’ as they reiterate the foundation of the field of narratology: “For Aristotle, narrative (*diegesis*) is one of two modes of poetic imitation (*mimesis*), the other being the direct representation of events by actors speaking and performing before the public [a.k.a. drama]” (1). Plato had already outlined this distinction before him but differed from Aristotle on two points: his teacher “Socrates denied to the narrative the quality (or, to him, the fault) of imitation” (2) and “the domain of what he calls *lexis* (or manner of speaking, as opposed to *logos*, that which is said) can be theoretically divided into imitation properly speaking (*mimesis*) and simple narrative (*diegesis*)” (2). To illustrate Plato’s division of imitation, *mimesis* for him corresponds to a character speaking or rather the writer speaking through pretending to be that character, while *diegesis* corresponds to the writer speaking without pretending to not be the writer, a position close to if not arguably the same as that of a narrator. (Genette and Levonas, 1-2) However, Genette and Levonas counter Plato’s opposition of perfect imitation (*mimesis*) and imperfect imitation (*diegesis*) because literary works are not representational: “If poetic imitation is considered to be the verbal representation of a nonverbal reality, and in some cases of a verbal reality (...), then imitation must be found in (...) narrative verses but not in (...) dramatic verses” (3-4). Consequently, “[I]terary representation, the *mimesis* of the classical notions, is (...) not the narrative plus the discourses. It is the narrative and only the narrative. (...) a perfect imitation is no longer an imitation; it is the thing itself. Ultimately, the only imitation is the imperfect one. *Mimesis* is *diegesis*” (5).

Perfect moment to quickly insert a call-back to the issue of authorial intention and the Romantic notion of artists for both of these are, as Beardsley and Wimsatt also mention, linked to the “polar opposites of “classical” imitation and romantic expression” (468); the former could be an argument that a written work contains the conscious imitation (representation) of the world (nature) by the author, while the latter characterizes the author as

a vessel for unconscious inspiration (also know as the author as genius). It is interesting to note how both of these paradoxical definitions are simultaneously used by the law to supposedly support an author's claim to copyright even though they completely and mutually undermine the other (more on this in chapter 2). Moreover, the Poetry Foundation website adds that for Plato art is imitation and he considers imitation to be a bad thing seeing it is several steps removed from the true nature of things and thus renders the original form to a copy which will always inevitably be inferior to it. This coincidentally sounds just like how a lot of people view/judge fanfiction which is ironic in this light seeing that the original is itself unobtainable and all works are in fact imitations of it. Copyrighted 'original' work, then, is as much a shadow cast on the inside of Plato's cave (sorry that sounded dirtier than I intended) as fanfiction is. Plus the bit about relativism takes away even the source of the shadow from actually being there seeing there are no intrinsic values or meanings to cast it. With no original, logically there can also be no copies or rather there can be no hierarchical differences between works. The website also mentions how Aristotle, compared to Plato (and by extension Socrates) sees imitation as less of a problem, arguing that it is a natural phenomenon through which humans recreate the objective reality or nature and add symbolic value to it in the process and it could even lead to catharsis or moral improvement. (<https://www.poetry-foundation.org/learn/glossary-terms/mimesis-imitation>).

Briefly jumping back, once more, to Roland Barthes here because we just can't help ourselves: in his essay 'Structural Narrative' he stresses that, touching upon mimesis and countering it, "[t]he function of narrative is not to 'represent'" (271). After all, he says, "[n]arrative does not make people see, it does not imitate; the passion that may consume us upon reading a novel is not that of a 'vision' (in fact, strictly speaking, we 'see' nothing). (...) What goes on in a narrative is, from the referential (real) point of view, strictly *nothing*. What does 'happen' is language per se" (271). This view strips narrative of its alleged goal or nature of representation. Although I agree that direct imitation would be impossible for a narrative, I feel this is because of the way language functions and that this is therefore equally true outside of narratives as well: our perceptions and interactions with the world around us and the 'others' that inhabit it never deal with direct representation, like the narrative, language is always that mediator between us and the world.

Another interesting observation/expansion in light of this is explored by Francisco Lopez's thesis on the literary composition studies of Dionysius of Halicarnassus, in which he points out how this Greek historian and rhetoric teacher eventually considered mimesis to be

an imitation of not only nature but also of preceding works by other authors. (Lopez, 4) Dionysius, Lopez states, opposed both Plato's and Aristotle's views on mimesis by considering imitation not as the artistic representation of the natural world but as an artful representation which, unlike Plato's claim that this representation was inferior compared to the object it imitated (a.k.a. the natural world), was in fact superior exactly through its artificial creation by humans. (Lopez, 5) Apart from flipping around imitation and turning this human-made, artificial creation from the bad guy into a good or even superior guy compared to the 'real' thing, Dionysius' claim that imitation includes that of existing and preceding works partly opens the door to rethinking originality and hints at the derivative and intertextual nature of all writing.

As we are about to dig deeper into narrative structure itself, it's probably a good idea to squeeze in a brief outlining of narratology, mainly based on the model that Gérard Genette developed and which is discussed in Lucie Guillemette and Cynthia Lévesque's online article 'Narratology'. They explain that narratology distinguishes "three fundamental entities: story [series of events/actions told by a narrator], narrative [final form of story], and narration [techniques used to convey a story that is made up by the narrative]". It investigates the dynamics and possible relationships between this triad and how they "operate within four analytical categories: mood [distance between narrator and text and the function of the narrator and thus the degree to which she intervenes], the narrative instance [narrative voice (signs that indicate narrator's presence in the narrative such as a homodiegetic narrator (present in story she tells as a character), a heterodiegetic narrator (absent in story she tells), and an autodiegetic narrator (present in story she tells as the main character)); time of narration (narrator is always in a specific temporal position relative to the story she is telling); narrative perspective (point of view adopted by narrator)], level [there are several (hierarchical) diegetic levels, most importantly: Extra-Diegetic (main plot), Intra-Diegetic (event-story), and Meta-Diegetic (embedded narrative). A breach between these levels is called metalepsis], and time [divided into order, narrative speed, and frequency of events]". Because it is an "internal analysis", narratology considers "narratives as independent, linguistic objects, detached from their context of production and reception" it "aims to reveal an underlying structure that can be identified in many different narratives". In this definition narratology is a quest to discover the DNA of narratives at "a level that lies below the threshold of interpretation". Moreover, and their reference to Genette echoes Barthes' point

from two paragraphs earlier, “all narrative is necessarily *diegesis* (telling), in that it can attain no more than an illusion of *mimesis* (showing)”.

As theoretically interesting and relevant it might be to study narrative from this angle, I can't help but feel that, yes, you would be able to spot recurring, perhaps even universal patterns when it comes to narrative structures, but in the end with this approach narratology attempts something that is impossible because of the inherently interactive nature of the very object they study and consequently blinds itself to half of the story just like, as we have seen, focusing almost solely on the author did. After all, there is no text without a reader/writer and, reversely, there can be no writer/reader without a text. They don't exist in any pure form in isolation from each other. In fact, to investigate a narrative purely at the textual level already required that engagement which narratology would like to leave out or assign a back seat in their analyses.

Let's hitch a ride back to take a closer look at the diegetic levels outlined above for, as Barthes reminds us in his 'Structural Narrative' essay, “[t]o understand a narrative is (...) to recognize in it a number of “strata,” to project the horizontal concatenations of the narrative onto an implicitly vertical axis; to read a narrative (or listen to it) is not only to pass from one word to the next, *but also from one level to the next* [my italics]” (243). The genre of fanfiction is the perfect cases study here (in fact you could easily fill an entire, separate thesis on this topic), not because it is exclusive or unique in this, but because it is (made) more visible in it than in some other genres. Most interestingly, perhaps, is the breaching of levels, or so-called metalepsis, which always inevitably occurs whether because the narrative 'directly' steers towards it (cue innocent whistle) or because the make-believe layer, fragile and thin as it is, gets dispelled for whatever reason to reveal these levels staying in place to be nothing more (or less) than an (suspended) illusion. The most obvious examples of fanfiction's overt metalepses (metalepsises? Or is that too Gollum?) are A/N (author's note) in which the writer directly addresses her readers (and sometimes characters too), disclaimers/tags in which the writer can embed comments directed at TPTB (The Powers That Be) or provide (often humorous) reflection on its extralegal status, and meta fics that blur or outright break through the diegetic levels by having characters interact with reader/writer, (e.g. with an insert thereof (we'll get to the weirdness that are inserts later)), or characters discussing popular fic tropes revolved around them or comment on their arcs in canon.

In her article ‘Metalepsis in Fan Vids and Fan Fiction’, Tisha Turk uses Genette’s definition of metalepsis too, stressing that these breached narrative levels are intratextual, as opposed to the extratextual level which includes the author (writer) and reader. (Turk, 86) However, she remarks that although “Genette locates the responsibility of metalepsis with authors; fan works show us that it can also be taken up by audiences. (...) The move from read-only to read/write culture thus necessitates an expansion of our ideas about metalepsis, and indeed about narrative more generally” (100). Needless to say I have some problems with the ‘read-only’ bit there for that seems to me to be an impossibility and culturally it hasn’t developed into a more interactive process, rather technology has increasingly facilitated this for a larger group of people. Though it *is* interesting to note, as Turk points out, how “fan works expand the terms of audience engagement with the source text they transform; they create the context for new variations of metalepsis in popular culture” (83-84). Before this she also (imho *wrongly*) asserts that fan works, although texts in their own right, perhaps most of all “supplement texts that are already complete, but always with the shadow meaning, the possibility of adding *in order* to complete.” (83-84).

I clearly disagree with her statement of a fic’s source text to be complete, if there are an infinite amount of interpretations possible it can never be complete or closed (plus the actual versions of a text coexist with its potential versions, both ultimately never fixed but always changing too (more on this near the end of this chapter)), and thus I wouldn’t claim that this is a fan work’s specific, even exclusive, characteristic. It does seem particularly striking, though, that “[f]or fans who produce and consume fan works, the boundaries of the source text’s fictional world are not fixed; rather they are infinitely expandable” (88) but “[a]t the same time, fans consuming fan works are perfectly well aware that there is in fact a boundary between the original text and the fantext. (...) The boundary between the two (...) is (...) extratextual rather than intratextual” (89). In other words, “If conventional metalepsis appears to destabilize the boundary between reality and fiction, fanworks effectively destabilize the boundary between audience and creator. Fanworks, then, are always metaleptic in the sense that they represent the imposition of extradiegetic desires upon the fictional world and the transformation of a text in the service of those desires. (...) This remarkably literal ontological metalepsis does not necessarily leave visible textual traces (...) the vid or story itself *is* the trace of the interference” (90).

This certainly rings true at some level but, again, a text is always both intratextual and extratextual, or rather the wreading (not a typo, we’re sticking to this word remember) process is necessarily a mixture of both, and one can subsequently argue that the perceived boundary



or breaking thereof is not textual (either intra or extra) but cultural when you consider fan works' status within mainstream society. The degree of overtness/visibility of diegetic levels doesn't necessarily characterize a genre, rather it shows what all writing has in common. Still, a lot of research on fan works use this hyper-intertextual angle to justify their research, casting fans as torch and pitchfork grabbing activists. I'm not saying none of us are, some of us might well be or want to be \*cough\* me! \*cough\*, but a lot of us simply aren't. Or not yet. More importantly, we don't need it as a justification for being recognized as a genre. I'm, at any rate, trying to argue the other way: fanfiction isn't special (practically: yes, theoretically: no), it just makes the nature of all writing glaringly obvious. To different degrees all writing contains metalepsis, the deferral of that is literally the reading/writing process, possibly the same process as the construction of life's narrative. What's more, if the lines between reader/writer/text and the extratextual/intratextual are hazy, how much of a boundary is there between external and internal (cognitively) and between this vague, supposed schism between reality and fiction? After all, the boundaries between the former are theoretically negligible seeing they inevitably occur in unison, and the latter may turn out to not be that much of a binary either for how do you really know, if life itself is a (linguistic) narrative web, whether you are the reflection in the mirror or the person standing in front of it?

#### ~External and Internal Stories~

In chapter 8 of the book 'Narrative Theory and the Cognitive Sciences' (which contains lecture notes from over a dozen researchers working in this field), Manfred Jahn makes a very interesting point with regards to narratology's inclination to focus on external stories (those which appear in some tangible form) and neglecting as a result the narratological relevance of internal stories (e.g. dreams, memories and fantasies). Jahn advocates studying both types of stories, and fit them into a narrative model that can connect them and provide a broader, more encompassing understanding of narratives. He opposes how internal stories are often ignored or given subservient status when they are considered embedded in the narrative and are thus demoted to always be "located within and framed by an external narrative" (198) instead of being a category of its own that exists outside of the external story (but is not wholly separate, as he stresses later on, we'll get to that in the next paragraph).

Moreover, according to Jahn the importance of including internal stories is essential for narratology when taking into consideration how stories/narratives can be viewed “as (...) psychological and cognitive *forces* rather than as *forms* of communication or entertainment” (198). Differently put, focusing solely on external stories is analyzing only half of the entire story. (Just how many times have we already come to this conclusion so far?) Narratives acting both like internal and external forces rather than as external forms alone dovetails very neatly with what we’ll investigate in the next chapter when we’re going to deal with the claim of ownership over a story when that story even in its physical manifestation is still an unfixed, ever-changing and fluid phenomenon consisting of an infinite amount of actualities and potentialities (we will get into this more later and then it’s all going to make sense, I promise).

Jahn does emphasize, however, that both “[e]xternal and internal stories, (...), are highly indeterminate and prone to shift status erratically as soon as contextual factors come into play” (200), which is why he proposes “a model of *transitional states* rather than one of contrastive categories” (200). Couldn’t agree more. This approach makes more sense than the ones we’ve already looked at. Also, Jahn distills two main research angles that the study of internal stories could play a vital role in: first, it can provide insight into psychological and cognitive processes, and second, it could investigate how internal stories affect narratological theory. In general, it could of course also help in uncovering insights regarding everything to do with the writing/reading process too. (Jahn, 195-206) A fervent promotor in putting internal stories on the map, Jahn aptly ends with a warning-like rally: “postclassical narratology must wake up (...) to the strange loops by which we perceive, remember, imagine, and tell stories which are like life itself” (212).

#### ~Reality vs. Fiction~

The alleged opposition between external and internal is also reflected in the way reality and fiction are often pitted against each other as if we are dealing with two entirely different species. Zooming in on factual and fictional narrative, for (textual) narratives are our main concern in this thesis after all, Marie-Laure Ryan’s observation in ‘Narrative as Virtual Reality: Immersion and Interactivity in Literature and Electronic Media’ provides us with a useful starting point to explore this particular track: “The difference between fiction and texts we read for information resides not in the occurrence of an act of imagination but in whether or not it forms the point of the game” (109-110). There is no difference then in reading factual

or fictional narratives, in both cases imagination plays a role even though some might be inclined to associate that with fiction rather than reality. Wolfgang Iser further dismantles the supposed binary of reality and fiction when he states in ‘The Reality of Fiction: A Functionalist Approach to Literature’ how “the basic and misleading assumption is that fiction is an antonym of reality” (7) because “the very term *fiction* implies that the words on the printed page are not meant to denote any given reality in the empirical world, but are to represent something which is not given” (7). Although, Iser admits, this still leaves the question of what exactly constitutes fiction if, despite not necessarily lacking the attributes of reality, it is not reality per se. He chalks this up to the fact (pun semi-intended) that fiction “tells us something about reality, and the conveyer cannot be identical to what is conveyed” (7). (Iser, 7) Then again, this likewise should hold true for reality which is never a direct representation of ‘fact’ but a conveyor of it as well. Although made nearly half a century ago, Iser’s call “to replace ontological arguments with functional (...) what literature *does* and not what it *means*” (7) should perhaps be repeated here for “[i]f fiction and reality are to be linked, it must be in terms not of opposition but of communication” (7).

In this light Iser goes on to discuss the ‘speech-act theory’ which, derived from language philosophy, contains the factors that determine the failure or success of linguistic communication. Iser argues that these same factors are also applicable to the reading of fiction, which is a linguistic action in the sense that it involves an understanding of the text, or of what the text seeks to convey, by establishing a relationship between text and reader” (8). This backs up the interactive nature of reading, and thus the interdependence between wreader/text for this to happen in the first place. He then deals with the question of the difference between literary speech (language) and ‘real’ (non-textual) speech acts (spoken vs. written language essentially), thereby echoing Plato and Aristotle when they made a distinction between drama and literature/poetry, with the latter being an imitation which is inferior to the first. He concludes that “if literary language is “parasitic,” it must have some qualities of the speech act it imitates, and indeed only differs from them in its mode of application” (13). Moreover, “[t]he verbal structure of literary speech-especially that of prose fiction-is so similar to that of ordinary speech that it is often difficult to distinguish between the two” (15) and out of the three main components of speech-act theory (locutionary, illocutionary, and perlocutionary respectively) “fictional language possesses many of the properties of the illocutionary act” (15). Basically, unlike a perlocutionary act, which is the effect of an utterance, fictional speech/language “has only a potential effect” (10-11) that is

similar to the illocutionary act in which what was meant is not always what was literally said nor what will be understood as its meaning that in turn could elicit the intended effect.

That's not to say that Iser completely equates literary and ordinary speech for he judges them to part ways concerning the situational contexts their utterances refer to. He maintains that "[t]he fictional utterance seems to be made without reference to any real situation, whereas the [ordinary/real] speech act presupposes a situation whose precise definition is essential to the success of that act" (16). This sounds a little less convincing when you (yes, you) consider how 'real' speech acts, more often than not perhaps, can refer to a situation that is as imaginary/hypothetical as the situations referred to in a fictional utterance and whose definitions aren't necessarily that precise and certainly not that much more precise than in the fictional utterance as is being claimed by Iser here. He gets close to this himself when he mentions how "[t]he symbols of literary language do not "represent" any empirical reality, but they do have a representative function. As this does not relate to an existing object, what is represented must be language itself" (17), but then he fails to extend this to spoken language which technically doesn't change its colors with the medium or the supposed difference in situational contexts.

