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Rebecca Katz

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# A Pilot Study of Fan Fiction Writer's Legal Information Behavior

Rebecca Katz  
McGill University

Correspondence concerning this article should be addressed to:  
Rebecca Katz, PhD Candidate  
Rebecca.Katz2@mail.mcgill.ca

## Abstract

Fan fiction, a genre using pre-existing and often copyrighted media as a springboard for new stories, raises several legal challenges. While fans may benefit from copyright limitations, their actual knowledge of and ability to exercise their legal rights is unclear, due to limited empirical work with fan writers on this subject. This is especially true of Canadian fans, who are underrepresented in the literature. This paper reports on a pilot study of Canadian and U.S. fan writers' legal knowledge, information behavior, and overall perceptions of law. It addresses background, methods, preliminary results, and future directions.

*Keywords:* Information behavior; legal information; user-generated content; fan fiction

## Introduction

Fan fiction refers to amateur-written, not-for-profit stories based on any identifiable segment of popular culture, such as a movie, book, or television show (Tushnet, 1997). The genre has grown exponentially since the advent of the Internet (De Kosnick, 2016, pp. 333–335), which has made it easier than ever for fans to join “fandoms” (fan communities around common source texts), connect with like-minded peers, and share their creative content. Fans frequently serve as amateur archivists, sharing and preserving their own material in digital, fan-made archives or libraries (De Kosnick, 2016). However, because fan fiction draws on or remixes earlier media, the genre raises copyright concerns which fans should—but may not always—be aware of. Copyright is not a limitless monopoly for owners; instead, copyright laws in most jurisdictions contain limitations allowing other social actors, such as reviewers, parodists, and libraries and archives to do their work and to spread knowledge and creative expression (see e.g. Lessig, 2004; see also Murray & Trosow, 2013). Fan fiction writers and their works may also benefit from the limitations built into copyright law. However, while there is considerable scholarship on fan fiction’s legality, fewer works have engaged with fans themselves to explore their copyright literacy.

This subject is important for several reasons. It has both general importance and relevance to the fields of librarianship and education. First, fan fiction, like other forms of fan creativity, is an example of participatory culture (Altizer, 2013; Jenkins, Purushotma, Weigel, Clinton, & Robison, 2009). Participatory culture allows audiences to engage creatively with existing cultural works, often commenting on earlier media while building valuable skills and sharing new works online (Altizer, 2013; Black, 2008; Jenkins et al., 2013). These commentary and skill-building opportunities should not be stifled by copyright uncertainty. Second, fan creators share a common interest in balanced copyright with libraries, archives, and educational institutions. A growing body of research examines library and information professionals’ copyright knowledge (see e.g. Dryden, 2010; Kortelainen, 2015; Morrison & Secker, 2015; Oppenheim & Woodward, 2004; Terra, 2016; Todorova et al., 2014). However, hobbyist fans have not been studied as extensively, despite their stake in copyright policy and practice. Third, learning more about how fans research and understand copyright is relevant to the broad field of information behavior, as it may shed light on how non-specialists access and interpret specialized legal information. Finally, fan creators, including fan fiction writers, may turn to offline resources such as libraries or educators to inform themselves about copyright issues.

This research adds to the literature by interviewing a sample of Canadian and American fan fiction writers to explore their experiences of the law and their legal information behavior. It explores fan fiction's benefits to fan writers, as well as fan writers' knowledge, perceptions, and information behavior regarding intellectual property laws. This article discusses results from the pilot study. It represents the first in a two-part research series to be published in the *Journal of Copyright in Education and Librarianship*.

### Literature Review

There is considerable literature on fan fiction's legality (see e.g. Christian, 2013; Katz, 2014; Peaslee, 2014; Reynolds, 2010; Schwabach, 2011; Tushnet, 1997). This scholarship frequently considers American legislation and case law (Christian, 2013; Schwabach, 2011; Tushnet, 1997). Much of this research explores whether typical fan fiction stories would likely qualify as fair use, a defense in U.S. law that allows for certain uses of a copyrighted work without infringing copyright (see e.g. Christian, 2013; Hetcher, 2009; McCardle, 2003; Nolan, 2006; Tushnet, 1997; see also D'Agostino, 2008, for a comparison of American fair use with its counterparts in Canada and the UK). Tushnet (1997) argues that this should be the case; Peaslee (2014) and Hetcher (2009) agree that U.S. law would likely be favorable to most fan fiction works. Hetcher (2009) also addresses the usefulness of social norms in encouraging fans to use copyrighted works fairly. However, other scholars, such as McCardle (2003) and Nolan (2011), are not necessarily as optimistic that fan fiction is typically fair use, though they acknowledge that individual fan fiction stories may pass that test. Fewer scholars have explored whether comparable legal doctrines outside the U.S. could likewise exonerate fan fiction (see e.g. Katz, 2014; Lim, 2015; Peaslee, 2014; Reynolds, 2010).

Moreover, few studies empirically assess fans' own knowledge and information behavior regarding relevant legal issues. This is consistent with the dearth of literature on fans and their information behavior generally, as the field of information studies has heretofore largely neglected fans (Price & Robinson, 2016; Price, 2017). There are, however, some exceptions to this trend. Price (2017) engaged in a lengthy study of fans' information behavior using a literature review, a modified Delphi study, and a tag analysis on several sites popular with fans. Although Price's focus was not, specifically, on fan knowledge of copyright issues, copyright nevertheless arose in her research. Price's findings suggested that fans create, share, and sometimes even commercialize their content without copyright forming a significant

barrier (Price, 2017, pp. 200, 206, 279–280, 298). Price’s research demonstrates that information management is vital to fandom. Further, fans use information management practices such as tagging to perform a variety of roles, including describing and organizing content as well as expressing opinions.