G rard Genette, Nitsa Ben-Ari, and Brian McHale investigate the same pair of fiction and reality in their article 'Fictional Narrative, Factual Narrative'. In it they examine the reason for the difference in behavior between factual and fictional narratives by addressing order, speed, frequency, mood and voice. (Iser, Ben-Ari & McHale, 756-757) For order, they argue, "one cannot oppose the factual narrative, where the order of events would be provided by other sources, to the fictional narrative, where it would in principle be unidentified" (760). We have already countered a similar if not the same argument above by pointing out how theoretically language is always an indirect reference so in a way this cancels out the supposed difference between hypothetical and 'real' situations. However, Genette and the others do concede that "the anachronies of fictional narrative are simply declared or suggested by the narrative itself-just like those of factual narrative." (760) so that the discrepancies between the chronological order of events and the order in which they are related in a plot can't serve as a marker between fictional and factual narrative (and by extension fiction and reality). Looking at speed then, Genette and co state that this isn't a category that distinguishes fictional narrative from its supposed counterpart of factual narrative either: "no story, fictional or otherwise, (...) has the power (...) to impose on itself a speed rigorously synchronous with the speed of its fabula [story]. The accelerations, decelerations, ellipses, and

pauses (...) in fictional narrative are also the lot of factual narrative” (760). Frequency also “does not a priori present any marked differences when one passes from the fictional type to the factual” (761).

Mood-wise it gets a little more complicated according to Genette, Ben-Ari and McHale but, although present in non-fictional narratives as well, they consider the degree and the more natural presence of “direct access to the subjectivity of characters” (761) a possibly distinctive feature that could “differentiate one type from the other” (762). This enhanced access to the subjectivity of characters “is because this other is a fictional being (or is treated as fictional) (...), whose thoughts the author imagines whenever he pretends to report them” (762). I’m not sure I agree with them here, that mood can be a distinctive marker for factual and fictional narratives. To what degree do factual narratives have less direct access to the subjectivity of characters? To what degree is it even possible to have this direct access to subjectivity (see the bit on intersubjectivity)? Does, in the end, the fictionality of the narrative/character even matter in this regard compared to a non-fictional narrative/character?

Last but not least, the final category to be discussed is voice: “What remains to be considered is the relationship *between author and narrator*” (764). According to Genette and friends “their rigorous identification ( $A = N$ ), to the degree that this can be established, defines factual narrative,” (764) because “the author assumes full responsibility for the assertions of his narrative and, consequently, does not grant autonomy to any narrator” (764). On the other hand, then, “their disassociation ( $A \neq N$ ) defines fiction, that is, a type of narrative for the veracity of which the author does not seriously vouch” (764). This is such a gross over-simplification I could devote an entire chapter (or even thesis) to discussing it, but we’ll get into the whole narrator mess later on, so stay tuned for that. For now I’ll point out how Genette and the others at least seem aware of this themselves as well for they conclude that the A-N relationship “is undoubtedly the most elusive relation (...), and sometimes the most ambiguous, but, after all, so is the relation between truth and fiction” (770) and “if the forms of narrative blithely overrun the boundary between fiction and nonfiction, it is not less but more urgent for narratology to follow their lead” (773).

## ~Unnatural Narratives~

Closely related to this discussion are the so-called unnatural (unrealistic) narratives that allegedly are the counterparts of natural (realistic) narratives. For Jan Albers in 'Impossible Storyworlds-and What to Do with Them', "The term *unnatural* denotes physically impossible scenarios and events, that is, impossible by the known laws governing the physical world, as well as logically impossible ones" (80). Unnatural narratives, then, "transgress real-world experiences and expectations" but, Albers notes, this transgression is never complete seeing unnatural narrators, for instance, are never entirely non-anthropomorphic and will inevitably retain human features. (Albers, 93) If this is true, and how can it not be considering it is always a human (w)reader that (re)creates the narrative (barring the possibility that an alien lifeform or a robot from the future with superior intelligence has brought the story to us), then as humans we only have access to a human perception/interpretation of the world. Not exactly the most reliable narrative in its own right. Not that much less reliable than a similarly indirect and subjective textual narrative in any case. Both narratives are, in that sense, unnatural or rather a 'mere' deviating approximation (at an intersubjective and inter-individual level) and never a direct representation of some intrinsic truth or meaning. Where does this leave Albers' proposed difference between unnatural and natural narratives? That the former is physically and logically impossible? Aren't both narratives the same in that they are ultimately bound by the limits (and possibilities) of our cognitive abilities? Isn't that the true boundary in this case? In that light Albers distinctive marker seems insufficient to differentiate between these two narratives and maybe even reduces it to an irrelevant distinction to begin with.

Brian Richardson, in his turn, defines unnatural as : "a defamiliarization of the basic elements of narrative" (97) through violating "conventions of standard narrative forms" (97) by following "fluid, changing conventions and create new narratological patterns" (97). This phrasing is different from Albers's view who mainly defined it as narratives that are impossible in the real world (physically, psychologically, cognitively, temporally, etc.) whereas Richardson speaks of *violations* of mimetic conventions that make unnatural narratives "not simply nonrealistic but *anti-realistic* [my italics]" (95). In 'Unnatural Narratology' Richardson likewise seems to presuppose a discernible difference between fiction and non-fiction and thus what is realistic and what isn't regardless that both are represented in the same medium; narrative. In addition, and perhaps more or at least equally important, at the end of the day both narratives use the same ingredients. You might end up

with a different meal but this doesn't mean different ingredients were used; rather the same ingredients were used in a different combination. Using this metaphor natural and unnatural narratives are made in the same kitchen by the 'same' human chef. This also affects the distinction between mimetic and non-mimetic (essentially the same as reality vs. fiction and natural vs. unnatural) seeing all stories are at their core mimetic, or more accurately still; semi-mimetic. Some narratives are just less visibly mimetic than others just like fan works are essentially the same as any other creative expression/product/process, it's simply overtly overt about it.

In his defense, Richardson admits as much, or at the very least hints at the fact that “[o]ne area of continued discussion among theorists of the unnatural is the relation between the unnatural and the conventional” (96) and he rightfully asks the question that seems at the heart of it: “At what point does an inventive, unnatural practice become an unremarkable convention, and how can such a technique then become unnatural again?” (96). The answer to this question would depend on what is considered natural (which is not to say that it *is*), which shows how subjective and arbitrary its definition is, and by extension also the definition of what constitutes unnatural for both are identified by being what the other is not. Most importantly, Richardson concludes that “narrative theory (...) has had a pronounced mimetic bias, and thus their theoretical models are necessarily inadequate” (95). By stating this he repeats what he has said before in an earlier article titled ‘Narrative Poetics and Postmodern Transgression: Theorizing the Collapse of Time, Voice, and Frame’, in which he already asserted that not the narrative is unnatural but rather the narrative-structure model used by narratology is inaccurate or insufficient. To indicate the inadequacy of this standard framework Richardson zooms in on 6 varieties of temporal constructions that according to him won't fit into it: circular (violates linear chronology by returning to its beginning), contradictory (story contains contradicting and incompatible versions), antinomic (narratives that either move backward or have two linear timelines that move forward and backward simultaneously), differential (time passing at different rates within one story), conflated (blurring and merging of different temporal zones), dual or multiple (several different plotlines begin and end at the same moment even though there is discrepancy between the time they take to happen). (Richardson, 24-27)

Richardson suggests using “the term “metatemporal” to cover both unusual and impossible temporalities” (30) and advocates for including this category in a new, encompassing theory, especially to analyze postmodern work seeing that the standard mimetic model doesn't account for this genre's deliberate departure from mimetic narrative structures,

and he adds that “[j]ust as postmodern narrative has experimented with temporality, it has also experimented with voice. In many instances the ontological dislocation that brings about the temporal anomaly also causes related instabilities in narration, as well as other aspects of the text: when the act of representation collapses in on itself, a stable narrating voice is not to be expected” (32). (Richardson (30-32) So, all in all, then, Richardson seems to mainly argue for an expansion of the “exclusively mimetic narrative theory” (33), for instance by identifying “some central (...) nonmimetic strategies of narrating” (33) such as “the unreliable narrator [the narrator can’t produce the narration because of various reasons, for instance a very mature and poetic description while the narrator is supposedly a very young child]. Contradictory narration [the narrator subverts and negates its function of narrating one, intelligible story]. Conflated narrators [blurring and blending of different narrators]. Incommensurate narrators [narrators moving between different ontological levels in the text and who can’t be the single source for the voices in the text]” (33-34). Although an expansion such as the one Richardson suggests seems justified, it doesn’t necessarily question the division itself between natural and unnatural narratives but instead he can be said to take an important step in that direction by indirectly criticizing this by calling narratology out on its mimetic bias.

Focusing on voices specifically, Henrik Skov Nielsen interestingly asks himself (and us) in his essay ‘Fictional Voices? Strange Voices? Unnatural Voices?’ (part of the book *Strange Voices in Narrative Fiction*): “Why talk about unnatural narratives or unnatural narratology at all? Is it not the case that there is something unnatural in the sense of artificial about any and all kinds of storytelling?” (2). Nielsen consequently argues that “we need not impose real-world necessities on fictional narratives. (...) we need not imagine situations that would allow for non-fictional narratives in (...) first person present tense narratives” (9), rather “this is one of many instances in which a fictional narrative foregrounds its own inventive powers and resistance to real-world descriptions and real world necessities” (9). Investigating this he focuses on unnatural voices/narratives in “such peculiar narrative forms as first person, present tense narration, you-narration, and paraleptic [suggesting by omission] first person narration” (1) as well as “the distinction between narrated I and narrating I” (4) for these are “voices that are strange in that they conflate text and paratext, here and there, then and now, I and you” (2).

Quoting Fludernik (an author also appearing in the same work), Nielsen observes how “present tense narrative with its unrealistic simultaneity between speaking and doing, (...) illustrates how telling *generates* the story in the first place, rather than representing and



reproducing in narrative shape a sequence of events that is prior to this act of linguistic creation” (8). He also points out how sentences like ‘I hand the flowers to Bob’ raise the question of to whom this is directed. Nielsen deems it unlikely or even impossible that the I-narrator would narrate this to herself. To whom then? An imagined presence of a narratee that leaves no trace in the narration?

When discussing the second-person narrative Nielsen discards the cases “in which an author unambiguously addresses his reader” (12) for “if, in natural linguistics, the first person pronoun designates “the speaker”, third person “the one spoken about” and second person “the one spoken to”, then it seems that in many fictional second person narratives the pronoun loses this functionality” (12). It is interesting to note, though, how one of the biggest fanfiction archives (namely fanfiction.net) has banned 2<sup>nd</sup> person pov because they clearly disagree with Nielsen that “[i]n most fictional second person narratives, the referent of “you” is inevitably created and obviously not addressed by the pronoun” (13) and they consequently regard this type of narrative as potentially too direct in its address to the readers.

Nielsen also points out how the “distinction about narrating I and narrated I (...) would seem to suggest that the standard case is that of a very close bond between protagonist and narrator” (14). He regards narratives containing these two “unnatural in the sense that they designate and refer to a character as “I” without *emanating* from that character. The narrating “voice” does not emanate from the character but invents and creates a world, including the first person and his knowledge or lack of knowledge” (13). A last, relevant observation Nielsen makes is that in some cases “it is difficult to say altogether where the text actually begins” (16-17). Is it the cover? The title? After the title even, in the case of *The Tell-Tale Heart*, when this is followed by a poem after which the title is repeated followed this time by the writer’s name and then another poem. (Nielsen, 17) We’ll delve more elaborately into these issues (povs, narrators, and intertextuality) after this final article I want to discuss in relation to unnatural narratives.

In his article ‘Violations of Mimetic Epistemology in First-Person Narrative’, Ruediger Heinze asks how narrators can (seemingly) possess knowledge which “is temporally, spatially, or cognitively undisclosed to them. If we assume that they project a human consciousness (...), they should, for obvious epistemological reasons, either not possess the knowledge they do, or their claims to that kind of knowledge should be labeled unreliable” (279-280). However, “unreliability cannot satisfyingly explain the exceptional knowledge of the first-person narrators” (280) nor does labeling them as omniscient narrators or categorize it as zero focalization (narrator knows more than character) just to fit them into narrative

theory. Heinze refers to Manfred Jahn's term of "first-person omniscient "paralepsis" [allusion to something by denying it will be mentioned]" (280) and considers that it could potentially be a way out "to label a paraleptic first-person narrator unreliable and/or illicit [because] [w]hatever is beyond the capacities of a human being must thus also be beyond the capacities of a fictitious narrator. If he or she claims otherwise, the claim must be unreliable" (283). Another route Heinze explores to make this paraleptic I unproblematic is an attempt to "separate humanness from the narrator" (283) for "we need not inevitably presuppose that there is a coherent unified narrator in the first place merely because as readers we tend to construct such a "thing". If we assume that just because there appears to be a narrative agent, voice, or narrator narrating the story, this figure need not in any way resemble or, by ontological fallacy, even *be* a human consciousness" (280).

He does emphasize, however, that "the opposition between fictional narrator and real life person merely detracts from the real problem: even if we as theorists do not equate a first-person narrator with a human consciousness, this cannot eliminate the puzzling effects of the aforementioned phenomenon [i.e. first-person narrators' 'omniscience'] *within* the narrative. (...) It downplays the fact that one of the most prominent effects of first-person narrative (and indeed of all fictional narrative) is exactly the projection of a human consciousness" (281). Basically what we already concluded a couple of paragraphs prior to this one. This, in turn, causes the "[p]roclamations about the death of the narrator [to] argue exactly this: the "I" of first-person narrative is merely a signifier, a semiotic sign to which readers during the reading process attribute certain propositions and descriptions that also occur in the narrative"(281) and Heinze concludes that "If epistemic unity-or its pretense-is a form of assuming discursive control, then these narratives assume an impossible control, emphasizing that it has always been illusory anyway" (292).

#### ~PN vs. ON Theories ~

With Heinze we've already started going down the path to the narrator-swamp, so let's hop on an airboat and continue cruising across it for a while longer. First up is Regine Eckardt who, in her essay 'Speakers and Narrators' (part of a collection of essays titled *Author and Narrator – Transdisciplinary Contributions to a Narratological Debate*), succinctly outlines the two main and opposing stances on the issue of narrators: pan narrator theory (PN for short) and optional narrator theory (ON). The first claims that stories always have a narrator and bases this on the linguistic evidence that "[a]ll sentences of stories carry tense. Therefore,

all stories need an utterance time to be interpreted. If there is an utterance time, then there is an utterance situation. If there is an utterance situation, then there is someone who makes an utterance. Hence we have a narrator” (153-154). The opposing theory, on the other hand, states that “*there could be stories without a narrator*” (154) seeing that “[i]ntuitively, there are stories that give us no clue about the person who might be telling it” (154). Investigating the validity of both theories, Eckardt digs a little deeper in utterance contexts for they are a vital factor in understanding what or rather who exactly is referred to with “indexical words like *I, you or now*” (160) and whether this is the narrator or if she can be absent altogether.

She starts exploring this angle by first establishing that “[e]ach context defines a unique speaker, addressee, time, place, and world” (161) as well as the assumption “that no two contexts may be different and yet share speaker, addressee, time, place, and world” (161). Secondly, and most strikingly, she looks not at the presence of indexical words, but at the sites of their seeming absence: “Languages provide means to report comments by the speaker, with or without the use of first-person pronouns” (170) for “[d]ifferent languages can omit pronominal reference to different degrees. (...) English has speaker-oriented expressions which implicitly refer to the speaker” (170). Eckardt explains this by pointing out how fictional stories can use meta-linguistic signals to indicate passages that reflect a character/speaker’s thoughts even though no pronouns, and thus no explicit reference to this speaker, are used. Examples of these signals could be lack of words, repetitions, self-corrections, sound imitations, and a character/speaker quoting other characters around her. According to Eckardt these signals “tell us something about the speaker (and (...) that the speaker is most likely *not* the narrator at that point), (...) at a meta-level and not by their literal meaning” (171). She then maintains that texts using these meta-linguistic signals would cause the reader to “understand that the evoked utterance situation is one where the fictitious speaker gains [for example] new insights while speaking. This restriction on possible speakers (...) could be sufficient to create the fiction of a narrator even without the use of pronouns like *I or we*” (176).

Moreover, although pronouns usually, and according to Eckardt unambiguously, “refer to the speaker of the utterance (and sometimes even the addressee), they are not traditionally listed in the literature on indexicality” (176). I find it hard to agree with Eckardt when she asserts that English indexicals don’t shift in terms of reference, taking into account all that we have discussed in this chapter so far seems to me to suggest that if there is one thing that indexicals do or can do it is shifting. (Eckardt, 176) In her defense, Eckardt doesn’t pretend to

have removed all doubt and still ends with a question: “Does a story create the *fiction* [my italics] of a narrator?” (183). She then aptly illustrates the legitimacy of this question and offers half an answer (or arguably more reason to question further) by comparing movies with textual narratives: “In movies, putting your camera somewhere does not always create the fiction that someone was watching from this position. In narrations, linking the story to a speaker does not always create the fiction that someone is telling me this” (183).

Adrian Bruhns, in his essay ‘Fictional Narrators and Creationism’, which appeared in the same book as Eckardt’s essay, takes a look at whether pan-narrator theories are consistent with certain ontological assumptions about fictional entities” (139). In order to investigate this Bruhns applies two ontological theories that “both claim that fictional entities are abstract things that have to be created by someone in order to exist” (141) and which are therefore also dubbed “*creationist* theories” (141). The first theory revolves around ‘artifactualism’ which essentially means that fictional entities are regarded as abstract, consciously created artifacts, though not abstract “in a platonistic sense, belonging to an eternal realm of necessary ideals, but in the less metaphysically dubious way of just lacking a spatiotemporal location” (142). This view discards the possibility to unconsciously create a fictional entity. Unknowingly creating it, maybe, but it deems it highly unlikely that a creator would be unaware of an idea that she has. (Bruhns, 145) As a result this theory would also consider every narrative to contain a narrator, for she would always be part of the conscious creative process. The second creationist theory that Bruhns uses is centered on pretended reference. Seeing this theory holds that “[t]o create any fictional entity, (...), an author has to pretend to refer to that entity” (149), it problematizes a pan-narrator stance because of its assumption that every narrative has a fictional narrator. After all, even in the case when no reference to her is being made a pan-narrator theorists would argue for “the existence of some implied impersonal entity as the fictional narrator” (150), which clashes with the pretended reference angle: “The implied existence of some entity is not a reference to that entity” (150).

To be honest this argument feels so thin I’m almost scared it’ll tear like paper if I touch it. Distinguishing between implied and referred entities seems just a teensy-weensy bit strained when intuitively as well as linguistically a case could be made that these are too closely related to use as a plausible grounds for ruling out the pan-narrator theory, especially when you take into consideration how (w)reading (maybe even life but for our collective sanity’s sake let’s not pursue that line of thought) never gets to the ‘genuine reference’ plane Bruhns indicates (in his discussion of John R. Searle) characters to exist on after the initial

and *only* pretended reference. Instead I feel that a character, regardless of whether you label her as narrator which, arguably, all characters are or rather all narrators could be seen as characters, is always hovering in this make-believe sphere, as is the entire narrative/story. Language *is* a constant (indirect) act of referring, this isn't an attribute to counter pan-narrator theory with, it is the originator of the 'problem' in the first place. Interestingly, though, Bruhns concludes in a bit of a plot twist that "one could view the act of creation as an interactive project that involves not only authors but readers as well (or maybe even just readers)" (151) so that "the premise that existential quantifications in intersubjectively accepted interpretations of fictional texts spawn fictional entities could be successful in maintaining a creationist view in combination with pan-narrator theories" (151).

Proving just how tricky, and potentially irrelevant altogether, this attempt to prove or disprove the (inevitable?) presence of a narrator is, Tilman Köppe and Jan Stühling's 'Against Pragmatic Arguments for Pan-Narrator Theories: The Case of Hawthorne's "Rappaccini's Daughter"' (FIY: still same book) hits the nail right on the head in proclaiming how "[n]either possibility can be discounted on theoretical grounds" (15) and that the only real (and possibly subtle but still divisive) difference between ON and PN is that the latter will simply insist on a "covert fictional narrator" when there isn't an explicit narrator while the first will use it as an argument to deny that particular narrative a narrator. (Köppe & Stühling, 15) That's not to say that these two authors don't pick a side. They do. Expressly so. With their essay they want to show that ON is possible and that the lack of a narrator doesn't mean literary interpretation is impossible. In order to argue for this they analyze Nathaniel Hawthorne's 'Rappaccini's Daughter' which, according to them anyway, is an example of a fictional story that has no narrator. (Köppe & Stühling, 16)

One of the excerpts from Hawthorne's story that they use to back up their ON-standpoint features a scene in which the main character Giovanni watches Beatrice from his balcony and his observation of her beauty (cringe!) are at first clearly linked to him, or better put it is logical to assume that the 'he' keeps referring to him, but then could be said to start to float around and come loose a bit. Köppe and Stühling admit that "although it is true that the passage is internally focalized with Giovanni being the focalizer" (20) they "don't think there is any reason to doubt the adequacy of his perception of Beatrice" (20) because this perception is backed up by another character referring to every man in town who has the same perception of Beatrice (i.e. that she is considered a beautiful woman). Moreover, they 'strengthen' (yes that was sarcastic, and yes, that's totally fitting for an 'academic' enterprise

such as this) their argument by pointing out that there are no indications in the rest of the story that Giovanni's perception is to be mistrusted. In other words Gio is very much a hobbit of unimpeachable reputation...so there! (Köppe and Stühling, 20) I guess it won't come as a surprise that I find their argument not entirely convincing when they essentially base the validity of a character's observation (and by extension their argument) on the statement of another character about this character and the 'fact' that the story as a whole doesn't indicate Giovanni's perception to be doubtful and thus the observations of Beatrice that potentially appear not to emanate from him don't, by any means, indicate a fictional narrator....(insert skeptical, one-eyebrow lifting emoji). This ironically superficial close-reading completely glosses over the site of ambiguity in the text, any text really, and perhaps because they are disinclined to bring back the author they 'solve' the problem by downplaying the interactive nature of reading and its habit to break (ontological) walls.

They continue on the same track when they argue how a fictional narrator is not a requisite for transferring fictional facts to the reader for readers have access to these facts without the mediating presence of a narrator and, above all, "[w]hat a fictional narrator does is fictional" (31)....(face palm emoji? eye-rolling emoji? take your pick, I know which one I'm going for). Apart from the fact that the supposed binary of fictional and real isn't that sturdy to begin with as is distinguishing between factual and fictional narratives (we've gone over that already), how is this an argument against a narrator's presence? Doesn't the presentation of fictional facts (by a narrator of some sort) happen simultaneously with the reader reading them? So if anything, the (w)reader *is* the narrator. Always. So the question then isn't whether an actual reader can gather fictional facts to construct a fictional world without the help/intervention of a fictional narrator but whether the descriptions given belong to a character and if it is ambiguous (which it always is) then the follow-up question would be whose perspective is the lens for this part; a fictional narrator that isn't a character? Or is it a semi-character, semi-narrator? A blend? Again, aren't all narrators that? And aren't we ultimately all narrators in the truest sense of the word?

This might come as a shock to you but Köppe and Stühling also raise some interesting, possibly valid, issues. They point out that just because "many people think that literary critics should never make any straightforward claims about what an author does, achieves, intends, thinks, tries to say, and so on" this doesn't justify if we would attribute all of these to a fictional narrator instead, thereby acknowledging her existence too. (Köppe and Stühling, 32-33) They have a semi-point here, but then again this authorial fallacy doesn't remove the

ambiguity of some references (if not all) and neither does removing the narrator from some narratives. Both approaches circumvent, not face, the underlying and exact same ‘problem’. Moreover, and at the risk of repeating myself, the validity or indeed the logic of Köppe and Stühling’s arguments only make sense if we are talking about the same narrator. What makes a narrator more of a narrator and what makes her less so? What conditions need to be met for a narrator to be qualified as such? What is the range of narrators and would it be useful to distinguish different types more specifically? Maybe it would be more conducive to the discussion as a whole to try and answer, but more importantly ask these and even more, related questions, and make discoveries or unravel more mysteries in not the effacement but a redefining of the protagonist of this discussion: the narrator. Maybe then there can be less of a split between ON and PN (they would be void as theories in fact) when we speak in terms of overt and covert narrators instead of erasing her altogether from a narrative that will always leave traces of some type of narrator, or character, or speaker, or whatever you want to call her.

Still the same book (it turned out to be such a page turner!), but a different voice/position this time. In his essay ‘Narratorless Narration? Some Reflections on the Arguments For and Against the Ubiquity of Narrators in Fictional Narration’, Frank Zipfel (the dopest surname of all authors I quote, hands down) summarizes the three main and different arguments which are used to refute PN: “1. the use of language argument: fictional heterodiegetic narration is considered as a mode of presentation that is completely different from fictional homodiegetic narration as well as from factual narration and is described as a non-communicative use of language. [a.k.a. No Narrator theory (NN)] 2. the transmedial narratology argument [considering the parallels between film and literature it is likely that just like the former the latter also has instances in which there is no narrator [a.k.a. No Narrator theory (NN))] (...) 3. the interpretation and fiction theory argument: (...) we should only talk about a narrator when there are explicit features in the text that prompt the assumption that there is a narrator. [a.k.a. Optional Narrator theory (ON)]” (45-46). Zipfel focuses on investigating number 3 (ON) and is mainly concerned with the question whether it is even relevant to assume a fictional narrator for every fictional narrative for, he acknowledges, the truth of both ON and PN can’t be proven and he therefore argues that this question of truth of either might prove not to be a very useful one if it is doomed to end up in a stalemate.

As we have seen above, Zipfel also references the so-called “analytical argument” (53) that is used in favor of PN, which follows the line of considering narratives as speech acts which, in turn, “presuppose someone who utters them” (53) and this utterer can be called a

narrator which would mean that every narrative has a narrator. Zipfel concedes that narratives “are invested with an illocutionary logic [which] regulates their performance” (54) thereby making them “textual speech acts” (54) but he adds that he considers fictional illocution to have two meanings: “speech acts that create fictional texts/worlds” (66) and “speech acts within fictional texts/worlds” (66). (Zipfel, 47-54) Moreover, he states that “this assertion would be valid for all fictional narrations, whether homo- or heterodiegetic” (56) and seeing “homodiegetic fictional narrations present fictional narrators, this puts us in a strange situation, because we would have to admit that fictional homodiegetic narratives have two narrators, a fictional one and a real one. There is of course a classical way out of this impasse: the assumption of an implied author” (56).

Zipfel then moves on to the “ontological gap argument” (60) which “claims that fictional narration must have a fictional narrator because real authors cannot have access to fictional worlds” (60). I agree with Zipfel here when he counters this by pointing out how this would also imply that, like the ‘real author’, “real readers cannot have access to fictional worlds” (60) either. Zipfel then accordingly concludes that “the main claim of the ontological gap argument is not actually concerned with the ontological difference between real authors and real readers and fictional worlds but it is directed at the pragmatics of fictional discourse or, more precisely, at the speech act of fictional narrations” (61). Another argument that Zipfel discusses in light of this is the one in which the seeming impossibility of a narrator’s knowledge leads some to claim that this particular type/part of narration consequently cannot be told by a narrator. Zipfel counters this by pointing out it doesn’t have to be problematic for a narrator of a fictional narrative to have this equally fictional ability to know more than a factual narrator would, and he adds that this argument is not just valid for heterodiegetic narratives but for homodiegetic ones as well seeing, for instance, how some homodiegetic narrators display eerily accurate memories when they describe events that happened a long time ago. (Zipfel, 74)

In their article ‘Author and Narrator: Problems in the Constitution and Interpretation of Fictional Narrative’, Dorothee Birke and Tilmann Köppe make a similar observation, saying that a fictional narrator belongs to an ontologically different category by virtue of being part of the fictional world and not the real world which, in turn, allows her to be capable of things that ‘real’ people can’t do because they “are limited to human powers (of knowledge, memory, linguistic ability, etc.). (...) fictional narrators need not be” (5). To be honest I find their (and Zipfel’s) argument rather weak. After all, apart from the tricky, potentially



impossible and quite useless distinction between fictional and factual narrator, to use the discrepancy between a 'real' person's abilities and that of a fictional narrator to account for a violation of mimetic epistemology is far less convincing when you consider how, ultimately, these narrators come to life through a 'real' human and are thus always, inevitably and similarly bound by the reach of our cognitive abilities as we ourselves are. Seeing fictional narrators lack their own physicality this argument seems to miss the mark completely by using that as a marker between real and fictional narrators. If we were researching actors portraying and lending their physicality to characters/narrators, then it would be an interesting angle to investigate. So, in my opinion Birke and Köppe mistakenly conclude that to conflate real (w)readers with fictional narrators is the core of the problem when, in fact, it is the other way around: the assumption that they shouldn't be conflated is the wrong starting point when it is the attempt to untangle what essentially and naturally *is* conflated that causes the problem. Who is this specter that peeps around the corner every time I (w)read? What? Me? What do you mean it's me?! Oh. Language and me. (It's trying to step on our own shadow if you will, a dog chasing its own tail).

~Focalization and Inserts~

On that (disturbing? enlightening?) note, we're going to explore this territory a bit further by specifically looking at the close and estranging connection between voice and perspective (a.k.a. pov). Let's kick off by calling an author we've already discussed back onto the stage (no, not Barthes, he's had his fair share of spotlight already). Henrik Skov Nielsen discusses first person narrative in 'The Impersonal Voice in First-Person Narrative Fiction'. He hypothesizes that "opposed to oral narrative, one cannot be certain that it is the person referred to as 'I' who speaks or narrates" in literary narrative (133). Nielsen suggests positing "an impersonal voice of the narrative" (133) for the cases in which this ambiguity is particularly evident, the most obvious example being "whenever something is narrated that the "narrating-I" *cannot* possibly know" (133). Moreover, he points out how free indirect speech is an especially interesting case for it seemingly merges "the voices of the narrators and the characters" (136). It has this effect because direct speech attributions (e.g. 'she said') are omitted. Nielsen, however, does not intend "to attribute to a narrator the voice in free indirect speech that is not that of the character" (138) but instead wishes to propose an acknowledgement in these cases of "the impersonal voice of the narrative" (138).

Nielsen accordingly uses Herman Melville's *Moby Dick* to illustrate how "readers very willingly accept the continuous identity of the experiencing-I and narrating-I even when the narration cannot plausibly be understood as coming from such a narrating-I" (138). As a result, *Moby Dick*, as a homodiegetic narrative (so a narrative in which the narrator is present as a character in the story she narrates) with zero focalization (i.e. the narrator knows more than the characters), demonstrates "the possibility of the presence of two voices in first-person narrative, the voice of the narrating-I and a voice that does not belong to any character" (138): "the impersonal voice of the narrative" (138). (Nielsen, 138) I do agree with Nielsen when he finally states how "[t]he paradox of fiction-that it refers to something that only arises when reference is made to it-seems to be intensified in first-person narrative fiction" (145) but, Mr. Nielsen (and you too, I haven't forgotten about you), isn't this impersonal voice actually a highly *personal* voice instead? Isn't it us? The (w)readers? And there is no difference, technically, between a writer's and a reader's knowledge of the story they (w)read, for the process is a continuous reinterpretation on both sides regardless of the seemingly fixed appearance of a story on its textual level. The writer and reader are not pilot and copilot; they're both flying the plane simultaneously.

Moving on to second person narratives which, like first person narratives, are considered more troublesome/confusing than the more traditionally third person narratives. Rolf Reitan's article 'Theorizing Second-Person Narratives: A Backwater Project?' should prove useful here. And to answer that question he poses: absolutely not! Admittedly, I am completely biased when it comes to second person narratives, it's my fav pov, but for good reason: it is perhaps the most overtly ambiguous perspective to use in a narrative for it can (paradoxically) refer to a speaker ("I'm so confused right now," you remark dazedly.), as well as address the character or the character addresses her/himself ('You shouldn't have done that. '), reader (Are you paying attention?!), and writer ('The question is are *you*?'). And then, in most of these examples if not all, you can refer to all of the other yous (that's the plural of you). Reitan, like me then, regards the arguably interdependent ambiguities and paradoxes of second-person narratives alone to make it a relevant topic of research. (Reitan, 147) He also points out the striking effects (which are always present in narratives, by the way, but, like fanfiction perhaps, you-pov just makes them so gloriously and blatantly obvious) of how "'you"-a pronoun of *address* - is used to refer to and *perhaps* to address a protagonist who obviously does not know he is being referred to and does not hear, if he is being addressed" (147). He argues that this "immediate reference, and perhaps address, to a "you" that would seem to be created by the same reference and eventual "address"" (147) indicates a "flagrant

fictionality” (147). So, apart from the fact that focalization, and the question of address “may give the impression of a narrator trying to engage the protagonist in a dialogical exchange” (161) Reitan stresses that “although you are not in any traditional sense addressed *as a reader*, you may nonetheless feel addressed by the initial “you”” (147) and thus “we-perhaps-would have a “double address” [a.k.a. “double deixis mechanism” (167)]” (147). Which is what I’ve been trying to do, obviously. Is that working by the way? Why or why not? And don’t give me that ‘we can’t play along because talking to yourself is the first sign of madness’ ~~bullsh~~ nonsense. Hate to burst your bubble but we do this all the time. When we read, write, think. All the time. Language happens to be dialogical. Deal with it. I hope that wasn’t too strict. Theses are remarkably like Whatsapp: you never really know whether that was a sassy tone just now or not. In any case, Reitan ends with a very intriguing question that is at the heart of all this, for “[w]hat is it, this “voice”, if not (...) some version of the creator’s voice *talking* (no, not talking *to*) his creation, or more accurately, *writing* his creation, flaunting its fictionality and writing readers into the protagonist’s position-thus leaving, perhaps, the talking part, and therefore also the addressing, to the more or less unnatural naturalizations that readers’, and some writers’, imagination will produce?” (172).

Seeing this thesis is about fanfiction, doesn’t seem like it so far perhaps but chapter 2 will fix that, trust me, plus the combined power of all these linguistic and narratological (which for some reason Word just doesn’t want to recognize as a word) arguments will form the backbone of our case against fanfiction’s legal status too, let’s briefly take a look at a phenomenon that seems a result of the confusing jumble that povs can be. I’m talking about so-called Mary Sues which, as defined by the online Fanlore website, usually consists of three main types: the ““Idealized self-insert: In the strictest sense, Mary Sue is an Original Female Character (OFC) in fan fiction. She is perfect in every sense of the word, and is usually considered to be a self-insertion of the author. Some fans have observed that she’s just as likely to be intended as someone for the *reader* to identify with”; then there’s “[t]he Attention Hog: original “guest star” character in fan fiction who overshadows the canonical cast. The focus of reader *and character* is unduly placed on the guest star rather than on the leads”; and last but not least we have “[t]he Warper: the canon characters and plot warp around her to fit the author’s wish fulfillment, allowing the Mary Sue to make the decisions and take the actions normally taken by others. A canon character can be made into a Mary Sue by this definition”. Mary Sues (or their male counterparts: Gary Stues) are often denigrated [by fans and non-fans alike] because they are assumed to be an author alter ego or self-insert, but, as the Fanlore website also points out, any OC (original character or non-canon character)

“might be seen as a self-insert”. Tisha Turk, whose article ‘Metalepsis in Fan Vids and Fan Fiction’ we’ve already discussed, makes a similar remark when she points to “metaleptic excess” (98) as one of the main reasons why Mary Sues attract so much fan critique for she “is redundant in stories that are always expressions of fan agency” (98). More importantly, though, she adds that “[i]n the broadest sense, we might say that *any* fan-created characters [a.k.a. Original Character (OC)] are metaleptic whether or not they are authorial self-insertions” (98). I want to extend this to *all* characters. To (w)read is to insert. This holds true for fics and non-fics. Again, this Mary Sue phenomenon just makes this more obvious but it is *not* an isolated phenomenon unique to fanfiction.

### ~Intertextuality~

Another element which many consider the identifying characteristic of fanfiction but which is, in fact, inherent to all writing (to all creative expression really), is that of intertextuality. It’ll be one of the final two hurdles we jump before we move on to chapter 2. In her book ‘The Kristeva Reader’, Julia Kristeva discusses structuralist Bathkin’s “conception of the ‘literary word’ as an *intersection of textual surfaces* (...), as a dialogue among several writings: that of the writer, the addressee (or the character), and the contemporary or earlier cultural context” (36) which then replaces “the static hewing out of texts with a model where literary structure does not simply *exist* but is generated in relation to *another* structure” (35-36). This, in turn, means that “[t]he word’s status is thus defined *horizontally* (the word in the text belongs to both writing subject and addressee) as well as *vertically* (the word in the text is oriented towards an anterior or synchronic literary corpus)” (36-37). All texts are thus always and inevitably interconnected and interdependent for activation on these other texts as well as the (w)reader.

Applied to fanfiction, Juli J. Parrish observes in her dissertation ‘Inventing a Universe: Reading and Writing Internet Fan Fiction’, “that while fan fiction *commences* from the characters and sometimes premises of a source text, it is indebted to a wide range of other texts and sources of invention as well” (16-17). In other words, fanfiction’s intertextuality doesn’t solely refer to its source text even though this connection is often (over?)emphasized in studies of it. And yet, Parrish remarks, “very few critics would agree that *any* fiction based on pre-existing work qualifies as fan fiction *per se*” (12). So, on the one hand fanfiction isn’t unique regarding the intertextuality it has in common with all literature, and yet on the other

hand it is its specific intertextual link to a source text that makes it fanfiction as opposed to other, equally intertextual texts. It seems a little off, to say the least, to define fanfiction, and consequently study it from a matching angle, based on an element it has in common with all other writing. An element, moreover, which is virtually untraceable too. Why try to separate fanfiction from other writing, I assume in order to justify it as an object of academic study, on the basis of intertextuality when this is exactly what links not fanfiction to all other writing but all other writing to fanfiction? Ergo: all writing is fanfiction. Ergo 2.0: the biggest accusation aimed at fanfiction, that it borrows too heavily from other texts and is therefore unoriginal, is void. By extension, fanfiction's inferior and derided status is wholly unjustified due to this misconception of intertextuality. Fanfiction doesn't behave differently from other literary genres in this, it is hyper-intertextual, not unoriginal, and the counterpart of the latter would be impossible due to the first at any rate.