Some researchers have considered different types of fan creators and their experiences of copyright, or have conducted research with fans along with members of other groups who are also copyright stakeholders. Thompson (2013) studied the social construction of law and the relevance of legal communication using interviews with several groups of remixers, including fan artists. He found that fan artists, like other remixers, use heuristics to understand the law (Thompson, 2013). Remixers also justified their creativity with reference to ethical values (such as creative freedom and the right to remix) and to fair use (Thompson, 2013). Several other researchers have referred to fan activities and how they may interact with intellectual property (IP) law. Altizer (2013) conducted a grounded theory study of video game “modders,” fans who create modifications (“mods”) for games. He analyzed modders’ responses to a prominent cease-and-desist notice (C&D) against a mod. He found that the game modding community was cast into confusion and uproar after the C&D, and experienced chilling effects, or a reluctance to engage in expression for fear of legal consequences (Altizer, 2013). Altizer also found evidence that the game modding community was divided over the rightness of the copyright owner’s actions (Altizer, 2013, p. 152). Some fans argued that the company had treated its fans poorly or “did not know what was best for its game” (Altizer, 2013, p. 152). Others criticized the approach of the modders who had received the C&D (Altizer, 2013, pp. 152–153). It was clear that the game modding community lacked a common understanding of fair use. Modders expressed concerns about being shut down by game creators they admired and about the inconsistency with which game companies treated mods (Altizer, 2013).

Clerc (2002) also analyzed several cases of IP owner-fan conflicts in the early days of Internet fandom. She considered the strategies with which fans responded to complaints and fan defenses of their own practices; the latter referenced issues like fair use, the non-commerciality of fan remix and its potential to grow the franchise’s market, and fans’ right to interpret media (Clerc, 2002, pp. 23–24, 31–32, 105). Conti (2017) considers the rhetoric of fan video makers or “vidders,” among other stakeholder groups in the Digital Millennium Copyright Act (DMCA) exemption process. Conti found that vidders engaged in vernacular discussions of copyright and defenses of their practices which, with

assistance from public interest lobbyists, eventually influenced policy-makers granting DMCA exemptions.

Casey Fiesler and her collaborators have also conducted relevant studies using interviews (Fiesler & Bruckman, 2014) and content analysis (Fiesler, Feuston, & Bruckman, 2014; Fiesler, Feuston, & Bruckman, 2015) to investigate fans' and other remixers' legal knowledge and information behavior. Their work suggests that remixers share both intuitions and misconceptions about relevant legal issues, and often turn to one another in online spaces for legal information (Fiesler & Bruckman, 2014; Fiesler et al., 2014; Fiesler et al., 2015). Similarly, Freund (2014) investigated fan vidders' copyright literacy and experiences, finding that baseline knowledge of fair use was common. Freund's participants also experienced copyright complaints as a form of corporate bullying of second-generation fan creativity (Freund, 2014, p. 1352); the vidders used a range of strategies to limit the likelihood of complaints or defend themselves in such cases.

Finally, in 2016, the Organization for Transformative Works (OTW), a fan advocacy organization, surveyed fans' copyright knowledge, research, and experiences (Burgess, 2017). The OTW invited fans to participate through a post on its fanworks archive, Archive of Our Own (AO3). As the AO3 serves fans from all over the world, survey respondents were directed to specific questions depending on whether they indicated they lived in the U.S. or elsewhere. Respondents were mostly fanworks creators, and fan fiction was the most common type of fanwork, a finding which is unsurprising given that AO3 hosts primarily written fiction. Only about 15% of respondents indicated any formal copyright training, ranging from a career in law to viewing YouTube's copyright training videos (Burgess, 2017). However, most respondents had at least heard of fair use. Further, most respondents discussed fair use with medium accuracy, as coded by a team of law student volunteers (Burgess, 2017). Respondents who answered a question about the fair use factors generally named at least one correct factor, although responses to this question contained some evidence of misconceptions, e.g., overstating the legal importance of non-commerciality and credit/attribution (Burgess, 2017). The questions addressed to international respondents are also instructive. International respondents varied in their knowledge of local laws, with some responses indicating that U.S.-based legal information was more prominent in online fan spaces. International participants, like their U.S. counterparts, varied in the detail and accuracy of their legal information, with many participants indicating they did not know whether provisions existed under local copyright law to shield second-generation fanworks. Other international

participants, by contrast, gave fairly detailed information on their local copyright laws, e.g., referring to specific amendments, sections, or legal terms. The author notes that, as of this writing, not all survey data has been made publicly available, including data on fans' legal information behavior.

This research expands on the existing literature in several ways. First, it focuses more specifically on information behavior than others, such as Thompson (2013), who concentrated on legal communication and remixers' social construction of law, or Clerc (2002), who highlighted the strategies and arguments of fans and IP owners in conflict. Likewise, this research focuses on fan fiction writers and their legal information behavior, knowledge, and concerns; this is in contrast to research centered on fans who produce different works based on different source texts (see e.g. Altizer, 2013; see also Thompson, 2013), or with research that grouped together fan creators and other remixers (see e.g. Fiesler & Bruckman, 2014; see also Fiesler et al., 2015). Finally, the existing literature engages primarily with U.S. fans and American law; Canadian fans are underrepresented. This research will begin to fill that gap by comparing the legal information behavior and copyright knowledge and experiences of Canadian fan writers with their U.S. counterparts.

### **Research Questions**

The pilot study addressed the following research questions:

1. How do fan fiction writers perceive relevant intellectual property laws? Are there factors (such as age, language, education, country/province) that appear to affect fans' perceptions of the law?
2. Do fan fiction writers self-report seeking legal information, or other information behavior related to intellectual property laws? If so, what information behavior do they report?