The accusation of borrowing too heavily, which 'coincidentally' is one of the four factors contained in the fair use clause, certainly explains "[t]he specific use of textual poaching [a term coined by Michel de Certeau] as a description of or a metaphor for what fans do" when they produce fanworks (65). I'm in full agreement with Parrish when she states that it is metaphors like these that effectively equate fans with poachers to a lot of people, including the negative connotations attached to the word: someone who illegally trespasses on land owned by somebody else to steal (creative) 'game'. Considering our observations just now on universal intertextuality this is a very unfair and incorrect metaphor to use when, essentially, either everyone trespasses or no one does and seeing it would be untenable to demarcate texts like land it seems more likely that all land is initially and inherently public instead, which would make the accusation of poaching equally impossible to hold.

Excavating this intertextual landscape, Jonathan Gray unearths the indispensable role of the paratext in his book 'Show Sold Separately: Promos, Spoilers, and Other Media Paratexts'. Gray refers to an illustration used by Thomas Elsaesser to explain how "buying a movie ticket is an "act of faith," in which we pay for "not the product itself and not even for the commodified experience that it represents, but simply for the possibility that such a transubstantiation of experience into commodity might "take place"" (24). He goes on to say how "Synergy [the picture is bigger in meaning and source than the concrete picture or the sum of the respective pixels it is made up of], paratexts [texts surrounded the main text], and intertexts [other (main) texts mentioned in the main text] are responsible for much of this faith in transubstantiation" (25). In other words these form "the textuality that allows speculative

consumption” (25) and Gray adds that “all of these are texts in their own right” (25). Fans, he says, “create their own paratexts, writing fan fiction” (41). Although Gray states that paratexts are texts in their own right, it feels counterproductive to me to imply a hierarchy nonetheless between texts and paratexts when in a lot of cases it’s not that easy or even impossible to determine a (single) source text when all texts naturally and always embed other texts within them, they are ultimately all part of the same web. Is the ‘official’ Star Wars online databank a paratext linked to the main text or a main text on its own or both at the same time? If it is both at the same time, Gray admits as much in his book when he states that paratext and text are bound up together, unable to free themselves completely from the other, then why attempt to separate and distinguish which comes with an implied hierarchy as a byproduct?

In order to answer the question “If paratexts fashion and/or act as “airlocks” to texts, what does the text itself look like?” (30), Gray refers to Roland Barthes’ insistence “that the text is always on the move and hence impossible to grasp or to study as object. (...) “the text is held in language, only exists in the movement of a discourse,” and is “*experienced only in an activity of production*” (30) so that “no text can be experienced free of the individual reader. (...) all of us bring to bear an entire reading and life history to any act of textual consumption, so that each of us will find different resonances in the same text” (30). It would make sense to assume that this is equally true for the paratext, although Gray doesn’t really mention (or consider?) this.

Continuing on intertextuality and its effect on meaning making, though, Gray discusses how Michael Riffaterre “argues that all texts rely upon other texts for their meaning” (31) and then critically points out that “Riffaterre’s faith in intertextuality as (...) guaranteeing the “proper interpretation” is unrealistic” (32) seeing there is no world full of “perfectly informed readers” (32), although Gray does concede that Riffaterre “is correct to point out the degree to which intertextuality can act both as a constraint upon reading and as a guide for interpretation” (32). I’m not sure though if the fact that texts are texts in their references to other texts and the potential of being referenced in another text in turn would require this unrealistically informed reader seeing that both text and reader would constantly create different meanings, not one of which takes precedence over another. In any case, Gray then adds Michael Iampolski’s view on intertexts by summarizing how, according to Iampolski, “The text is the consequence of the meeting of work and reader, but each work and each reader will bring multiple intertexts that energize (...) the text” (32); an echo of Barthes’ equation of the text with “an activity of production” (30). In light of this, Gray mentions how

Stanley Fish is also a strong proponent of these “personalized texts, as his reader response theory allows for readers *in theory* to imprint any meaning upon a text” (32). However, Gray is quick to add this does not indicate limitless freedom for “Fish sees interpretation as constrained” (33) by “context and “interpretive communities”” (32).

Another important insight that Fish provides, Gray reminds us, is how “analysts too often interpret the text as a whole, hence forgetting how it developed and took form in the act of reading” (41) a reason for Fish to label literature as ““kinetic,” in that it moves and “does not lend itself to a static interpretation because it refuses to stay still and doesn’t let you stay still either”” (41). Again, this either echoes Barthes or Barthes echoed Fish. Whichever you prefer. Intertextually it would work both ways after all. Gray then remarks that, like Fish, Wolfgang Iser too acknowledges “the active nature of texts” so that “Meaning arises, (...), out of the process of ““actualization,” in the act of reading” (41) and “how texts leave “gaps” between sentences and ideas that readers must fill in” (41). In short, to use Iser’s words, reading is “a process of continual modification” (41) and Gray offers that these ““gaps,” are often filled with paratexts” (41).

~Literature is Archontic~

Texts’ inherent intertextuality can also be imagined to be (and work like) an archive; an allegory, if you will, that was officially born with Derrida’s text on it, and which Alexis Lothian, for one, discusses in her article ‘Archival anarchies: Online fandom, subcultural conservation, and the transformative work of digital ephemera’. Building on Derrida’s *Archive Fever*, Alexis Lothian explores fandom as a digital archive culture through the Organization for Transformative Works (OTW) which is perhaps the most well-known, non-profit, fan created online archive for fan works. (Lothian, 541) She points out how OTW, and organizations and websites like it, provide a sanctuary for fic writers (among other fan artists) and offer a place to preserve their work. Their goal is cultural as well as political: they offer legal advice about fan works on their website, advocating that as non-profit, transformative works they count as fair use and should consequently be allowed a site for publication. With this goal OTW legitimizes their own archival project, taking a stand in the debate concerning “what legally belongs to whom” (543) and by extension “what deserves to be preserved” (543). (Lothian, 542-543) This archive, then, behaves dominantly and exclusively as well as offering a sanctuary for the preservation of peripheral voices that are not granted the same

rights to be archived contrary to the mainstream archive. However, Lothian points out how the OTW might strive “to preserve what would be lost, but Derrida reminds us that all preservation involves loss, that a complete archive is an impossible concept” (552).

And now, to wrap up this chapter let’s go over one final article that takes this Derridean archive route as well. This happens to be one of my favorite articles (saved the best for last!) but I’ll try not to fangirl all over it. Abigail Derecho’s essay ‘Archontic Literature: A Definition, a History, and several Theories of Fan Fiction’ discusses how fanfiction is often defined “as a subgenre of a larger type of writing that is usually called “derivative” or “appropriative” literature, but which I [Derecho] choose to call *archontic*, a term borrowed from Jacques Derrida’s definition of archives as ever expanding and never completely closed” (72). Considering how “[t]he archontic principle never allows the archive to remain stable or still, but wills it to add to its own stores” (74) the “adjective *archontic* better describes the intertextual relationship at the core of the literature than the words *derivative* or *appropriative* do. Although *derivative* and *appropriative* both imply intertextuality, an interplay between texts-one preceding and providing the basis for the other-these adjectives also announce property, ownership and hierarchy” (74) Like Lothian, Derecho emphasizes how therefore historically “archontic writing has been often used by minority groups and women as a technique for making social and cultural criticisms” seeing how, seen through poststructuralists concepts of Gilles Deleuze and Edouard Glissant, “fan fiction and archontic literature are ethical projects that oppose outdated notions of hierarchy and property” (72).

Derecho refers to poststructuralist Gilles Deleuze and how his (together with Edouard Glissant’s) views back up her claim of how fan fiction and archontic literature hold an opposition to hierarchy and property notions. To Deleuze “repetition can be something other than a strict, exact replication-there can be repetition with a difference, repetition that appears, at first glance, to be a repeating of the same, but in fact contains differences that make the second iteration to be completely new and distinct from the first. These repetitions, says Deleuze, “do not add a second and a third time to the first, but carry the first time to the ‘nth’ power”” (84-86). Like Derecho, I agree with Deleuze here, though if a story and its ‘copies’ are infinite, like Rey in front of that mirror on Ahch-To (let’s call this the Ahch-to Cave Mirror Effect (ACME?)) then the first ‘original’/‘real’ Rey to me is undistinguishable from the copies and they all are constantly in equal measure fluctuating between differing virtual/actual states (see following paragraph) and never fixed.



To elaborate and clarify what I said about virtual/actual: “Another concept that Deleuze introduced was that of the “virtual” and “potential” being just as real as the “actual”: (...) Deleuze claims that there is a set of virtual realities [no, not the one you get when you put on a VR headset], or possibilities, or potentialities, that exist at the same time that our actualities exist” (86). This would imply that “[t]he virtual is that which *could* happen, (...), the actual is that which *is happening*” (86) and that “[t]he virtual realm, the realm of possibilities, is no less real than the realm of the actual” (86): think Schrödinger’s cat, essentially. Fanfiction, then, “and all archontic narrative, permits virtualities to become actualized” (86) for “[a]rchontic literature assumes that every text contains a wealth of potentialities that variations of the text can then make actual” (86). Thankfully Derecho here has managed to phrase what I’m thinking so much more eloquently and concisely than I ever could.

Derecho also acknowledges that given the fact that “archontic texts are always open and have the potential for infinite expansion, one might say in that sense, all texts can be called “archontic” (76) and that therefore “all texts may be intertextual—that is to say, it is possible to argue that all texts are archives that contain hundreds or thousands of other texts” (76). But she then argues that “the specific relation between new versions and the originary versions of texts, the fact that works enter the archive of other works by quoting them consciously, by pointedly locating themselves within the world of the archontic text, (...) makes the concept of archontic literature different from the concept of intertextuality” (76). Like I’ve already stated somewhere above, and I don’t want to needlessly repeat myself more than I’ve already done, locating fanfiction’s uniqueness in what it has in common with all writing could prove to be a bit of a slippery slope despite the emphasis on the supposed difference between archontic and intertextuality.

Another concept Derecho refers to in order to separate intertextuality from archontic literature is Edouard Glissant’s ‘relation’, which assumes for the first “a writer unconsciously under the sway of influences; (...) [in which] texts have interplay without any conscious intervention on the part of the writer” (87) while “[r]elation acknowledges this interplay to be possible, but it also requires that people be conscious of the play and remain vigilant, guarding against the possibility that the play will cease and become fixed and rigid” (87). Consequently, Derecho argues, archontic literature, including fanfiction, demonstrates Glissant’s concept of ‘relation’ in that it “does not privilege new variations over originary works and which does not aim to limit creative production to authoritative or canonical

versions, enacts Glissant's ethical program at the level of literature" (87). She concludes, linking it back to fanfiction, that "the fics written about a particular source text ensure the text is never solidified, calcified, or at rest, but is in continuous play, its characters, stories, and meanings all varying through the various fics written about it" and as a result "[f]an fiction is philosophically opposed to hierarchy, property, and the dominance of one variant of a series over another variant. Fan fiction is an ethical practice" (89). Obviously I would like to add to this that not just fanfiction is an embodiment of an opposition to these things; literature, *all* writing, is inherently incapable of them even though some two-legged creatures may be.

## Chapter 2

### *Of poachers, pirates, and thieves*

#### Ownership

All righty. Chapter two. Keeping all of the narratological and linguistic theories we've discussed in the previous chapter in mind, we're going to cast a critical light on copyright law: we'll explore its (historical) foundation, its goal, and its premises and especially how it affects fanfiction's (legal) status. Mimicking our starting point for chapter one, let's begin with the author again, or more precisely, who the author is according to the law and what constitutes authorship and thus ownership.

#### ~Author as Genius~

In her article 'The Genius and the Copyright: Economic and Legal Conditions of the Emergence of the 'Author'', Martha Woodmansee explains that "the 'author' in its modern sense is a relatively recent invention. Specifically, it is the rise in the eighteenth century of a new group of individuals: writers who sought to earn their livelihood from the sale of their writings to the new and rapidly expanding reading public" (426). Overall, she elaborates, the writer was portrayed as both craftsman and as inspired (the latter being linked to the Romantic notion of author as genius) and it is therefore striking that "in neither of these conceptions [he is] regarded as distinctly and personally responsible for his creation [but] always a vehicle or instrument" (427). In order to counter this, for it would make the author not very liable to be granted copyrights, Woodmansee mentions how "Eighteenth century theorists (...) minimized the element of craftsmanship (...) and the internalized the source of (...) inspiration [so that] it came to be explicated in terms of *original genius*, with the consequence that the inspired work was made peculiarly and distinctively the product-and the property-of the writer" (427). The idea that we accordingly should "treat a book as a revelation of the personality of its author" can of course be easily countered by the intentional fallacy argument alone and Woodmansee also points out that the traditional (but sadly not entirely faded) tradition of criticism having to do with the recovery of the author's meaning is based on this eighteenth century concept of the author and warns us that some still "tend to overlook (...) the degree to which that concept was shaped by the specific circumstances of writers during that period" (448).

Mario Biagioli comes to a similar conclusion in his article ‘Genius Against Copyright: Revisiting Fichte’s Proof of the Illegality of Reprinting’, in which he states how “[g]enius functioned as a remarkably effective legal fiction rather than an accurate description of the process of literary or artistic production” (1848) but he then stresses that “the kind of creativity attributed to that figure can in fact easily undermine the very notion of property it is deemed to have established” (1848). Following Johann Gottlieb Fichte’s ideas on what we now call copyright in his work *Proof of the Illegality of Reprinting*, and which in turn have informed the current CR laws to a considerable extent, Biagioli argues that Fichte’s notions have been only partially and therefore wrongly implemented. He outlines Fichte’s ideas as follows: any idea that the author has put into her work (not including ideas that could be attributed to others due to intertextuality) ceases to be her sole property the moment it is sold and the idea is consequently appropriated by the reader. This means that the physical object of the book may technically be alienable from the author, but that her ideas, although potentially appropriable by readers, remain inalienable from herself. Biagioli aptly remarks here that this line of thinking isn’t “at all analogous to Roland Barthes’ statement that “the birth of the reader must be at the cost of the death of the author,” but rather that both authors and readers are always already active in the way they produce or grasp works” (1860). (Biagioli, 1859-1860)

Most importantly, though, Biagioli exposes a paradoxical side effect to Fichte’s definition for it implies that the author’s property, her expression, cannot be taken from her even if the tangible medium that holds it can, which in turn would beg the question why she “would need the law to protect something that has been determined to be inalienable and thus, one would assume, in no need of protection?” (1856). In fact, “[b]ecause Fichte’s definition was so sharp and absolute, it could construe only verbatim reprinting as illegal” (1860-1861) so that, as a result, “[t]he meaning of “copy” has already been limited, a priori, to a verbatim reproduction of the original” (1866). Based on all the evidence we’ve gathered and insights we’ve gained in the previous chapter I absolutely agree with Biagioli’s interpretation of Fichte’s definition of copyright. I would go even further, theoretically at least, and claim that even verbatim copying cannot be illegal when the at once tangible and intangible (for external and internal), the actual and virtual states, as well as the fluidity between ontological levels and the perpetual reinterpretation that is (w)reading make this impossible. Practically speaking, however, I concede that verbatim copying would be where the line could be drawn. What ultimately proves the most relevant is how, as Biagioli points out, Fichte’s “very narrow

definition of protectable work may go a long way toward explaining why copyright law has latched with gusto on to the first part of Fichte's argument-that about the author's unique personal expression-while failing to notice the other half about the reader's personal expression" (1861) for "[i]f the second half were accepted, (...) All transformative borrowings would have been legalized" (1861).

Biagioli hits the nail right on the head when he observes that the peculiarity of this construct lies in the fact that an author's property is inalienable (i.e. physically inaccessible and unreproducible), and yet necessarily 'contained' in a material object (e.g. a book). (Biagioli, 1865-1866) And I believe he is absolutely right in attributing to this seemingly bizarre construct that "[w]hat the law seems to have done as it moved away from Fichte's radical but compelling logic, is to cast the personal expression as *imitable* (...) by collapsing it with its material medium. It is by saying that the personal expression is bound up in a book that the law transforms it into something that is liable of copying" (1867). Biagioli raises the very question that is at the heart of this thesis, for "[i]f one takes "personal expression" to be foundational to copyright, then she ought to take seriously the other "unnoticed" half of Fichte's argument about the reader's personal expression, and the radical ways in which it would both restrict and destabilize copyright law. Alternatively, if one were not to uphold the centrality of the "personal expression," what would then be left of copyright law?" (1867).

Because it is considered such an influential text (especially for fan studies and other, related fields), let's briefly take a look now at Henry Jenkins's *Textual Poachers*. Although he doesn't refer explicitly to copyright I think, he does offer some very interesting and relevant observations on the author in relation to fans that also undermine the law's definition of it. Jenkins states how "fans cease to be simply an audience for popular texts; instead, they become active participants in the construction and circulation of textual meanings" (24). These textual meanings, in turn, and Jenkins refers to De Certeau's model here, "[allow] for the validity of competing and contradictory interpretations" (34) even though "De Certeau's formulation does not necessarily reject the value of authorial meaning or academic interpretive strategies" (34) but "would simply include these interpretive goals and strategies within a broader range of more-or-less equally acceptable ways of making meaning" (34). In addition, and he discusses Barthes here, Jenkins adds that "since narratives build heavily upon intertextual knowledge, all reading is essentially rereading" (68). So this means that readers and authors' interpretations are on the same level and neither can be owned seeing the readers' interpretations are always going to be different (not inferior or wrong) from the authors' and

the author, like the fan, can therefore only consider their own interpretations as their uncopyrightable property.

### ~CR Law's Purpose~

Let's continue by asking ourselves the same question that Diana Leenheer Zimmerman asks herself in her article 'It's an Original!(!): In Pursuit of Copyright's Elusive Essence': "What looms behind the door marked "originality" is a question that is rarely acknowledged by courts and never definitively answered: what exactly is the purpose of copyright law?" (2). There are different answers to this question but, as Zimmerman identifies in a later article titled 'Copyright as Incentives: Did We Just Imagine That? ', "The most widely accepted explanation of why we need copyright is that it provides authors with the necessary economic incentive to create" (29). Nevertheless, Zimmerman notes, "the empirical foundation for the copyright-as-incentive story (...) fails to account for the economic conditions under which most art [is] produced" (29). In addition, she points out how "empirical research has shown that intrinsic factors are much more important determinants of participation in creative work than such extrinsic ones as a monetary reward" (29) and the latter can actually "be detrimental to the creative impulse" (29).

Jumping back to her preceding article again, Zimmerman adds to this goal of CR law to provide an incentive for creators to create (seeing their work and therefore their investment will be protected, not a profit guaranteed mind) that this protection would even serve the public's interest in ensuring a steady supply of new work. (Zimmerman, 2) She goes on to discuss another purpose of CR law that is often called upon in order to defend it, for most might say that the law is there to acknowledge authorship and reward the author for her labor. More precisely, this argument is based on John Locke's labor theory and is frequently referred to by defenders of CR, often in combination with Hegel's personality theory which, as explained by Elizabeth F. Judge in her book *Originality and Intellectual Property in the French and English Enlightenment*, is "based on the idea that art is an expression of the author's personality" (22) which includes "attribution rights (...) and integrity rights" (22).

I'm totally on board with Zimmerman when she subsequently argues that it is, in fact, impossible to define the terms like author and originality used in CR law when it is not even clear what CR law's exact purpose is. (Zimmerman, 2) I would turn it around a little bit,

though I suspect that Zimmerman essentially refers to the same issue, and point out how this purpose is determined by the definition of authorship (which it links to originality as its deciding factor) just as its definition is adjusted and determined, in her turn, by CR law's alleged goal. This ultimately means that CR law artificially creates and sustains itself. Looking at the origins of CR law to detect its true purpose, Zimmerman concludes that "the most obvious explanation" for this "form of protection (...) was really trade protectionism" (4). And, moreover, this protection in the form of copyright "can only be awarded to an author, (...) and author only encompasses someone who produces a work that is original" (6). Again, CR law's foundations are arguments based on preserving and justifying CR law, *not* on arguments that make any sense narratologically or linguistically, even though to protect a literary work you would expect that to be the kind of evidence you want to build your case with. We've already established the derivative nature of literature (of all writing, all creative expression, *everything*) and how, as Wolfgang Iser puts it by quoting J.M. Lotman in 'The Reality of Fiction: A Functionalist Approach to Literature', "the literary text has another special quality: it delivers different information to different readers (...) The literary text acts as a sort of living organism" (19). This interactive and multi-interpretability of both the virtual and actual state of literary works reduces originality to an impossibly fixed and out of place foundation for authorship and thus CR law.

What's more, as Jessica D. Litman observes in the second chapter ('The Art of Making Copyright Laws') of her book *Digital Copyright: Copyright laws are designed "at the expense of outsiders" (23), after all "the general public doesn't sit at the negotiating table" (24) and as a result "negotiated copyright statutes have tended, throughout the [20<sup>th</sup>] century, to be kind to the entrenched status quo and hostile to upstart new industries" (25). In addition, the definition of infringement has been made so narrow in some cases that, theoretically at least, it could mean that not only the website posting an online image of a copyrighted character (for instance as an icon for a chat group related to the fandom to which this character belongs) is infringing, a user accessing/watching/scrolling passed it as well as all the computer to computer transmission happening to have the data of this image go from the webserver to this user's computer are all cases of (the same) infringement. This RL not imaginary monster is known as the Digital Millennium ~~Faleon~~ Copyright Act (DMCA for short). (Litman, 27) The DMCA's potentially far reaching consequences illustrate the basic problem that "the information policy solutions devised by copyright lawyers negotiating among themselves are inevitably copyright-centric" (30), which could ultimately lead to*

issues concerning free speech, equity, competition, diversity of viewpoint, accessibility of information sources, and privacy. (Litman, 30) She also argues that “[t]he suitability of that model [used by U.S. copyright law which is based on print media] for new media is controversial” (31). The latter part is undeniably true, although I don’t agree with Litman when she maintains “that copyright laws become obsolete when technology renders the assumptions on which they were based outmoded” (22). The models used for printed works were just as unsuitable for those, the attempt to apply them to new(er) media/technology has only made this unsuitability more obvious and visible.

Let’s turn to Aaron Schwabach’s recent and highly relevant book *Fan Fiction and Copyright - Outsider Works and Intellectual Property Protection*, in which he, as a professor of law, investigates fanfiction’s legal status in the current CR law. He refers to the CR law’s statement to track down its official motivation in terms of which work it offers protection (and inevitably which it doesn’t grant this protection): “Copyright protects “original works of authorship fixed in any tangible medium of expression” including the literary, dramatic, graphic, and audiovisual works upon which so much fanfic is based. Elements of the work that are not original, however, are not protected, nor is “any idea, procedure, process, system, method of operation, concept, principle, or discovery” incorporated in them” (35). Plus, copyright has an expiration date attached to it and even though this period has been extended considerably over time it can’t be indefinitely renewed and last forever. (Schwabach, 35) For Schwabach, at least in this book, fanfic consequently “refers to works derived from other works currently protected as intellectual property, but not explicitly authorized and not commercially published” (17). As such, unauthorized fanfiction “presents a dilemma for content owners: while fan fiction may infringe on the content owners’ copyright and trademark rights, the fans who create and share it are the biggest, (...), market for owners’ works” (9). In order to decide whether it is justified that “fan works are always haunted by the specter of copyright” (30), Schwabach adapts a two-pronged approach to inquire “first, whether the underlying work or element (such as a character) is protected by copyright and, second, if so, whether the fanfic or other fan work violates that copyright” (30).

We’ll cover what his analysis yields later on and dispersed over this chapter, for now I want to briefly mention what he considers the main reasons for content owners to object to fanfic and what this accordingly means for fanfic authors. He distills three reasons of objection to fanfic by CR owners: 1. “the way in which the original material is used or depicted” (121); 2. “the fanfic, by anticipating the author’s future work, exposes the author to liability for copyright infringement in his or her future work” (121); 3. “the fanfic or other fan



work borrows too extensively from his or her copyrighted work” (121). Schwabach regards the first objection to highlight “the gap between the expectations of content creators and the rights actually provided by U.S. law” (125) seeing it “recognizes only economic, not moral, rights in copyrighted works and characters” (121). In response to the second objection Schwabach points out that “there is a widespread misconception that the author has the power to determine what is and what is not copyright infringement” (141) for “copyright does not prohibit the use of “[an author’s] world or any of her characters” (141) seeing that the boundaries of [CR] protection are not always clear” (141) (again, we will get into this more later) and “[i]ntertextuality is not necessarily copyright infringement” (141). As for the third objection, the commercial or noncommercial nature of the allegedly infringing work seems to be the most important factor weighing against defendants, as does the transformative nature of it, in which case referencing works like lexicons are somewhat tricky to judge seeing they would include perhaps more verbatim copied parts of the source text but their nature is referential and not a work of fiction and so can still be considered transformative. (Schwabach, 144-166)

He then outlines the (possible) consequences of these objections to fanfic authors, or rather the degree to which CR law would rule against them in a case of litigation. For the first one Schwabach simply concludes that “it is a problem without a remedy” (174) seeing US CR law can’t, technically, take moral objections into account and thus the depiction of a content owner’s work would not be deemed infringement on those grounds. Concerning the second objection, Schwabach argues that “most fanfic will not cause this particular type of market harm, which we can call story preemption, and most works that do cause such harm will not be fanfic. As ideas alone are not protected by copyright, damages, if any, would be minimal unless an author also copied a fan’s expression” (175). As for the third objection, it is difficult to show infringement in a lot of cases because it would depend more on how transformative an allegedly infringing work is and not necessarily on the amount used or the degree of similarity to the copyrighted text. (Schwabach, 175) Finally, before we move on to the next ‘subchapter’, I want to point out an inconsistency, or rather a failure to really follow through with what Schwabach gets close to concluding about the main foundation of the law’s definition of authorship and thus ownership: originality. He literally recognizes that “without originality there can be no copyright” (125) but then doesn’t seem to implement this and come to the only conclusion possible: originality as the basis for CR law is untenable because creative expressions are always derivative and doesn’t change its nature because of the legal lens forced on it; therefore CR law is equally untenable.

~Character's CR-ability~

Apart from the inaccurate and outdated notion of author that CR bases itself on as well as its policies potentially being counterproductive of its alleged goal of promoting creativity, another important aspect that is central to it is the copyrightability of characters. Zahr K. Said indicates in his research paper 'Fixing Copyright in Characters: Literary Perspectives on a Legal Problem', that "[c]haracter jurisprudence under copyright law misaligns with cultural and literary notions of character. Intellectual property law has taken insufficient account of important discrepancies among legal, cultural, and literary theories of character" (774). Said then outlines how, "[a]t the heart of the doctrinal confusion over the proper scope of protection for characters are a series of questions that literature can help answer: what is a character, and how can the law identify it as such? Can characters truly be protected independently of the work that embeds them, and if so, how much of the character should the law protect as such? What method should courts use to separate characters from their text, for the purposes of assessing whether unauthorized uses of characters in new creative works constitute infringement? To whom do characters belong, and when? What should the law make of the role readers play in constructing, completing, and resuscitating characters?" (774). Overall, he argues that copyright law needs to adopt an interdisciplinary approach which will include input from literary studies and other, related fields, in order to determine the copyrightability of characters. (Said, 829).

Asking similar questions in her book *Originality and Intellectual Property in the French and English Enlightenment* about the nature of characters and whether or not they are eligible to copyright protection, Elizabeth F. Judge reasons in the dramatically titled chapter 'Kidnapped and Counterfeit Characters: Eighteenth-Century Fan Fiction, Copyright Law, and the Custody of Fictional Characters' that "the concern of the characters' creators, seems to be both that their *same* fictional characters are making unauthorized appearances in other people's writing *and* that *imitations* of their characters are masquerading in other people's writing, superficially similar in appearance but *not* the same in their essence" (41). This observation already (or once again) indicates a striking paradox when it comes to defining constructs such as characters and authors. After all, and besides the assumption that one creator creates a character when every reader, like the 'original' creator, ('co')creates in this, this creator's fear is that the *same* as well as *imitations* of 'their' character appear in other

work. So not only would they claim ownership over one version but all possible versions of a character which they technically and necessarily derived from other (stock) characters in the first place. Nevertheless, “[i]nserted into the legal framework, these authorial (and fan) interests in preserving characters’ integrity was subsequently propertized, turning these early moral and aesthetic claims that characters were being kidnapped, counterfeited, ravished, and debased into the later legally cognizable assertions that original characters could be “claimed,” “owned,” and “taken.”” (25). Judge maintains that “fan fiction (...) makes it difficult to discern when it is the same character who is re-appearing in a different literary work and when, by contrast, it is another character inspired by the first” (55), but I would argue, as I have done before, that fanfiction with its overt ‘borrowing’ of CR-protected characters doesn’t complicate this more, theoretically at any rate, than all other writing. When Judge accordingly asks whether a fictional character is even “separable from the original work and the original plot” (56) I would say that it is a misconception to think this is possible because the character in the ‘original’ work is not even stable enough in that one work so never mind transferring it to another work. Plus, just as the work is never original, so is the character never original to begin with and is itself an amalgamation of elements of other ‘preceding’ characters which are arranged in a certain way but never long enough to constitute a fixed, solid, transferable entity, not even within the same work. All of this makes the question that seems highly relevant in fact completely superfluous.

I’m strengthened in this by what Regine Eckardt says in her article ‘Speakers and Narrators’ on story-worlds: “Different readers imagine parts of the story in very different ways, depending on their expectations and experiences” (156) and “these different ways to imagine the story-world are equally well supported by the text” (156). Like the story as a whole, the characters in it are similarly constructed at the sentence level, so the same should ring true for them too. How, then, would it be possible to come to “an intersubjective notion of sentence content” (156) and thus of characters or even story which can then be fenced off and ‘protected’? Perhaps in an attempt to circumvent the inability of both the law as well as the literary experts that Biagioli would call upon as reinforcements, proponents of characters’ copyrightability (both content owning writers and fan writers interestingly) often use a different tac by emphasizing the immorality of leaving them unprotected and thus vulnerable to abuse by other writers (forgetting the reader is apparently at perfect liberty to do so as long as it’s in their heads only) as if characters were family members and therefore entitled to similar rights as their human ‘counterparts’.

In their article ‘It’s like rape: metaphorical family transgressions, copyright ownership and fandom’, Jenny Roth and Monica Flegel analyzed “debates between originary producers and fans” (902) and observed how “both claim ownership, but not within the discourse that underpins most of copyright law itself” (902). Instead, fans and authors alike turn to familial metaphors and analogies and thus also not to copyright law but to “criminal laws and social norms to make arguments about the restriction or circulation of creative ideas” (902). Roth and Flegel do point out that they noticed a difference in the application of these familial analogies between ‘professional’ authors and fanfiction authors. For the former “the argument that fan fiction represents personal violation against one’s family, as opposed to an intellectual property issue, [suggests] that (...) copyright as a concept in and of itself requires a more humanizing and personalizing narrative in order to describe the sense of wrong they feel when their characters are used in fan fiction” (903). Fan authors, on the other hand, “invoke family quite differently (...) [and] in arguing for the formation and maintenance of community ties as central to creative endeavours, fans invoked more feminist models of kinship, which challenged the idea of text as property in favour of text as shared resource” (906). Consequently, “[p]osing authorship and ownership in these ways makes the question of how one uses another’s property a point of accepted community standards, and of family rendered differently than the patriarchal family-under-attack in author’s arguments” (906). However, it is vital to note here how many fic authors mimic CR’s erroneous notions and add after a legally pointless disclaimer how the character *Thorin Oakenshield* belongs to *The Professor*, but how they own their OCs (ironically the current legal system could potentially allow for this btw). Therefore, Roth and Flegel’s somewhat idealized and romantic statement that “[t]he construction of authorship fans use aligns with common cultural practices that undo the hierarchical binary of producer/consumer on which copyright relies” (907) isn’t exactly true in a lot of cases (as much as I want it to be true).

In conclusion, let’s confer what has been argued in favor of or against characters’ copyrightability by taking another look at Schwabach’s book (*Fan Fiction and Copyright – Outsider Works and Intellectual Property Protection*) and compare it to what he has to say about it. First of all, Schwabach concurs that “[a]uthors and fans alike often assume that fictional characters are protected” (37) but adds that the extent and/or eligibility of a character to be granted copyrights is far less straightforward and clear in reality. This is mainly due because, ignoring the narratological and linguistic (and literary) evidence we have collected, courts in the U.S. “have applied two tests to determine whether a character described in text is protected. The first, and more widely applied, protects characters that are “sufficiently

delineated” independently of the works in which they appear. The second, applied, although not consistently, asks whether the character “constitutes the story being told.”” (38). These tests are not only incredibly broad, vague and virtually inapplicable, they potentially contradict and undermine each other too. Schwabach indicates this by using the example of the character of *Tarzan* and the attempt of the court to apply the sufficiently delineated test so that his creator could have a legally justified claim to copyright protection. Schwabach demonstrates how the court in this case didn’t get beyond a very general outline of what the character of *Tarzan* consisted of and how, as a result, “[t]he copyright protection of fictional characters is narrow, (...) [so that] the dozens of imitators (...) are not infringement on *Tarzan*’s copyright, so long as they are identifiably separate characters” (40).

Analyzing the second test, in which the character allegedly constitutes the story being told, Schwabach refers to the *Sam Spade* case in which the court had to decide whether this character was a mere chessman in the story in which he features or whether his character *is* the story to such a degree they can’t be separated. Seeing that the court judged *Sam Spade* to be this mere chessman, Schwabach subsequently questions whether this outcome is “inconsistent with the *Tarzan* cases” (42) and why *Tarzan* isn’t a chessman too. The court explains its decision by holding that the *Sam Spade*’s story is “a story driven by plot and atmosphere” (42) making “Sam Spade (...) not so much a man as an attitude” (42) who “might not be “sufficiently delineated” for protection” (42) whereas “*Tarzan*’s stories are about *Tarzan*” (42). Schwabach then offers a very striking insight when he points out how “the *Sam Spade* court may have allowed itself to be influenced by a non-economic factor” (42). Dashiell Hammet, *Sam Spade*’s creator, wanted to sell the rights to use this character to a radio channel but this was fought by the movie producers he had already sold the rights to in order to turn a *Sam Spade* novel into a movie. Consequently, “[r]ather than deprive Hammet of the right to write additional stories about his creation, the court went out of its way to create a test under which Hammet would win” (42). This is another example of CR law twisting and turning to serve one side over the other (regardless of whether it is the claimant or defendant) and its inconsistent and arbitrary application of tests that “are bound to yield different results in some cases (...) [which] further enhances the confusion surrounding the copyrightability of fictional characters” (44) and so ultimately “[t]he tension between these two tests has done nothing to clarify the copyrightability and the extent of copyright protection of fictional characters” (44).

Comparing pictorial characters to textual characters, Schwabach makes another important observation when he emphasizes that the reason for treating them differently is due to the fact that “the very appearance of these characters is the product not purely of the author’s imagination but of a joint effort of imagination on the part of the author and the reader” (53). I’m not sure I completely agree with him on this, though. I feel a case could be made that, although a pictorial character might be more easily defined and thus delineated, it still consists out of more than just its 2d/3d representation. As interesting as CR law’s different treatment concerning different media and creative products is, it would expand the scope of this thesis well beyond its limits to pursue it further. Finally, I would like to mention how Schwabach also comments that although “[f]anfic authors incorporate not only characters from the underlying works, but also non-character story elements” (61), even these can sometimes be eligible to copyright protection if they are distinct, original creations, potentially making Harry Potter’s Firebolt not just a “real-world mass-produced consumer product” but a ‘character’ which could be protectable. (Schwabach, 62) Moreover, Schwabach points out several other (potential) complications: characters could develop and not be fully delineated from the first work in which they appear, characters can (simultaneously) appear in different media, and characters can be partially in and partially out of copyright because of copyright of older works expiring while the character is still protected in newer works. (Schwabach, 64-65) He concludes that all of this demonstrates the risk of the court going “where it ought not to go: into the realm of literary criticism” (66), which is a direction Schwabach, unlike Biagioli, doesn’t want to go in.