### **Methods**

In the fall of 2017, a pilot study was undertaken. Three participants with experience writing fan fiction were recruited. The author recognizes that this is a low number of pilot participants, from which conclusions cannot be drawn. However, while the pilot study was designed to test and seek feedback on the research instrument (see e.g. Connelly, 2008; van Teijlingen & Hundley, 2001), it nevertheless yielded interesting data. Some of this preliminary data is congruent with earlier studies, while some suggested new forms of legal information behavior. Further, the pilot study suggested improvements for

the upcoming full study, such as streamlining questions.

Pilot participants were recruited using informal ads on social media. The text of these ads had previously been approved by McGill University's Research Ethics Board. Two pilot participants were Canadian, with one living in the Montreal area and one living in Ontario. The other participant was American and resided in California. All interviews were conducted in October 2017.

The interview guide drew on the research questions and literature review. Some questions were also formulated based on the OTW survey and on Fiesler and Bruckman's 2014 interview guide. Pilot study data was coded by the researcher, with the assistance of a second coder. Results are discussed below.

### Participant Biographies

This research considers the need for a Canadian perspective on fans' legal information behavior. Preliminary data suggests that this topic is worth exploring. However, factors besides nationality also appeared relevant to pilot participants' legal knowledge. Brief participant biographies are therefore presented below (Table 1).

Table 1 <i>Participant Biographies</i>		
<u>Participant</u>	<u>Nationality</u>	<u>Professional or academic exposure to legal issues</u>
S	Canadian	S indicated that she had researched patent law in the context of a job.
J	Canadian	J indicated she had learned about, and had to explain, some legal aspects of travel insurance while working as a travel agent. She also indicated she had learned about the law of collective agreements while studying teaching.
H	American	H indicated she had worked extensively in election campaigns. She was therefore used to applying election law. Further, H had studied creative writing since childhood, and had considered intellectual property law as a career. She was studying television writing at the time of the interview. H indicated that she had participated in writing courses that touched on IP issues, and had contacts with lawyers and professional writers who seemed knowledgeable about legal issues.

All participants were in their late twenties or early thirties, spoke English as a first language, and had some education beyond a bachelor's degree. As discussed below, seeking more demographically diverse participants is a priority for the full study.

## Results

Four primary themes emerged in interviews. These themes are: benefits of and motivations for involvement with fan fiction and fandom; copyright knowledge and self-assessment; legal information behavior; and overall perceptions of legal and ethical issues affecting fan fiction and/or fandom. These themes are addressed in more detail below.

### Fan Fiction: Benefits and Motivations

The three pilot participants reported differing attitudes to copyright and different legal information behavior. However, all expressed some common experiences, notably in discussing what motivated their interest in fan fiction and how they benefited from this hobby. First, all participants remembered their earliest exposure to fandom and to fan fiction quite vividly. This could suggest that fan fiction and fan communities are important to the lives of participants, although pilot participants differed in answering a question about the practice's importance to their identities (perhaps because of the question's ambiguity). Second, all three participants talked at length about the lifelong friendships they have made through their fan activities. Third, participants agreed that fan fiction has allowed them to improve their writing skills, and cited the value of receiving feedback on their writing. Feedback was both a benefit of writing fan fiction and a motivation for writing and sharing it. Furthermore, S and J, who discussed fairly extensive engagement with other fan activities (such as making fan crafts or serving as a moderator on a fan forum) indicated that they improved other skills through those activities.

All participants mentioned "fun" as a motivation for writing. Participants S and J discussed their desire to expand and explore new ideas in the "canon" or source text as motivations, while Participant H focused more on getting feedback and improving writing skills. Additional motivations for writing fan fiction included challenges (such as re-writing a work in a new genre), exploring or improving the canon world or characters, and an initial desire to write down stories that were, essentially, daydreams about living in the canon's setting. Participants also listed a wide range of themes which they explore in their fan fiction

works, some of which are a departure from the canon's themes, tone, and story lines. Exploring these new themes allowed participants to take the canon in a different direction as well as practice writing skills.

### Copyright Knowledge and Self-assessment

Pilot participants expressed varied levels of copyright knowledge. Interview questions encouraged them to indicate their familiarity with legal concepts. One question explicitly asked participants for a copyright self-assessment as a grade out of ten. Participants also indicated their knowledge of and familiarity with the law in answering other questions, and in expressing accurate or inaccurate information throughout the interview. The two types of data—self-assessments and concrete legal knowledge as suggested in the interview—place the participants at different points on a continuum of legal knowledge. Interview data suggests that one's place on this tentative continuum may influence and be influenced by one's legal information behavior. This idea is discussed more below.

Participant S, interviewed first, represents the mid-point of this tentative continuum. S's statements suggested low legal knowledge and confidence. For example, she asserted that "I know very little about any of this" and "I know very little about the law in general; I just know copyright can be an issue." She also conflated some legal concepts, such as copyright with trademark and fair use with the public domain. Like other fans and remixers in existing literature (Fiesler et al., 2015), S assumed that to acquire a copyright, one must register with some sort of government office. In raising these matters, S indicated an awareness of legal doctrines such as fair use and the public domain, but uncertainty about what, specifically, those doctrines entailed. Similarly, while S had some familiarity with American fair use, she had not heard of fair dealing, the equivalent Canadian doctrine, despite living in Canada. S acknowledged that, in her experience, "in fandom, when copyright comes up, it's *really* only referring to American copyright laws—*maybe* sometimes British." S indicated that U.S. laws seemed to be "used and talked about the most", potentially eclipsing Canadian or other local laws under which non-U.S. fans live. Nevertheless, despite these gaps, S self-assessed her copyright knowledge as 6.5/10. She described her knowledge as "slightly more than the average person" and as "enough to know that I don't know much." She also contrasted her caution about ideas which seemed blatantly illegal with the perceived foolhardiness of some other fans.

Participant J assumed a different position on the continuum

and adopted a different approach in her reasoning about copyright. She assessed her copyright knowledge as 1/10. Likewise, J indicated low legal knowledge with comments such as “I’m not a lawyer . . . I don’t study law so I don’t really know laws. I just know that copyright is an issue”, in response to a question about which laws may impact fan fiction. Further, like S, J made some assumptions that were not completely accurate. She, too, believed that creators must register their work in some sort of bureaucratic process involving “a lot of paperwork signing and lawyers” for copyright to vest, and compared the process of getting a copyright with getting a patent. J also overemphasized the importance of non-commerciality and of character ownership to fan fiction’s legality.<sup>1</sup> J self-reported no knowledge of fair dealing (although the American equivalent fair use did not arise in this interview). Further, J expressed a belief that fan fiction could be copyright infringement. As she explained, “I think it is [copyright infringement] a little bit. Which is why you put the disclaimer saying these are not my characters. Like we were never claiming to own these characters. And I think that’s like a little loophole.”

Unlike S, who did not consistently use disclaimers, in part because she felt attribution could be implicit, J expressed a commitment to using disclaimers. She suggested these disclaimers were “probably legally necessary” and may be a way to avoid infringing copyright—another

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1. Non-commercial uses are more likely to be fair under American fair use law, but commercial uses may be fair as well (and, indeed, many court cases addressing fair use stem from disputes over commercial uses: see e.g. *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569 [6th Cir. 1994]; see also *Suntrust v. Houghton Mifflin Co.*, 268 F.3d 1257 [11th Cir. 2001]). In this respect, Canadian fair dealing law parallels its U.S. counterpart (*CCH Canadian Ltd. v. Law Society of Upper Canada*, 2004 SCC 13). Non-commerciality is helpful to a finding of fair use or fair dealing, but not absolutely essential. Canada’s Copyright Act also contains a specific provision exempting non-commercial user-generated content from infringing copyright, even if the user-generated content uses a portion of some pre-existing copyrighted work (Copyright Act, RSC 1985, s. 29.21; see also Katz, 2014). In contrast to a general fair dealing defense, a user seeking to benefit from the user-generated content provision may only create non-commercial content. Similarly, not all fictional characters necessarily qualify for copyright protection. The U.S. courts have used different tests to determine which fictional characters qualify for protection apart from the work in which the character features (see e.g. *Nichols v. Universal Pictures Corp.*, 45 F.2d 119 [2nd Cir. 1930]; *Warner Brothers v. Columbia Broadcasting*, 216 F.2d 945 [9th Cir. 1954]). Canadian courts have invoked the earlier of the two American legal tests, and state that characters must be “sufficiently delineated” to merit independent protection (*Preston v. 20th Century Fox Canada Ltd.*, [1990], 38 F.T.R. 183). It is therefore non-obvious that fan fiction stories necessarily infringe copyright simply because they tell new stories about characters that initially appeared in other works.

slight legal inaccuracy common among fans (Fiesler et al., 2015).<sup>2</sup> J, however, expressed a sense similar to S that if fan fiction writers required permission, then such permissions would be practically unavailable: “I wouldn’t know who to ask for it.”

Participant H had the greatest prior experience with the law and greater professional motivations to learn about legal issues relevant to fan fiction and writing generally. H therefore reported greater copyright confidence and familiarity than other pilot participants. H self-reported her copyright knowledge as 8.5/10. She expressed familiarity with the fair use doctrine, and listed three of the four factors U.S. courts consider in the fair use test. The ability to list fair use factors was unique among pilot participants. However, since H is American and the other two participants are Canadian, this area is difficult to compare. Also unique among pilot participants was H’s statement that she would defend herself against a hypothetical takedown notice instead of simply complying with it. H cited being good at legal argument, having debate experience, and following rules as justifying her readiness to challenge a complaint about her fan fiction.

### Legal Information Behavior

All pilot participants engaged in different information behavior to acquire their current legal knowledge. For example, participants S and J referred to peer observation. S, in particular, had observed and taken part in discussions on fan forums, where she learned about copyright based on peer advice and practices. She spoke of answering copyright questions based on the fan consensus she had observed online, which she would then “parrot”. S, like the other participants, also referred to the common fan practice of putting a copyright disclaimer before a fan fiction story. However, S reported seeing fewer disclaimers now than she did years ago. The perceived decrease in disclaimer use suggested to S that fan fiction’s legal status may have improved: “The fact that people are not putting disclaimers on their fan fics anymore leads me to believe that this has maybe been settled once and for all and that . . . maybe it’s not legal but it’s *okay*.” (This statement, however, betrays some legal

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2. Disclaimers expressing intention not to infringe and attributing the creator of the copyrighted work are not a part of U.S. fair use (Title 17 U.S. Code, § 107) or Canadian fair dealing (Copyright Act, RSC 1985, c C-42; see also CCH, 2004). However, Canada’s copyright exemption for user-generated content requires that “the source—and, if given in the source, the name of the author, performer, maker or broadcaster—of the existing work or other subject-matter or copy of it are mentioned, if it is reasonable in the circumstances to do so” (Copyright Act, s. 29.21).

misinformation, as no court case has “settled” or even addressed the question of written, non-commercial fan fiction).

Additionally, S addressed several other forms of information behavior and sources of legal knowledge in her interview, besides peer observation and interaction. S had watched the documentary *Remix Manifesto* and attempted some legal research in response to specific concerns or ideas. S had attempted to research copyright after seeing peers in her fandom receive complaints about fan activities (other than text-based fan fiction), although she found legal sources inaccessible and discouraging. Furthermore, S’s limited research on patent law in a workplace context was not transferable to copyright, and may even have led to some confusion. (However, it is equally possible that misconceptions about acquiring copyright—i.e., that, it, like patent, requires some government registration process—are common among fans). S stated that legal texts were too difficult to parse without getting paid to do so. While S indicated she would use online searches such as Google to seek legal information, she stated that “it’s just so hard to understand law as a layperson, so I think a lot of people, myself included, just won’t bother.” Finally, S had also asked other people for advice about copyright matters in the context of wanting to organize a convention about her primary fandom. While this issue did not stem from concerns about fan fiction, S nevertheless discussed her concerns, research, and inability to satisfy her information needs. When faced with questions about legal issues affecting conventions, S asked staff at existing fan conventions, other fans in different locations who’d organized similar events, and a small business consultant at a community organization. She indicated that she received restrictive and conservative advice.