#### ~Pro-Fanfiction and Anti-Fanfiction Writers/Fans~

Before addressing this chapter’s final part on whether fanfiction constitutes fair use under the current CR law, I want to include a bit of an overview of fanfiction’s status among fans and ‘professional’ writers, bearing in mind that both sides aren’t always easily divided in these seemingly opposing camps and that this will only contain a small selection of opinions on the subject but I feel they are useful to go over because they are representative of the main objections to and promoters of fanfiction. I’ll start with the (in)famous, online rant by ‘professional’ writer Diana Gabaldon. In this collection of blog posts she accuses fanfiction to not only be immoral but also illegal, stressing that its non-profit status doesn’t exculpate it from these charges in the least. Apart from the fact that, as we shall see when discussing the

fair use clause later on, fanfiction's non-profit nature doesn't determine its legality/illegality (a for-profit fanfiction could technically also be determined fair use), it's Gabaldon's demeaning and aggressive tone that strikes me as even more unjust than her being misinformed about copyright. When she addresses fanfic authors and literally accuses them (*us*; I'm shamelessly biased here but at least I'm aware of it plus unlike authors like Gabaldon I'm not excluding a majority of (w)readers but include all of us, including them) and explicitly compares them to burglars breaking into somebody else's house, I strongly feel that the metaphor used (like that of poachers) portrays fanfic as a crime and thus by extension fanfic writers as criminals. The language used throughout all of these posts are needlessly and disproportionately derogatory, don't show any real insight into what fanfiction or copyright actually entail, and reveal just how little insight into the writing process Gabaldon has gained during her career as a 'professional' writer and even though she claims to write the "REAL thing" as opposed to fanfic writers. I find it baffling how a fellow writer feels she is justified in branding a large group of writers as thieves while acknowledging the intertextual and derivative nature of writing but then at the same time contradicts herself by claiming that "that the central-the only truly vital part-of a story, and what makes it unique, is the character or the characters. Everything else springs from that. A story, in essence, is its characters" and that "the notion of copyright intrinsic in characters is well-documented". Actually... No. It isn't. It can't be. It's narratologically, literarily and linguistically impossible (see chapter one!) and the law should recognize this. For 'your' story. For 'my' story. They aren't 'our' stories. Never have been. Never will be. Sharing is the name of the game. We would all benefit from it too that way. Writers (people) like Gabaldon who perceive and paint the genre of fanfiction as illegal and immoral either are blinded or blind themselves to the reality: *they* are the real thieves. They are the ones appropriating public property based on a law that is vague, inconsistent, arbitrarily and contradictorily applied and is by no means based on any kind of real understanding regarding the creative process, including the (w)reading process. Darn it. It's so tempting to answer a rant with a rant. But I'll cut myself short and move on to the next blog post by a 'professional' writer (who happens to be Gabaldon's friend): R.R. Martin.

In his blog post 'Someone Is Angry On The Internet' (now you know how passive aggressive capitalizing the first letter of every single word in a title can be), Martin very weirdly confesses that he started out by writing fanfiction, that is writing as a fan/amateur, but that he didn't dream to write about someone else's characters but instead invented his own. Again, I've said it a million times before and I'll probably repeat it another million times: this

is not how creativity works! No one invents characters or stories from scratch. We all inevitably use the same ingredients (which we also all interpret and perceive differently by the way) to create a character which inevitably can't be stable enough to present the same character to me and you. Therefore, to claim a character as your property is to not only fool yourself into thinking that you are the sole creator of a character that is a fixed entity, you also (and this is a lot more harmful and outrageous) wrongly assume that the character will be the same for your readers (or regard their versions as inferior or inaccurate) and consequently force your version on them, thereby also wholly dismissing the reader (and text) as active agents in the (w)reading process who are on the exact same level as you are. Moreover, Martin also admits that he has 'shared' his characters with other writers and has written about these writers' characters as well but then stresses how this is completely different from fanfiction seeing that this "shared world" was "a tightly controlled thing" in which the writers gave their consent as well as retained the right to point out what they perceived as an inaccurate portrayal of their characters. First off, a 'shared' world in which one dictator can still censure character portrayals is not a shared world. Second, no narrative could possibly be called 'a tightly controlled thing', I trust I don't need to summarize the entire first chapter here to make that point. His misconception of the writing/creative process is perhaps most evident when he considers writers allowing fanfiction to be making a mistake for "this door, once opened, can be very difficult to close again". This 'door' is exactly at the core of his misunderstanding and accordingly erroneous statements and stance on fanfiction for this gate is as fictitious as Martin's claim that fanfiction "is NOT fair use, by the way, not as I understand the term". Then you understood it wrongly. The wording alone in the fair use clause are vague at best, open to interpretation and reinterpreted/reprioritized depending on the case. There is a reason why no litigation against fanfiction was ever followed through: it *would* be considered fair use (not that this clause makes any sense, but still) and win the lawsuit.

I'll try not to snap while we go over one final rant from another 'professional' writer from ~~the dark side~~ their side of the fence. In her blog post aptly named 'The Fan Fiction Rant', Robin Hobb has the audacity to dust off the ancient authorial intent argument to attack fanfiction. She claims that in the case of a fan fixing her story (she's referring to so-called 'fix-it' fics in which fan authors change events and character arcs for instance to prevent a character from dying or hooking up with the 'wrong' person) "[t]he intent of the author is ignored" (see the intentional fallacy bit in chapter one for why this argument obviously



doesn't hold) and as a result "closes up the space that I [Hobb] have engineered into the story, and the reader is told what he must think rather than being allowed to observe the characters and draw his own conclusions". This is an awkwardly hypocritical statement when we consider how Hobb subsequently explains that "[w]hen I [Hobb] write, I want to tell my story directly to you. I want you to read it exactly as I wrote it". How are those two positions not contradictory and mutually undermining? How can she reproach fanfiction for allegedly telling a reader how to interpret a story/character when it actually demonstrates the room there always inevitably is for endless reinterpretation (a.k.a. the (w)reading process) and deny the reader of her work that very room by enforcing her own interpretation? Let me know if you can make sense of that because to me it absolutely doesn't stack up .

Switching gears a little, let's take a quick look at the arguments used by both fans and 'professional' writers to defend fanfiction while noting how these sometimes tend to make the same mistakes and end up not really defending it in my opinion. First up is the 'professional' writer Patricia C. Wrede, who wrote in her blog 'Originality, Fanfiction, and a Few Other Things' that "Originality is something that is prized in modern-day fiction, at the very same time it is proclaimed impossible. (...) On the one hand, originality is held up as an absolute, fundamental prerequisite for high quality writing (and this is further reinforced by the attitude of modern society toward plagiarism). On the other hand, any author who stops to think clearly for more than a few minutes will have to recognize that after some thousand years of recorded human history and storytelling, finding an original story to tell, or something new to say about the human condition, is going to be nearly impossible". Close. But no cigar. This impossibility has got nothing to do with the length of the historical tradition of storytelling but with the nature of it. The very first cave drawing, let's take that as the earliest form of expression, is already not an original but an indirect depiction of, say, a deer. This deer would then also have been open to interpretation to those who 'activated' it by either drawing or looking at it. That's representation: indirect (non-intersubjective) imitation *not* direct (objective) originality. So, when Wrede continues on this track and argues how "the whole point [of fanfic] is that it's not purely original in itself; it has to have something to be an alternative to, or an expansion of" she fails to realize that she hasn't described/identified the point of fanfic, but the nature of *all* writing. Another cringe-worthy argument that Wrede makes: "Nobody complains about plagiarizing something if your rewrite is *better* than the original". I won't bore you with another serenade under (aesthetic) relativism's ivy-infested balcony, but suffice it to say that seeing no work can be 'better' for there are no objective

standards or inherent qualities to determine this by, and combine this with the fact that the ‘original’ as such doesn’t exist and is as much of a copy as the copy (or rather the whole binary is annulled) leads me to conclude that this sentence is (sadly) based on not one but two wrong assumptions.

Unfortunately, Bookshop’s (a.k.a. Aja Romano) blog post ‘I’m done explaining why fanfic is okay’ uses a similar strategy to defend fanfiction and could be said to end up perpetuating the system it opposes by applying the same definitions and ways of thinking which, in turn, does nothing for really changing fanfiction’s status. As much as I appreciate the sarcasm, and I *do* appreciate it, Bookshop’s main defense of fanfiction consists of a description of what authors like Gabaldon reject fanfiction on, only to set them up for a nasty surprise when it turns out that these exact accusations also apply to a long list of Pulitzer Price-winning writers and their work. At first glance this seems a perfectly executed ‘aaw, snap!’ moment. At a closer look, however, I feel it’s counterproductive to defend fanfiction by showing how it resembles published works based on characteristics spouted by anti-fanfiction writers/people which, in turn, are based on misinformed, and derogatory views of fanfiction. Moreover, Bookshop further undermines her attempt to defend fanfiction by listing people who write fanfic but who are also professional writers, phd students, experts in their fields, etc. How is emphasizing a cross-over/overlap between status-possessing, societal positions and fanfic authors making a case for fanfiction when fanfiction’s very status-less position is based on wrong assumptions about the derivative nature that *all* writing has in common and is not just a ‘eureka-meets-triumphant-ha!’ connection that it has with this list of price-winning works? Bookshop makes it worse, and also clear where she goes wrong in her approach, when she stresses fervently how “[i]t is absolutely *not* my intention to make the claim that anything with the least resemblance to something else is fanfiction. All of the works in this post have been deliberately sourced from preexisting sources, with the intention of changing these sources, or adding to / expanding them in some way. Nor am I claiming that professional published works have the same goals and intentions as fanwork, or that they are exactly synonymous; rather, the purpose of this list is to show that [in the cases of the works mentioned] the practice of writing and the story produced are *both identical to the act of producing fanfic*. There is no difference.” The ‘right’ arguments are there but applied with the same and wrong assumptions as used by fanfiction haters. If you see that all writing is derivative at its core, then why not take the next step that would logically follow and realize that, yes, everything is essentially fanfiction?

Let's get ourselves a much needed shot of 'OMG, you're *so* right!' because the following blog post by Dawn Walls-Thumma reflects my own position the closest and can offer a counterweight to the arguments we've discussed so far. Not gonna lie, I'm super jealous at how she hit it right out of the park with this one. The title should pretty much clue you in on her main point: 'Fan fiction is Fiction'. She backs this claim up with the following bit that I'm just going to quote in its (almost) entirety because it's too spot on to paraphrase instead: "Fan fiction is fiction. As in the fact that fan fiction is the same as regular fiction (if there is such a thing), only it goes under a different and derogatory name. And as in the fact that treating "fan fiction" and "fiction" as separate is itself a fiction. (...) if you think back to the root of creating fiction, there is a knot of people gathered around a fire as one tells a story...or should I say, *retells* a story. The art was as much-if not more-in selecting, recasting, and expanding upon existing details as it was in adding original changes. (...) When did "storytelling" become "fanfiction"? (...) when we began to commodify creativity, when we began to draw boundaries (in the interest of making money) around *my* ideas, *my* characters, *my* stories. (...) When creators and the companies that profited from them realized that they could inscribe tight boundaries and claim "ownership" of stories that, in fact, are the product of the thousands of collectively derived myths, stories, and archetypes that define our culture did we end up with the sneering term "fan fiction" (...) That intelligent, creative people fail to understand the need to respond creatively to the stories of others is astounding. (...) in Ms. Gabaldon's perfect world, we would legally and morally be able to respond only as *consumers* to the creative work of others". This particular post neatly summarizes a lot of what I've been trying to say as well.

Now let's embark on a mini side-quest into the dodgy realm of canon for that, after all, decides what is the official version and thus part of the 'original' creation of a content owner which some would accordingly want to mark as off-limits to everyone else. In his online article (but also offline so WITH page numbers: huzaaah) 'Whose Film Is It, Anyway? Canonicity and Authority in *Star Wars* Fandom', John C. Lyden discusses how the huge fanbase and practical cult that is *Star Wars* can't solely be attributed to marketing done by corporations like Lucasfilm, for a lot of this is also generated by fans themselves through appropriating the commercial products of popular culture. (Lyden, 775-777) As a result, "[i]t is difficult to identify which version of *Star Wars* actually is the original at this point, given the plethora of versions and the continuing dispute between filmmaker and fans about what constitutes the "canon," and who has the authority to define it" (780). In addition, I would also like to question the relevance of notions like canon and authority when those have been

proven to be untenable in the light of narratological and linguistic theories alone. In this regard I agree with Chuck Wendig ('professional' writer) when he warns in his blog post 'Pointing the Cannons at Canon' that "[i]f we become too rigorous in our slavish devotion to canon, we lose the chance to tell stories. (...) The more we care about what's "true"-in a universe that has never been true and whose power lies in its fiction-we start denigrating those things that aren't. (...) We dismiss fan-fiction as just some wish fulfillment machine instead of what it often is: a way to tell cool new stories in a pre-existing pop cultural framework that aren't beholden to the canonical straitjacket. The truth is, canon has never been all that canonical". In other words, "I can have my batman, you can have yours, and nobody has to arm-wrestle over which one is right, which one is true, which one belongs, which one does not".

#### ~Fanfiction = Fair Use?~

Lastly, let's turn to the fair use clause embedded within CR law and which was designed to guarantee the public access to copyrighted material in order to parody, criticize and research it without constituting infringement. Next to fanfiction as a community and fanfiction as a counterculture, investigating whether or not fanfiction could be covered by the fair use clause presents the third angle through which it is most often studied. Going back to his book *Fan Fiction and Copyright – Outsider Works and Intellectual Property Protection*, Aaron Schwabach succinctly summarizes the four factors that the fair use clause is made up of: 1. the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes; 2. the nature of the copyrighted work; 3. the amount and substantiality of the portion used in relation to the copyrighted work as a whole; 4. the effect of the use upon the potential market for or value of the copyrighted work. He remarks how "[t]hese four factors have been much criticized for their nebulosity" (82) and that "it is difficult-often impossible-to determine in advance of litigation whether a particular use is "fair"" (82). Moreover, he adds, there is "a widespread but incorrect belief that noncommercial uses are presumptively fair uses. (...) while the commercial or noncommercial nature of the use is weighed in determining whether a use is fair use, (...), it is not by itself determinative. A commercially published fan work may make fair use of the source material. Yet even in noncommercially published works, some fans may go overboard and engage in copying from the underlying works that exceeds the boundaries of fair use" (81). Schwabach then importantly points out that "[w]hile any work incorporating characters,

settings or story elements form an earlier work may be said to be “derivative” in a literary sense, not all such works will be “derivative” (...) [i]n a legal sense” (82).

I feel this is where he and I (maybe you as well) part ways. It sounds logical and reasonable enough, but with FU’s factors not only nebulous and often immeasurable, they also (in the case of fanfiction seeing that is our focal point here) deal with a literary work without any reference to or insight of the literary process that creates them. Schwabach himself acknowledges when trying to answer the question of what exactly makes a work legally derivative (as opposed to literary derivative) that “[t]he definition of “derivative work” in section 101 of the Copyright Act, unfortunately, provides less illumination than it might: (...) [it] tells us only that an adaptation from one medium, form, or language to another is a derivative work, as are shortened versions” (78). This, then, also means that “a work can be derivative even though it is “an original work of authorship”-that is, even though the secondary work itself would otherwise be eligible for copyright protection” (79) which “greatly expands the potential scope of the derivative works’ right, as far as fanfic and other fan works are concerned” (79) because “most fanfic and other fan works are themselves original works of authorship rather than mere adaptations. The problem is that these original works incorporate characters, settings, and other story elements from the underlying works to a degree that may make the fan works derivative” (79). I find it difficult to grasp as well as highly illogical that the FU clause is applied *ex post facto* without investigating how that fact was established in the first place. If they would then it would never even come to infringement or fair use because literary works can only be analyzed and thus judged literarily. If you instead ignore its production process, as well as the players it involves, and judge it like the tangible product it isn’t and can never be because of its nature, the entire foundation for that judgement inevitably crumbles and collapses. It’s an intriguing but also frustrating paradox that originality is legally determined through the degree to which other, derivative works are transformative in their use of the ‘original’ work and thus creates its own illusion without containing any substance itself.

I also don’t agree with Schwabach’s predictable but understandable and widely used definition and consequent positioning of fanfic, claiming that “all fanfic is derivative in a literary sense; in order to be fanfic, it must include enough elements of the underlying original work to place the fanfic within the fandom. Most fanfic, however, is not derivative” (87) in the legal meaning of the word and most are, in fact, “substantial transformations of the original works” (87). Again, the distinction between a legal type and a literary type of

derivative works goes unchallenged when it should be critically examined. And if it would be, well, then the determining of originality (literarily impossibility, ergo legally impossible, for they both pertain to the same ‘object’) and the degree of transformation of a derivative work would be revealed to be the wholly misplaced and unfeasible mission it actually is.

Indeed, and that still makes me think of Teal’c, Schwabach appears to spot the same issues when he concludes that “[t]he treatment of fanfic by content owners reflects a one-sided view of the conversation between authors and fans. This is not surprising, as that view has been embodied and embedded in Anglo-American copyright law (...). Copyright law views the publication of works of fiction (or any works, for that matter, but fiction is our concern here) not as discourse but as monologue: the author delivers the content, and the audience passively receives it, with no part in shaping it” (178). He also pinpoints one of the major causes as to why we’re still entrenched in this awkward and also skewed gridlock for “copyright law ensures that the fans remain outsiders” (181) even though “most fan works are in fact fair use” (181), but “the problem that remains is that few fans have the resources to defend their uses in court” (181). Unlike me, Schwabach’s holds on to his belief in CR law’s ultimate potential to iron out its kinks and provide protection for content owners and offer room for fan works to coexist legally with the underlying work used. I therefore find his book’s goal to advocate that “all or nearly all non-commercial fan fiction should be protected as fair use” (10) because it “is a way of combating the inevitable alienation” (10) produced by the current situation in which the majority of texts are owned by a few, a very meager compromise, especially in the light of what he himself points out in terms of the ambiguity and arbitrariness of the current CR law. (Schwabach, 10).

Although critical of the way CR is constructed and applied, Schwabach’s negligence to consequently question its very existence is representative of the majority of articles which I have read on this topic. Maybe this can be explained by the fact that most of these were written by law school students, professors and researchers, who might simply be reluctant to undermine their field’s *raison d’être*, but I feel that this (conscious or unconscious) refusal to critically reevaluate not just the topic but the field in which it is placed/bred is an essential part of the process. I’m certainly not pulling any punches considering ‘my’ field of literature studies either, after all. Anyway, Drew Leland Leatherman’s paper ‘Fan Fiction: Is the Creation of these Derivative Works Fair or Foul?’, unsurprisingly adopts an approach similar to Schwabach’s. But the question in the title of this paper is really not the one that should be asked. You know why by now. I’ve been hammering it in every chance I got. Maybe you

have known it all along. It's because (and say it with me now!) "*every* work is derivative so to grant copyrights to a work based on originality and determine infringement based on the degree of transformation is ludicrous!" (We just simultaneously quoted me and then me and you, think about that). So what *is* the real question? The real question is: is it fair or foul that CR owners claim that their work is original? That notion has caused the problem which wasn't a problem when everyone was cool with the fact that all stories/creations are derivative but then some ~~men~~ people had to get all bossy and greedy and ruin all of that.

And analyses like Leatherman's say little to nothing at all when all she does is repeat the law without really questioning what it is that it actually says. And thus Leatherman obediently regurgitates that "[t]o qualify as copyrightable material, a work must meet two fundamental elements. First, it must be an original work of authorship, and second, it must be fixed in any tangible medium of expression" (3) without observing the impossibility and ambiguity of the core terms in those elements. What's more, "[t]his paper argues that the general posting of fan fiction for others for free does not in itself constitute a material injury to the copyrighted work, but that, at some threshold point, the quantity and prevalence of posting freely accessible fan fiction will eventually involve a material injury to the copyright holder" (13) by which Leatherman implies that fanfic is the one that can cause potential damage when, first of all, it is a category only because of the existence of CR protected works, which are, secondly, and at a closer inspection actually the ones causing damage by dismissing the public right to access and interact with stories. She also ignores that fanfiction generates money for content owners more often than not for it provides free advertising. Plus she avoids the swamp that is CR law when it comes to determining not just when something is infringement but more importantly why something and how something can be granted CR in the first place! I can't stress this enough seeing this is where most (fan)scholars, pro and anti fic, go wrong. Classic case of misdirection. Like Rey totally looking like she was going to take Kylo Ren/Ben Solo's hand in the trailer and then didn't in the movie (Yes, I'm still upset by that. And yes, that's totally why I went and 'fixed' that by starting my own she-takes-his-hand fic. Sue me! Seriously. Sue me. If I can gather the necessary funds I'll win. You know I will.).

Rachel L. Stroude, although also fitting fanfiction into the FU clause without questioning it and the CR law it is embedded in as a whole, does actually include more literary arguments in her article 'Complimentary Creation: Protecting Fan Fiction as Fair Use'. For one thing, she acknowledges that "[e]ach reader may invest new meaning in the work

conjured up by the author” (192) and how consequently “[t]he author invites the reader into the world she creates, but (...) cannot limit where her world takes the reader” (192). Stroude then, based on this surprisingly narratologically sound reasoning, aptly concludes that the mere words “copyright infringement” (192) effectively (and unjustly) “end the existence of the reader’s world, and thus fan fiction” (192). Moreover, Stroude points out by quoting Jacqueline Lai Chung, ““a character may represent one person to one reader and another person to another reader. Therefore, although the author has in a sense given birth to her own character, she alone will not be able to capture the entire significance of what she has created.” Consequently, participatory works [a.k.a. derivative and transformative works] will inevitably emerge because “[o]nce a text reaches readers, the copyright owner loses control over its interpretation”” (197). I want to take this one big, giant step further (surprise, surprise!), and you really should be able to chant this with me by now, because the writer/author/CR-owner already loses this control, or rather, never has this control to begin with, before, during and after writing. Furthermore, characters can’t only be different characters to different readers, but are in fact different characters to the same (w)reader. Recognizable, maybe, but never the same. Again, and I suspect you’re getting so bored with me shouting this, the real point you need and can prove with these (and related) arguments is that the CR owners’ act of claiming work is illegal not that fanfic needs to prove its legality.

Our final stop before beaming down(?) (how do dimensions even work on a 2d screen!) to chapter three, is Rebecca Tushnett: a professor of law, one of the founders of the OTW and chair of its legal committee later on, and someone who has written extensively on fan works and its position within the current legal framework. In her article ‘Legal Fictions: Copyright, Fan Fiction, and a New Common Law’, she starts out by emphasizing how “[s]torytellers have long drawn on a vast reservoir of cultural knowledge” (652) which in turn meant that “[n]o one had a better claim to characters and situations than any other person” (652). She then argues that in allowing people to tell stories in a private instead of a shared environment, the law does not divide legality and illegality in a respectable way. In fact, the law disrupts creative and productive interaction this way. Moreover, “[w]hen most creative output is controlled by large corporations, freedom to modify and elaborate on existing characters is necessary to preserve a participatory element in popular culture. Copyright’s purpose, after all, is to encourage creativity for the public interest, not only to ensure monopoly profits” (684). She also points out how the FU doctrine could potentially ensure the public’s access and protect it’s creative response to CR-protected works, but its vague state causes groups like fan authors to be intimidated. (Tushnet, 684-685)



Tushnet goes farther than Schwabach and others like him, when she remarks concerning the transformative argument for determining FU, and which Tushnet feels applies to fanfic, that this gets complicated seeing that “no bright line of originality exists” (667) and that “[c]opyright law does not and could not grant its protections according to judicially measured cultural value or requirements of absolute originality” (667). In addition, “[a]nalyzing the third fair use factor, the amount and substantiality of the portion used, is difficult. If a character can be copyrighted, then use of the character might be deemed use of the entire copyrighted material. But characters cannot be copyrighted in themselves; they only merit protection when they are sufficiently delineated in a copyrighted work.” (677) and “[t]he extent of protection for characters independent of the works in which they appear is unclear, and the case law is confusing” (659). She rightly proceeds to formulate this in concrete questions such as how to determine and if it matters whether a fan author has appropriated a character entirely or partly, whether the character behaves IC (i.e. in character) in the fan author’s work, whether it’s an AU type of story, etc., and concludes based on these that “[t]hese definitional problems suggest that the third factor is too indeterminate in a productive use context to be weighed heavily” (678). Lastly, she also mentions how the CR disclaimers that fan authors tend to head their stories with are, although legally ineffective, expressive of “a general belief [adopted by fans] that fan fiction is fair use” (679).

Finally, let’s wrap up this chapter by going over a different article written, almost a decade later, also by Rebecca Tushnet. In ‘Economies of Desire: Fair Use and Marketplace Assumptions’, Tushnet appears to have tightened the thumbscrews on CR and its attitude towards fanfic some more. This time she packs a particularly mean punch at CR’s underlying incentive theory: “At its extreme, incentive theory posits that maximum incentives require maximum control” (517), but [t]here is little hard evidence about the relationship between copyright and creativity” (517) to back this claim up. What’s more, “copyright’s formal indifference to content [For the law should not judge artistic merit. (Tushnet, 521)] has mistakenly been coupled with indifference to process” (522) and this is exactly “where incentive theory breaks down” (522). Consequently, “the fact that there is no bright line between something that is a derivative work and something that is not points to [another] major breakdown between creative practice and copyright theory” (528). Tushnet accordingly deems it vital that we should get “closer to the lived experience of creativity” (526) for then we “are in a better position to understand exactly how resistant or compliant creative practices are likely to be in response to the constraints and possibilities of copyright law” (526-527), and thus the focus should be on “creation the *verb* rather than creation the *noun*” (527) for

“[i]nspiration and motivation are dynamic” (527) and “[a] copyright law directed only at static products will make mistakes about how to foster progress” (527). Tushnet contrasts CR law’s lack of insight in this regard with fan creator’s awareness of creativity (imagination) as “a renewable source” (529) that makes them inclined to “reject the economy of scarcity and excludability that animates mainstream copyright discourse” (529) and by extension “[f]anworks take this infinite extensibility to its logical conclusion” (531): “[e]ach person can write her own version of the story, and thus there are no contradictions in the stories, only variations” (531). Although I agree with Tushnet that fanworks, like fanfiction, “foreground their embeddedness in a web of other, related works” (536) which shows how “a story is not a single economic entity, neatly divisible from the rest of the world’s creative output, but is inextricably intertwined with other stories” (536), I feel that she romanticizes and exaggerates fans’ awareness of this. Yes. For me it totally works this way. Fanfiction made me rethink everything I had been taught and I’ll be eternally grateful that it liberated me in this regard. However, and I don’t mean to speak for all fan authors here, based on my own personal experience in reading fics and exchanging reviews/comments, I can’t conclude that this fan that Tushnet describes, and with her many others studying fanfiction, is that representative of the majority of fans in general. Nevertheless, she does, at least, and unlike most of whom I’ve discussed in this chapter and especially this final subchapter on FU, seem to be aware how CR and its “[i]ncentive stories, because they do not explain creativity, can mislead us about the value we want to protect” (539).

## Chapter 3

*All written works are created equal*

### Alternatives to CR Law

Mr. Wordcount crashed through my window SWAT style and informed me we need to keep this chapter short. So, without further ado (and without subchapters too), let's take a look at some possible alternatives to CR law and why it would be a good idea to explore and develop them further. Although phrased slightly wrong, Alexis Lothian asks the right question in her article 'Living in a Den of Thieves: Fan Video and Digital Challenges to Ownership': "vids, and similar arts of juxtaposition challenge the idea that creative legitimacy relies on original ideas that belong only to those who initiate them. Will transformation be the new originality?" (133). The only part I would retcon here is that transformation isn't the *new* originality, and I would instead propose reintroducing it as the *old* originality. Or, as Lev Grossman puts it in the online *Time* article 'The Boy Who Lived Forever', "Is art about making up new things or about transforming the raw material that's out there?" Sadly, though, and despite his correct conclusion that "[t]he legal argument against fan fiction isn't actually very strong" and that only because fans can't afford "to go through the (...) expense of litigating against a celebrity or major corporation" there exists no "definitive legal precedent", Grossman denies fanfiction its full rights by claiming how fans "don't do it for money (...) [but] just for the satisfaction". This weak argument, apart from opening up a whole new can of worms on the art for money versus art for art's sake discussion often used to keep genres like fanfiction in its 'proper', non-profit place, also misrepresents fanwork producers as the ones who chose to, for instance, write fanfiction just for the fun of it. When mainstream culture has ousted you for decades, when CR law is geared against repressing you, when content-owners threaten you with litigation, and writers (both fan and 'professional') demean you and what you write as being second-rate, uncreative and poor imitation, adding to the pool of creative works for free is most definitely *not* a choice. By phrasing it like this, Grossman and others using the same or similar words to describe fans and justify their position, fail to see the real cause-effect relation here.

Going back to Lothian now, for she draws attention to this as well and identifies it as one of the main reasons for revisiting CR law when she outlines the threat that large corporations and media producers pose to fanworks. She explains how these parties "have explicitly sought to solicit fan participation as labor for their profits in the form of user-

generated content that helps build their brand” (135) and although “[m]any fans perceive these developments as a desirable legitimation of fan work, (...) they can also be understood as an inversion in the direction of fannish theft. Rather than fans stealing commodified culture to make works for their own purposes, capital steals their labor-as, we might consider, it stole ideas from the cultural commons and fenced them off in the first place-to add to its surplus” (135). Again, I hope it’s become crystal clear by now who the real bad guys are here and who are wrongly cast in that role. I therefore wholeheartedly agree with Abigail de Kosnik when she argues in her article ‘Should Fan Fiction Be Free?’ how “[f]anfiction authors are in some danger now of repeating what hip-hop’s earliest DJs might call their error: waiting too long to decide to profit from their innovative art form, and allowing an interloper to package the genre in its first commercially viable format” (120). She refers to the Alice Randall case in which her novel *The Wind Done Gone* was sued for infringement by the CR-owners of the novel it was based on (*Gone With The Wind*) and which it critiqued/parodied. The CR-owners in this case later dropped the lawsuit and publication was in fact allowed under the label ‘unauthorized parody’. De Kosnik points out how the outcome of this case shows fanfiction communities “that commodifying fanfic based on copyrighted material, although likely to lead to a legal battle with copyright owners, is possible” (121). And she stresses, as do I, that it is vital that fans look at this case and feel heartened. After all, “[a]lthough fans have legitimate anxieties about fan fiction being corrupted or deformed by its entry into the commercial sphere [e.g. restrictions on content after filing off the serial numbers], I argue that there is far greater danger of this happening if fanfiction is not commodified by its own producers, but by parties foreign to fandom who do not understand why or for whom the genre works, and who will promote it for purposes it is unsuited for, ignoring the aspects that make it attractive and dear to its readers” (123).

That there is a need for fans to organize and come up with an alternative commercialization model, is also recognized and expressed by the writer John Scalzi in his blog post ‘Amazon’s Kindle Worlds: Instant Thoughts’: “on one hand it offers people who write fan fiction a chance to get paid for their writing in a way that doesn’t make the rightsholders angry, (...) on the other hand, as a writer, there are a number of things about the deal Amazon/Alloy [as in Alloy Entertainment] are offering that raise red flags for me”. These red flags are the fact that a fan writer would be restricted in terms of content; they would also only get a very small percentage of the potential profit their story makes; and they would sign away their rights to whatever they add to the fandom they wrote for so that,

effectively, Amazon owns the copyrights and Alloy Entertainment can use a fan writer's ideas without further compensation having to be paid to her. The true nature of this deal reveals how Amazon making "a show of saying that the writer owns the copyright on the original things that are copyrightable (...) appears to be just that: show". Scalzi mentions the possible counter argument in favor of deals like Amazon offers because the opportunity to publish fanfiction 'legally' and getting paid for it in the process, no matter how disproportionately small the amount, is better than not having this opportunity at all. This way of thinking is very dangerous and fans would literally be selling themselves short if they support it. I agree 10000% with Scalzi when he points out that "there is a difference between writing fan fiction because you love the world and the characters on a personal level, and Amazon and Alloy actively exploiting that love for their corporate gain and throwing you a few coins for your trouble". As much as I would love for monetary incentives to be taken out of the equation altogether and have commercialized writing go in the direction of fanfic communities' gift economy instead of the other way, projects like Amazon/Alloy's reek so bad of exploitation it's smelling worse than your average unwashed rancor (I'm assuming that name was aptly chosen) (also, contrary to this reference, I'm a hardcore PT/ST girl myself, but never mind). However noble a goal it may be to promote and gain acknowledgement for fan communities' gift economies and open-source models, it's simply too far out of reach yet and it'll only be harder to get there if we reject commercialization on principal and creative grounds, only to end up being exploited and assimilated into a system that'll potentially restrict the type of creative expression thriving within fan communities. So, like Lothian, de Kosnik and Scalzi, let's be a little less naive and dreamy and get our equal rights to payment squared and then we can talk rainbows and unicorns.

Talking about necessary changes, another thing that needs to change is academia's, or more specifically literature studies' attitude towards fan works like fanfiction. Of course, the case might be different for every university or country, but in general I've personally felt the same way Anik Lachev expresses in her article 'Fan Fiction: A Genre and its (Final?) Frontiers': "As a form of literature, I figured, fan fiction would have to be acknowledged by Literature Studies. But not only was there hardly any research to draw from-least of all any local publications-there was not even an interest in encouraging such research" (84). Seeing fanfic has an increasingly more prominent position and has developed into a mass phenomenon (Lachev, 84), as well as the fact that it is literarily speaking not different from other literature and that it is also an American popular culture phenomenon it should

definitely be included in literature courses, especially the ones belonging to the North American Studies program. I agree with Lachev when she points to the “very classic notion of literature as something stable and finished, of high cultural value (instead of “mere entertainment”) and crafted by one single, professional individual” (85) as being the main suspect when it comes to explaining and potentially rectifying “[t]he often demeaning and hostile attitude towards fan fiction” in the academic world when it is clearly based on the assumption that fanfiction “threatens the sanctioned position of literary authorship as purported by Literature Studies” (85) without acknowledging that this assumption has been totally misinformed and misguided.

Perhaps Martha Woodmansee and Peter Jaszi say it best when they paraphrase Neil Hertz in their article ‘The Law of Texts: Copyright in the Academy’: “we must resist perpetuating a one-sided legalistic concept of “author’s rights” in our own institutions through a punitive approach to plagiarism, which reflects nothing so much as our own anxieties of influence” (783). What’s more, they point out what I’ve been experiencing myself as a student of literature, namely that “students enter (...) advanced courses with a lingering sense of inauthenticity that predisposes them to an exaggerated respect for the “real” authors enshrined in our syllabi. We [i.e. literature studies] do little in most of these courses to dispel their illusion. Our canon-busting has by and large stopped at adding to the existing canon of great authors token representatives of our diversity-new “authors” assimilable to the Romantic vision of authorship rather than role models for alternative writing practices” (784). It is ironic, after all, that a genre as fanfiction is derided and seen as the very embodiment of inauthenticity concerning authorship, while, in fact, as Angela Thomas phrases it in her article ‘Fan fiction online: Engagement, critical response and affective play through writing’, many “people in the online fan fiction communities are writing collaborative texts, reflecting a new way of thinking about writing that challenges the traditional notion of the single, individual author” (237) and it is *this* aspect, especially its cases of overt awareness of the writing process as interactive and intertextual, that actually makes fanfic one of the most authentic literary genres out there.

Suggesting a move away from this approach based on the erroneous notion of authorship and the author as genius lie that inspired it, K. Weingarten and C. Frost talk about how, for instance, “teaching with collaborative writing tools such as wikis is a step towards inhabiting this largely authorless, and perhaps more democratically-composed, world” (56) for “[w]ikis, by subverting the fiction of the author, allows students to escape temporarily

from the regime of individual authorship that is so central to academia, particularly in the humanities” (51) and will hopefully make these and similar “open-source platforms premised on collaboration(...) more prevalent” (51). This approach to the writing process, far more accurate than those often taught, allows for foregrounding instead of denying the transindividualistic (collaborative) nature of it and which K.S. Howard, in her online OTW article ‘Surrendering authorial agency and practicing transindividualism in Tumblr’s role-play communities’, analyzes in Tumblr’s role-play communities. Her conclusion is that although “[t]he writer who engages in acts of online role-play or make-believe is often thought to promote him or herself as an individual agent”, it is in fact a process in which the “surrender of authorial agency (...) allows them [Tumblr’s role play community members] to work across, among, and between other entities until the boundaries of the self become porous rather than fixed”.

Again, like it has been stated above, this approach would be much more in line with the true nature of the writing process which one would expect to inform the method and curriculum of courses offered by any literature studies department. So rather than base classes on closed, individual reading in which authorial intent keeps cropping up, literature studies should remember how, as Allan Parsons describes it in ‘Creative Practice: Performative; Collaborative; Egalitarian’, “a narrative environment, as product, is not simply an instrumental construct. Indeed, it is not simply a product. It continues to work or perform after its completion as construct” and therefore “A creative practice approach would seek to encourage a focus on performativity rather than productivity (the latter signifying a primary focus on production of commodities whose manufacture and exchange are productive of and for capital, for profit), and egalitarian collaborative working relationships rather than a hierarchical division-of-labor”. Moreover, as James J. Brown notes in his article ‘Essjay’s *Ethos*: Rethinking Textual Origins and Intellectual Property’, especially the current proliferation of writing technologies should remind “us that tracking down the origin of a text is always a problem” (239) and how “[o]ften, this question of origin ultimately leads us to questions of identity as we attempt to link a text with an author” (240-241) when we should consider “that Wikipedia has not *created* this problem of linking texts with origins but has instead *exposed* a problem that is internal to the process of writing” (241) regardless of whether this “citationality complicates any discussion of plagiarism, intellectual property, or textual origins” (241-242).