Participant J likewise engaged in unique information behavior. While she, too, described observing peers’ practices (such as putting disclaimers before fan fiction) and “drawing my own conclusions” on that basis, she was unsure whether she had ever specifically asked peers in fandom about legal matters. She had also never been on the receiving end of such questions. Similarly, J indicated that she would do a Google search if she had copyright questions, but had so far not done so. Instead, when she received a complaint about some handmade fan merchandise she sold, she asked a family member for advice. The most unique aspect of J’s legal information behavior was her information avoidance. J indicated that she “never bothered to look into the legal aspect of it because [I’d] rather operate unknowing.” When asked to clarify, she said that “I don’t like doing illegal things. I’d rather not know that I’m doing something illegal.” This attitude could stem from J’s impression, quoted above, that fan fiction “is [copyright infringement] a little bit.” J indicated

that she would prefer to make an innocent mistake rather than learn in advance that a practice she engages in is illegal. She relies on disclaimers to express her intention not to harm the copyright owner: "I guess I'm hoping that by saying disclaimer I'm just being a fan . . . not doing it out of malice." When asked for further clarification, J also referred to her strong deference to the will of canon creators (some of whom seek to prohibit fan fiction): "If I knew exactly that this was hurtful to specific people, like, . . . if [J. K.] Rowling asked for no Harry Potter fanfiction to be made, then to post . . . any would be hurtful to her." J's answers suggest that her information avoidance could be linked to fear of doing something illegal and/or hurtful to the first-generation creator.

Participant H presented different legal information behavior and a different relationship with law and writing. H's experience was apparently driven by her extensive professional interests in those fields. In contrast to the other participants, whose workplace exposure to legal issues did not carry over to copyright, H's experiences gave her significant confidence in researching legal sources. Further, H had connections to knowledgeable individuals (lawyers and writing professors) through her professional creative writing program. These advantages and experiences led H to engage in information behavior that was unique among pilot participants and more extensive than anticipated.

H's legal information behavior was both extensive and varied. She described keeping a folder of research she conducted as well as notes from seminars and webinars. She had also discussed legal issues related to fan fiction and writing with lawyers and with other writers who had contacts with lawyers. Further, H made use of online legal resources and law libraries. She indicated that "[I've] spent quite a bit of time in law libraries and I'm pretty good at doing research there." Interestingly, H also demonstrated her own information literacy practices in evaluating the reliability of legal sources she found. She spoke of using resources "that are legitimate, from sources that were written by attorneys, . . . who are attorneys, and not from Wikipedia." When asked for further details about her evaluation criteria, she added the following:

[For] example, if you want intellectual property knowledge, you've consulted an intellectual property or a tax attorney, that's pretty legitimate. If you find the information in a law library, also pretty legitimate. A Web site that has peer reviewed information and articles written by attorneys... Again, pretty legitimate. And also case law in some select cases couldn't be more legitimate.

H reported getting satisfactory answers to her questions, which appeared to focus on transforming works she began as fan fiction into publishable novels that are sufficiently distinct from the texts that inspired them.

## Overall Perceptions of Law

Participants demonstrated different relationships with the law, different perceptions of law, and varied legal information behavior, with some commonalities. Overall, participants were not deterred from writing fan fiction because of copyright fears. All perceived that the legal situation for fan fiction writers is fairly safe, with H even describing it as “generous”. S cited the twenty-year span over which her primary fandom has been popular and a decrease in disclaimer use to justify a perception that “maybe it’s not legal but it’s okay.” Participant J summed up the situation by saying that, “I don’t think the copyright law really affects fanfiction writers. They write no matter what.” S and J also raised enforcement issues in questioning the feasibility of mass copyright owner complaints against fans writing fan fiction or engaging in other activities, although their specific speculations differed. S discussed her sense of anonymity online and conjectured that copyright owners may be unable to prove characters depicted in fan fiction are the same as canon characters. J, by contrast, stated that it is unlikely copyright owners or their legal teams will attend fan conventions or be able to issue complaints against all sellers of fan merchandise.

Pilot participants expressed fascinating similarities and differences. Both S and J, for instance, were more concerned about copyright’s effects on other fan activities aside from text-based fan fiction. While both had some workplace exposure to other legal issues, that experience did not increase their familiarity with copyright or their confidence in navigating it. H, by contrast, was more confident in her copyright knowledge. Further, H grounded her overall perceptions in more extensive legal argument and greater professional experience involving the law. In H’s estimation, the law can be both accessible and fair to fans. She did not report that she wished to change anything about current copyright laws as they affect fan fiction. Instead, she stated that she doesn’t see copyright law as helping or hurting creators, including amateur creators and fans. She later specified that the fact that copyright law fails to punish fan authors when it could may be considered helpful. Interestingly, H, S, and J all reached similar conclusions—that copyright largely does not deter or affect fan writers—despite differing levels of self-assessed legal knowledge and varied information behavior.

Pilot study participants also raised a number of ethical, rather than strictly legal, issues. This theme was particularly notable in the interviews with S and J, although H raised some similar points. All participants articulated non-commerciality as an ethical defense for fan fiction. Further, S and J demonstrated thoughtful “extra-legal”

engagement with the ethics of their practices, though their concerns diverged. Even S's statement, that fan fiction may not be "legal" but could be "okay", demonstrates an awareness that ethical practices may not always fall within the letter of the law (or vice-versa). Similarly, S questioned the potential for unethical abuses of copyright. Although she expressed an overall sense of safety regarding her own fan writing, she still had concerns about copyright overreach. In particular, S feared that well-funded, corporate rights owners could use their legal monopolies and financial power to threaten second-generation creativity and commentary, or even to quash innocent educational uses. While S agreed that "making sure people can have their property and profit off their property is really important", she warned that owners should not be able to "take advantage." S recognized the legitimacy of the law, with caveats, i.e., that it must be applied fairly and reasonably. S also contrasted modern copyright, which risks relegating audiences to mere consumers, with traditional story-telling and retelling:

Part of it depends on whether you consider . . . intellectual property to be something that only one person or organization can own: they get final say on everything, everyone can do nothing but consume. The role of other people is to consume; they cannot think about it; they cannot talk about it; they cannot write about it or make art about it. . . . To me that's saying that other people can do nothing but consume it almost mindlessly? I think there's something really wonderful and creative and almost open minded about being able to take someone else's thing and make it different. I mean, we've been doing that with stories for so long. Traditionally, storytelling was an oral tradition, and in the retellings, it got changed, whether intentionally or not, but people would put their own spins on things, and that was just kind of how things were. Everything was public domain, and that was OK.

S's concerns contrasted with those of J. J was especially sensitive to the feelings of individual first-generation authors, who may or may not approve of fan fiction. Where S invoked traditional storytelling and retelling in response to a question about whether fan fiction is ethical, J undertook an exercise in perspective-taking, and considered fan fiction writers and readers as well as first-generation creators. J stated:

From the original creators' perspective, I can see it going either way. Negatively, because it's their creation that's being taken over. But it's also positive in a way because people love their stuff so much that . . . they're going to go and buy anything that has been made by that original creator. . . . But I do understand, I think it's Anne McCaffrey who didn't want fanfiction made of her characters and

I can understand that completely. So out of respect for that I don't read fan fiction in her worlds. . . . I try to be respectful of original creators' wishes when I know about [them].

J later went from stating she avoids copyright information for fear that fan fiction may be "illegal" to stating she would be uncomfortable reading fan fiction if she learned that the canon author found it "hurtful". J's statements seem to link legality with the canon creator's feelings. J also saw credit/attribution in the form of disclaimers as an ethical practice which was probably legally necessary.

Finally, while H demonstrated the greatest motivation to research copyright law, she nevertheless emphasized some ethical rather than strictly legal considerations. Notably, H highlighted fan fiction's non-commerciality, its lack of market harm, and its potential to grow the market for the underlying works (similar to the above quote from J). After noting the balance between constitutional free speech and copyright, H went on:

I really feel like . . . just talking about something and being a fan of something is not infringing someone else's right that they own, . . . unless you are making a significant amount of money off of it. If you are celebrating it and being a fan of it and posting pictures of it and posting, you know, fanfiction of it, in reality, you're really just helping the person who *does* own it to garner more fans and make more money.

H then provided an example of how her fan fiction had inspired one of her readers to start following the TV show it was based on. H stated that a reader of her stories about one TV show began reading her work about a subsequent show, *Downton Abbey*; this led the reader to start watching that program. H inferred that this incident benefitted *Downton Abbey*'s creator, Julian Fellowes: "For example, the fact that I got somebody into *Downton Abbey* [is] making Julian Fellowes money, not me, because that person's going to get interested and they're going to go out and buy the DVD."

These ethical considerations are common in fan and other remixer circles (see e.g. Fiesler & Bruckman, 2014; Thompson, 2013), and may have felt more real to H and other fans than the dry fair use factors. (While non-commerciality and market effect would likely arise in a case addressing fan fiction, they are not the whole fair use test, as H indicated.) Similarly, H displayed reasoning that was not strictly legal in discussing fan fiction disclaimers. She indicated she thought fan writers should "probably" put a disclaimer before their stories for legal reasons (disclaimers are not generally a relevant part of a U.S. fair use analysis, although the practice may be relevant to the non-commercial user-

generated content provision in Canadian law: see Fiesler & Bruckman, 2014; Fiesler et al., 2015; Katz, 2014). However, H reported that she does not necessarily use disclaimers before all of her stories, indicating that they are sometimes redundant in context. H also compared fan fiction writing to other non-commercial uses of copyrighted media which are common in some circles, such as theater students acting out a scene from a well-known work and putting their amateur take on YouTube.

### Discussion

Key findings, as well as key revisions for future research, are summarized below (2):

Table 2	
<i>Summary of Findings and Future Revisions</i>	
<u>Theme</u>	<u>Key Findings/Planned Revisions</u>
1. Fan fiction: benefits and motivations	Participants made valuable friendships through their fan activities and experienced social benefits. Participants agreed that fan fiction helped them improve their writing skills and cited the value of feedback. Participants expressed varied motivations for writing fan fiction.
2. Copyright knowledge and self-assessment	Tentative continuum of copyright knowledge; a participant's position on that continuum may influence and be influenced by their legal information behavior (e.g., a fan with greater pre-existing legal knowledge may be most comfortable engaging in further research). Two of three participants indicated fairly low copyright knowledge. Some misinformation was present, including mistaken beliefs about getting a copyright (in all three participants), conflation of intellectual property regimes, and possible overemphasis on commerciality, character ownership, and disclaimers (in 1-2 participants). S provided some evidence that U.S. laws may overshadow Canadian law.

### 3. Legal information behavior

Legal information behavior was varied and ranged from avoidance to informal methods, such as participating in fan discussions or observing peers, to more formal methods (RQ2). Discussions or observation of peers in fandom are a common form of information behavior.

Two of three participants shared copyright information with peers in fan spaces.