Enough aca-bashing, let's get back to our favorite piñata: CR law. What changes could/should be made here? In her article 'Copyrights as Incentives: Did We Just Imagine That?', Diana Leenheer Zimmerman suggests that "even if we are not about to remake copyright wholesale, we could get away from a position where we have enforcement of more rights than the copyright theory can legitimately justify" (58). Specifically, she proposes "reconsidering copyright in light of the intrinsic motivation theory" (54) seeing how the law considers "the creative individual as a rational profit-maximizer whose willingness to invest effort, time and resources in creative enterprises is directly correlated to the expected extent of the returns that will be forthcoming" (31) instead of taking into account how writers (artists, people in general) are also, if not more, intrinsically motivated. I agree with her on a principal/ideal level that monetary incentive is not and should not be thought of as the main incentive for creativity. Just as I feel it would be great to live in a world of fairies in which everyone, not just artists, were free to pursue happiness and realize their creative potential without having to be dragged down by a system that capitalizes on everything, including art, and that promotes unfair monopolies and rights to be granted to a lucky few at the cost of (nearly) all others. But, in order to get there, let's first give everyone a shot at making a collective profit off of writing. To make that a tad more poetic: instead of creating these islands, let's all be the ocean!

Because I'm such a fan, I quickly want to insert Rebecca Tushnet's comment regarding this, and which she made in her article 'Payment in Credit: Copyright Law and Subcultural Creativity'. Tushnet proposes how "Fandoms norms of attribution may provide a different perspective: fan practices accept the importance of authorship, but treat it as a question of *propriety*, while rejecting claims of control over creative work as *property*" (166) so that "ownership claims do not [in the propriety version] automatically or inevitably expand. Fan creations show that when attribution is separate from permission, (...), extremely popular sources do not suppress diversity in creative content but rather enable it" (166-167). And I absolutely love it when she rightfully adds, totally echoing Barthes, that "[f]inding authorship everywhere turns out to have the same liberating effects as killing the author" (166-167).

In his turn, Zahr K. Said (who we've discussed before), ascertains in 'A Transactional Theory of the Reader in Copyright Law' that "copyright law lacks a robust theory of reading, and of the proper role for the "reader"" (605) and he accordingly proposes the consultation and/or implementation of "a theory from the humanities[:] (...) Rosenblatt's theory of



transactional reading” (605) for this theory indicates how the meaning of a text is not inherent in said text but constitutes a transaction between reader and text. This inclusion is necessary because, as Said argues, “[t]he ordinary observer standard [let’s say the reader stand-in to represent the average person’s reading of a work that the jury takes into consideration in cases of determining infringement] is not a model of conceptual clarity. (...) it skews outcomes, contributes to the miscalibration of scope in copyright, and literally demands the impossible for juries. For those reasons, scholars and courts should care about improving their understanding of the ordinary observer, and rethinking its role in copyright litigation” (645).

Megan B. Abrahamson too, in her article ‘J.R.R. Tolkien, Fanfiction, and “The Freedom of the Reader”’, advocates for including the reader more in all this for studying the text, trying to define it, inevitably ends up in most cases to being an investigation of the reading process (and by extension the writing process seeing both are similar performative and mental processes). This is why “[f]an studies theory also moves the focus “from the text to the processes of reading,” and, much as in the case of reader-response theory, is based on the premise that texts only acquire meaning when they are being read” (58). What struck me especially about this article is how Abrahamson goes on to point out by reasoning that “[i]f the act of interpreting a text is the first step, then writing down these interpretations, either in metacommentary or narrative form (or drawing them, or producing any other form of fanwork), is not significantly any more transgressive than the initial, internal act of interpretation” (59). This dovetails neatly, if not seamlessly overlaps, with what I’ve been saying about the (w)reading process and how its interactivity and simultaneous external and internal state makes writing fanfiction technically not even different (or more precisely, more transgressive) than reading the source text is. Moreover, she argues “that fanfiction is not a new phenomenon, although the term and many of the nuances of form and mode are. We need merely see that fanfiction and other derivative texts are related, and that the delineation between them may ultimately be impossible to define. Because lines between fanfiction and professionally published “original” fiction are so easy to blur, drawing the line between the two is subjective at best” (60-61). This line of thinking can be backed up by the theories we’ve discussed in (mostly) the first chapter.

Moving on to another alternative, though not so much to CR law but rather a way for CR-ed texts and non-CR-ed to coexists without one harming the other, is offered by David S. Roh in his book *Illegal Literature – Towards a Disruptive Creativity*. He refers to the Japanese phenomenon of *doujinshi*, fan-made mangas which are published to be sold among

other fans, and uses it to illustrate how, unlike its American counterpart of fanfiction, *doujinshi*'s existence and thriving represents a balance between copyright holders' benefitting from fixed material on the one hand, and "new authors and the reading public benefit[ing] from open dialogism" (66) on the other. The fact that there is no such system (yet) in the U.S. when it comes to fanfiction indicates, according to Roh and I'm inclined to agree with him, how "the dialogic engine has stalled in the face of two limiting factors: intellectual property law and centralization of distribution" (14-16). Roh uses the term disruptive as a positive and necessary element in the production and stimulation of creativity, explaining how it "comes from the technology sector, in which *disruptive* has come to mean paradigm-shifting technologies or products that cannibalize or create new markets, rendering a preceding technology obsolete" (16). Roh specifically appropriates this term of disruptive "to articulate the three vectors of this book's ultimately humanistic argument, (...). First, disruptive textuality conceptualizes a textual condition that acknowledges and even embraces continual upheaval as part of the literary process driven by the dialogic engine. Contingent on the first, the second vector necessitates revisiting notions of authorial ownership and property rights, which clashes with existing legal policies. Third, this project dwells on the disruptive nature of decentralized network logic, which multiplies and escalates the preceding two components" (17). He accordingly concludes that "[t]extual disruption has been burdened with an increasingly strict interpretation of law influenced by the ideology of authorship. Whereas curbing piracy makes sense-piracy upsets economic models of creativity without directly contributing into the cultural pool-putting parody in the same category does not" (27).

Point made. But that's not to say that I agree with the fact that he considers practically all *doujinshi* to be covered by the parody label (basically to be eligible for the FU clause more than anything), and I instead feel that this reasoning should apply to *all* (fan) works. I also cringe a little when he stresses the importance of the tension and disruption between extra-legal and legally protected texts and views this dynamism between the two as necessary for the production of creativity. In other words, it is fanfiction's extra-legal status that gives it its function and assigns it its place in this dynamic process. This, to me, seems to imply how granting fanfiction legal status would upset that balance when, again imho, this is an excuse to perpetuate a divide which doesn't represent balance in the first place, and seems utterly ridiculous when you consider how every text always fluctuates between balance and imbalance both on a textual and intertextual level, regardless whether or not we're dealing

with an extra-legal or legal text, that manmade division doesn't, in fact, resemble one unbalancing force for the benefit of the other, supposedly balanced side.

I want to end this chapter by going over Kate Darling and Aaron Perzanowski's book *'Creativity without Law – Challenging the Assumptions of Intellectual Property'* for they offer some interesting examples of creative industries that thrive outside of CR law (or IP law more broadly). Darling and Perzonowski start by ascertaining that “by granting innovators and creators the legal powers to exclude others from their work, (...), the IP system embodies an unavoidable tradeoff between incentives and access. By creating limited statutory monopolies, IP results in higher prices and decreased public access to creative works” (7). They argue that the “practices of a range of previously ignored creators and innovators, (...) challenge this intellectual property orthodoxy” (7) and “force us to rethink the assumptions underlying IP law: that creativity cannot thrive without legal rights of exclusion, that widespread copying is inevitable without legal intervention, and that law dictates the way the public interacts with creative works” (7-8). Subsequently, they propose three areas that, like IP law attempts to do, could regulate behavior too: architecture (the design of buildings and all other features of the physical environment), social norms (regulation through private interactions instead of through state legislation), and market mechanisms (unwanted behavior will be more expensive and thus discouraging). (Darling and Perzanowski, 8-10)

In chapter 1 of this book, titled *'Norms-Based Intellectual Property Systems – The Case of French Chefs'*, Emmanuelle Fauchart and Eric von Hippel propose as an alternative to IP law “Norms-based IP systems” (21) that “function within a group to provide group members with IP rights based on social norms only” and which, for instance, work effectively in French chefs' communities and should therefore be explored further just as it would “also be useful to more deeply explore whether one system tends to dominate the other when both [law-based and norm-based IP systems respectively] are present” (43) and to what degree they actually complement each other. (Fauchart and von Hippel, 22-43) For the second chapter, *'An IP Lawyer Walks Into a Bar – Observations on Creativity in Cocktails'*, Matthew Schruers argues that even though in cases “[w]here protection is unavailable, orthodox theory suggests that we ought to encounter an under-supply in the market” (47) we actually don't see that, for instance, the cocktail industry is booming with old and new recipes available in print and online without causing a decline in the industry and despite “the absence of exclusive rights” (48) and instead with the help of “different business models, [and] incentives” (48). (Schruers, 47-48) He concludes that “what conventional IP theory explains

poorly, the incentives of the marketplace seem to explain rather well. Cocktails are an area where we see innovation in the absence of protection in large part because there are external motivators to innovate” (61).

Although I agree that these are promising case studies, they do not, in themselves, nor does Darling and Perzonowski’s book as a whole I feel, advocate abolishing altogether or advice a critical enough review and revision of IP law as such. Of course it would be a step closer to empowerment and true change if fanfiction could follow these leads, but being a part of a creative industry that so heavily (and mistakenly) relies on CR law it might be less of a feasible option if this law doesn’t drastically adapt to include what it should include, namely fan works, and not just deem them potentially fair use. Moreover, and I’m once again going to refer to Rebecca Tushnet here seeing she wrote the seventh chapter (‘Architecture and Morality – Transformative Works, Transforming Fans’) in this book, for fanfiction to experiment with alternative models instead of trying to fit into a CR law that actively and for its own existence depends on an exclusion of it, it is hindered by this very law. For, as Tushnet says it, “[t]he ability to move into the formal economy is an important part of the innovation cycle. To deem the experimental process infringing, or to force all activity into the formal economy, risks shutting down that generative flow” (189). The first step I envision, and I’m a hopeless dreamer so bear with me here, is to expose CR law for the fraud it is so that the alleged infringers (a.k.a. fan authors/artists) can legally and financially strengthen their position so that one day, perhaps, fandom’s non-profit elements and communal spirit can truly be a useful and empowering heritage to the impoverished and disenfranchised writers they are now forced to be.

## Conclusion

Instead of summarizing every twist and turn made, every argument supported or refuted, and repeating every deduction we've already come to, I want this conclusion to offer some ideas for further research. There are a lot of underexplored and new angles to use when it comes to investigating fanfiction or, more broadly, fan works. For one, it deserves to be studied as a genre in its own right as well as being an intriguing and contemporary representative of how all writing essentially works. It is an incredibly playful and diverse genre as well that lends itself perfectly for an even more interdisciplinary and transnational approach. It is a global phenomenon, after all, with fans from all parts of the world communicating, sharing, and co-producing. Like Bronwen Thomas neatly points out in her article 'What is Fanfiction and Why Are People Saying Such Nice Things about It?', seeing it isn't possible to assume one type of fan interaction with a fanwork, there are many types of fans and thus also many types of interaction after all, she proposes that a dialogue between the fields of narratology and media and cultural studies, which have been reluctant to truly team up, would be mutually beneficial and relevant for fanfiction studies which can effectively be a middleground between the two. (Thomas, 20-21) Fanfiction could be studied from a culture studies perspective (e.g. What role does fanfiction play in cultural imperialism when it comes to the distribution of American popular culture?); a digital studies and/or media studies perspective (How does the interface of a medium or the combination of different media effect the fan work?); a literature studies and/or literary studies perspective (How does metalepsis work in fanfiction and what new ways of exploring this literary/narratological technique does it offer?); a linguistic studies perspective (Does writing fanfiction in a second-language affect its reception or potentially change the distinction between native and non-native use of a language?); a legal studies perspective (What does fanfiction reveal about CR law's treatment and understanding of creativity? (This sounds familiar); and a fan/audience studies perspective (What affect has fanon on fans' perception of canon?). Most importantly, almost all if not every research question centered on any type of fan work would inevitably overlap with other fields of research, which shows the fertile ground that it is as a topic, including and maybe especially for North American Studies as well.

In addition, I fully agree with Ika Willis when she argues in her essay 'Keeping Promises to Queer Children: Making Space (for Mary Sue) at Hogwarts' how "Fan fiction, (...) can be a site of resistance not only to the *doxa* [Roland Barthe's (and Pierre Bordieu's) term for collective opinion/common sense a.k.a. the dominant cultural code] which tries to

govern the reading of a text, but also to the “vengeful rigor” of academic discourse” (191) for, and I’m more than happy to let Willis speak here on my own behalf as well, “as a fan fiction writer, [I] feel I have (despite copyright law, despite being aware that there are writers who experience fan fiction written about their work as a painful effacement of *their* investment in the text) a *right* to the stories I tell, a right which is granted in part by my *readerly* implication in a text” (191-192). Fanfiction could serve as a reminder of what literature studies tends to only briefly mention and then quickly park somewhere out of sight: to analyze literature through the narrow lens of culture and history, and to efface both it and the reader in favor of an author/writer that is technically as much of a creator as those two are, is to tell not even half of the story and offer no more than a superficial, skin-deep insight similarly awkward and insufficient as studying a painting without ever mentioning paint.

Moreover, and like perhaps the majority of fan works, fanfiction has received a lot of unfounded derision and condemnation which have contributed to its peripheral and alleged inferior status compared to ‘professionally’ published literary work. A sentiment accurately expressed by Emma Lord in her blog post ‘13 Things Fan Fiction Writers Are Very Tired Of Explaining’: “Even (...) when fan fiction is more prominently known than ever, I can see people getting genuinely uncomfortable with me mentioning it. (...) People still have so many weird misconceptions about what fan fiction is, what kind of people write it”. Lord emphasizes that, no matter how baseless when looked at closer, “Unfortunately, fan fiction writers are in a constant stream of (...) judgement on all sides” and I feel she hits the nail right on the head when she identifies the reason for “people [to] feel so comfortable mocking fan fiction authors is because we’re somehow less “real” or “legitimate” than other writers in their minds”.

In order to challenge this unjust and erroneous judgement the academic world, literature studies in particular, has a responsibility to, at long last, acknowledge to itself that it has, despite the availability of literary/narratological/linguistic theories that refute her, perpetually resuscitated an author that is long dead and thereby also artificially kept alive the so-called literary expert and critic who (wrongly) assume her to be the key to the fictional gate they seem to think needs them as guardians. This lingering and sadly often still dominant attitude reveals nothing so much as the ironic lack of insight into the (w)reading process, the product of which literature studies scholars and critics claim to know. It is high time genres like fanfiction are included in the curriculum and research of literature studies programs; that they are added to the reading list so it can be studied as a genre; that on one of its many

subgenres can be zoomed in on; that it can be analyzed as text; that authorship can be explored through it; that links with other research fields can be discovered and fostered; and the list goes on. Fanfiction is and should be an indispensable part of literature studies, of American studies literature studies in particular, and should no longer be ignored, derided or mocked by gatekeepers who have guarded a non-existent gate for so long they seem to have forgotten it is and never has been there.

In the current #metoo era it's also vital that we seize this opportunity to rid fanfiction of its stigma for, at the core, there are also undeniably (internalized) misogynist and sexist elements at play (cue gender studies, another relevant angle to add to the list). Emma Lord, in another, very recent blog post titled 'Why Fan Fiction Shaming Is A Feminist Issue', succinctly outlines one of the major reasons why fanfiction is also a site that reveals gender inequality as well as triggers a resistance to it: "The fan fiction world has certainly seen its fair share of this kind of stigma. (...) the shame associated with fan fiction originated long before these works reached readers outside of their usual sphere. (...) The writers are (...) often young women, subjecting the work to the same dismissive attitude society frequently takes over things that young women enjoy. (...) fan fiction was so popular because it helped them [women] create their own narratives in a world where media mostly catered to men. (...) And while we live in a world now where plenty more media caters to women, we do not live in a world that has stopped shaming women for wanting the things that we want in it; even now, women face shame for writing the very content that was meant to empower them". And the consequences are not to be underestimated for, as Lord, again, aptly points out how because of it "we are setting up women to apologize for their writing before it even leaves the keyboard. We are attacking them not only personally, but professionally; we are discouraging them owning a part of themselves, and from profiting from it". This needs to change, and the academic world has a huge responsibility that many affiliated with it have been neglecting to act on so far.

I would like to recommend Ashley J. Barner's very recently published book here, for *The Case for Fanfiction – Exploring the Pleasures and Practices of a Maligned Craft* offers an intriguing analysis of this link between fanfiction's status and misogyny. Barner points out how absorbed reading, which is what fans are associated with (in particular fan girls and simply women in general) who read/write fanfiction/fictional novels, has historically been deemed bad in the case of women and particularly as a form of controlling women. This derisive attitude towards absorbed reading is also partly due to the fact that the in dominant

cultural organizations like universities, the very opposite reading strategy of detached objectivity is promoted and placed (hierarchically) above this subjective, intense and personal type of reading that the fan engages in. Reading like a scholar in a way becomes synonymous with reading like a man, which is approved of, while reading like a non-scholar is closely associated with reading like a woman, which will earn you scorn and disapproval. (Barner, 14-35)

Last but certainly not least, fan works form and incredibly creative and inventive phenomenon in which new technology and media are experimented with to create intriguing new narratives as well as offer the opportunity to explore the dynamics at work between 'reader/writer/text'. Characters have Twitter accounts, do podcasts (you could check out Leia's podcast for The Force Awakens youtube channel for an excellent (metaleptic) example), and provide metacommentary on the movies they themselves appear in (e.g. Kylo Ren's reviews of the ST as well as the other recently made SW movies on the youtube channel Auralnauts). Fans non-stop experiment with multi-media approaches to producing and sharing fan works, for instance Star Wars Theory's animated fanfiction on youtube (including audio commentary by the maker), or people turning their or others' fics into audiofiles, or fic mimicking the style of a script or song, and then I haven't even mentioned the vast and growing body of memes, manips and amazing artwork that are out there (for example on social media like Tumblr). With the boundaries of media ever expanding and dissolving, combined with CR law's out of touch approach and policies to creativity, it is high time to change how we treat and perceive fan works. We live in a very exciting time, maybe fanfiction can one day soon be the bridge we need to reach a future where we have revisited IP policies, where the current CR law and concepts such as plagiarism are, finally, a thing of the past, and in which all forms of creative expression and the study of it are allowed to truly spread their wings.



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