Participants indicated they would research law-related issues online, e.g., through Google.

Other people, including fellow fans, family, authority/educational figures, and, in one instance, legal professionals and writing professors, were used as information sources.

Participant J indicated information avoidance; S spoke of attempting to do legal research, but not understanding legal language. Participant H engaged in additional legal information behavior such keeping notes from seminars, using law libraries, and speaking with lawyers and/or professional writers.

All participants had some knowledge of legal issues from work experience, but still varied in their legal information behavior.

Casual exposure to legal issues did not seem to enhance confidence in researching copyright.

The participant with the greatest prior exposure to legal issues (H) engaged in the most varied legal information behavior and seemed most confident conducting this research and addressing a hypothetical complaint.

However, there were challenges operationalizing a “satisfactory response” to a legal complaint or information need, as participants defined this differently. Some saw removing offending material as satisfactory while others expressed an intention to counter a hypothetical complaint.

4. Overall perceptions of law	<p>The general perception is that fan fiction is safe from legal threats, though participants arrived at that conclusion in different ways (RQ1).</p> <p>Two participants raised greater concerns about fan activities other than text-based fiction. Non-commerciality of fanworks was a prominent ethical defense; two participants also raised fan fiction's ability to grow the market for the first-generation text as an ethical defense.</p> <p>Participants S and J, especially, raised ethical concerns that are not strictly legal, such as the importance of avoiding copyright abuse and respecting creators' feelings. While these ethical issues may motivate different aspects of regional and international copyright, they were presented in an "extra-legal" or "supra-legal" sense, i.e., participants did not frame their concerns with reference to law or legal scholarship. Participants demonstrated a perception that formal law and ethics may overlap to varying degrees, and tried to behave in accordance with their own ethical principles (RQ1).</p> <p>Even participants with fairly low knowledge of copyright specifics engaged with ethical principles.</p>
5. Expected revisions to full-scale research	<p>Explore more fully whether U.S. law may overshadow Canadian law.</p> <p>Recruit more diverse participants, as pilot sample was demographically similar.</p> <p>Address different ways of defining a "satisfactory response" to a legal challenge.</p>

This pilot study validates and adds to the existing fan studies literature. Participants provided additional support for broad principles in fan studies, for example, that fan communities can be socially valuable for their members (see e.g. Jenkins, 2013; see also Black, 2008), and that participating in fan fiction can develop writing skills (see e.g. Black, 2008; Mackey & McClay, 2008; Wren, 2014). Further, asking participants about their experiences in fandom and how fandom benefits them seemed to put participants at ease before moving on to legal questions about copyright issues, which may seem more like a "test." Addressing those subjects not only provides opportunities to

validate (or, potentially, add to) existing literature, but also helps to gain participants' trust.

Regarding the narrower question of fans' copyright literacy and experiences, this data likewise builds on existing research. However, direct comparisons are sometimes difficult, because much of the research either "lumps" fan creators together with other remixers (see e.g. Fiesler & Bruckman, 2014; Thompson, 2013), and/or focuses on fans who create other types of fanworks (see e.g. Altizer, 2013; Thompson, 2013). Only the OTW survey had a majority of self-identified fan fiction writers and, unfortunately, they have not yet published data from the survey questions addressing legal information behavior.

Regardless, this pilot study suggests some trends which can be compared to existing research. Price's modified Delphi study (2017) found that fans were ambivalent towards copyright, which was, in turn, not a significant barrier to fan creativity. To some extent, pilot study participants expressed a similar perception (RQ1), which they arrived at despite varied legal knowledge and information behavior. Nevertheless, two of three pilot participants were aware of famous copyright owner complaints about, or attempts to prohibit, fan fiction. This finding could suggest that owner campaigns against fans (see e.g. Clerc, 2002) made an impression on the fan community at large. Further, the same two pilot participants, S and J, had either personally experienced or knew peers who had received complaints about other fanworks, such as offline conventions or parties, music, and merchandise. Interestingly, participants adopted different "tones" in discussing IP owners prohibiting fanworks. S's language suggests anger at owners who seek to restrict fans, while J showed owners more deference, and H seemed unconcerned. Perhaps these differing attitudes are similar to the controversies among video game fans which Altizer found in the wake of a cease and desist notice (Altizer, 2013).

Previous research demonstrates that fans sometimes seek legal information in fan sites and spaces (see e.g. Fiesler et al., 2015; Fiesler et al., 2014); other fans indicate having professional legal experience or knowledge from working in fields like law, library and information science, or publishing (see e.g. Fiesler et al., 2014; see also Freund, 2014, p. 1352). The research also suggests that community norms are important in governing fans' behavior, and that norms overlap between individual fans, fan sites, and creators of different types of works (Fiesler & Bruckman, 2014, p. 1026; compare fan vidders in Freund, 2014; compare Hetcher, 2009; Tushnet, 2007a; Tushnet, 2007b). Fan norms include an emphasis on non-commerciality (Fiesler & Bruckman, 2014, p. 1027; 2007a; Burgess, 2017; Tushnet, 2007b) and attribution of

borrowed material (Fiesler & Bruckman, 2014, p. 1030; Freund, 2014, p. 1357; Burgess, 2017; Tushnet, 2007a, pp. 154–155). These norms are similar to the heuristics which Thompson (2013) found among fan artists; heuristics included creating small-scale works without significant commercial gain to avoid complaints, attributing borrowed materials, and maintaining that fans should be free to create. Thompson also identified fan concerns about IP owner attempts to restrict their art.

Fiesler and Bruckman's 2014 research, the OTW survey, and Thompson's interviews with fan artists suggest that fans overemphasize non-commerciality and may assume that it is the key determining factor in whether a use is fair (Burgess; 2017; Fiesler & Bruckman, 2014; Thompson, 2013). Participants in the pilot study were familiar with the same community norm and likewise emphasized non-commerciality as a defense. However, pilot participants, like fans in other research (e.g., Burgess, 2017; Price, 2017), also discussed commercial fanworks, such as fan merchandise or commissioned fan fiction. At least one pilot participant, J, was careful to articulate her ethical justifications for selling fan merchandise. J's defenses demonstrate thoughtful engagement with ethical, if not strictly legal, issues: she stated that she does not make products that compete directly with licensed merchandise or even with other fan-made items available in her community. The OTW survey likewise found that fans were concerned about commerciality. In a question asking fans to identify factors that could argue for a finding of fair use, the most common responses (in descending order) were commerciality, transformativeness, amount used, and market harm. Fewer respondents named other issues (e.g., education or critique/parody). Commerciality was by far the most prevalent concern. Pilot participants here fit with this consensus; all raised non-commerciality in defending fan fiction, or, in J's case, articulating why fan fiction was only copyright infringement "a little bit" but could benefit from a "loophole". Further, all pilot participants cited transformativeness—the way fan fiction adapts or changes something about the first-generation work—as important, though they did not necessarily use that word. H and J also invoked the capacity for fan fiction to grow or maintain the market for the first-generation text, again using different wording. However, only H, in listing U.S. fair use factors, explicitly invoked the amount of the underlying work used.

Similarly, Fiesler and Bruckman found that their interview participants valued attribution highly, and assumed that fan disclaimers were more significant to fair use analyses than they are (Fiesler & Bruckman, 2014, p. 1030). The vidders Freund studied also employed disclaimers attributing source materials and explaining their intention

not to infringe copyright, but rather to create a transformative work (Freund, 2014, p. 1357). All pilot participants invoked the same community norm to include a disclaimer with their fan fiction, although they varied in how consistently they reported doing so.

This pilot study depicts a wider range of fan legal information behavior than previous research. Based on the literature, it was expected that fans would observe and follow social norms in fan communities, would turn to one another in fan spaces to answer legal questions (Fiesler & Bruckman, 2014; Fiesler et al., 2015; Fiesler et al., 2014), and would circulate norms and, potentially, legal information (and some misinformation) in laypersons' terms (Conti, 2017; Fiesler et al., 2015; Thompson, 2013). The literature also recognizes that some fans report having legal knowledge or experience from their professional lives (Fiesler et al., 2015; see also Freund, 2014, p. 1352). Nevertheless, other fans reported finding legal sources inaccessible, and turned to online forums for advice (Fiesler et al., 2015).

Pilot participants demonstrated similar experiences and behavior, to varying degrees. Here, RQ2 can be answered in the affirmative, i.e., fans reported engaging in a variety of legal information behavior. All three participants reported some workplace exposure to legal issues, with H's experiences apparently helping her to develop significant confidence in researching copyright. All participants engaged with copyright-related norms in fan communities, such as using disclaimers. S and H also reported participating in copyright-related discussions in fan spaces, although the sources they used to answer questions varied. S and J observed peer practices and, in S's case, discussions, and thus learned about fan approaches to copyright. Like some of the posters in Fiesler et al.'s content analysis study, S complained that formal legal sources were effectively incomprehensible.

However, in addition to these examples which closely mirror findings of existing research, the pilot study data presents several other forms of information behavior. J spoke of information avoidance, which did not arise in previous studies. This finding is also unique among pilot participants. While S's interview could suggest a desire for more copyright knowledge despite a lack of understanding (for example, watching *Remix Manifesto*, conducting some research, and expressing frustration that primary sources lack plain-language explanations), J avoided information out of fear she would learn that she is doing something illegal and/or hurtful to the first-generation creator. Further, participant H also detailed a wider range of legal research methods than was previously documented in the literature. For example, H had conducted research in law libraries and had reached out to professional

contacts. Finally, both J and S spoke of information behavior that used as a resource people who were neither fellow fans nor legal experts. These aspects of fan information behavior are additions to the literature.

### **Conclusions and Future Directions**

This pilot study yielded valuable data while also suggesting improvements for the full-scale study. For example, participants were demographically similar, which makes it difficult to assess whether demographic factors appear to impact fans' copyright literacy and information behavior. In proceeding to further data collection, a more diverse sample will be recruited. Additionally, the pilot study data could suggest a slight advantage in favor of American fans over their Canadian counterparts, if resources about U.S. law outnumber those about other legal systems. However, more data on this point is required. It will be addressed more explicitly in future interviews.

Further, participants' awareness of copyright, perceptions of the law, and information behavior may be more closely connected to their attitudes, goals, and professional experiences than to demographic factors. For example, H appeared to be motivated by a desire to publish works she originally piloted as fan fiction; she also gained confidence in legal research through professional exposure and because she had considered going into IP law. More casual professional exposure to legal issues did not substantially affect S or J, but their interviews could suggest different attitudes to copyright; they also lacked H's professional interest in ultimately publishing works that began as fan fiction. If fan legal knowledge exists on a continuum, it is possible that those who already have the most knowledge and/or interest will be most confident in seeking more information, and most likely to do so, as H was. It is also possible that, as in H's case, professional aspirations may motivate legal information seeking.

Next steps in this research include recruiting additional participants. Special attention will be paid to ensuring a mix of American and Canadian fans, and seeking a more demographically diverse sample. More data will then be collected using revised instruments and approaches based on this pilot study. Once analyzed, data from subsequent interviews will appear in Part Two of this series.

Finally, there are significant opportunities for future research in this area. As noted, relatively little scholarship addresses fans' information behavior generally. There is work to be done exploring how fans learn about fan communities and topics which may be relevant to their fan activities, such as writing research.

Further, due to the small-scale nature of this research and the difficulties with generalization in qualitative research, more work on fans' legal knowledge and information behavior, using different samples and, potentially, methods, would be valuable.

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