

FAN FICTION BETWEEN PLAGIARISM AND ORIGINAL WORK

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Abstract

Fan fiction, as the name suggests, represents creations based on already existing works. But their authors are often not professional writers, but fans, sympathizers of the original work, who put their own stamp on the new work: they modify the narrative thread, the characters, the era in which the events take place, all with a desire to continue the pleasure of reading or to present their own version of the work, giving free rein to the imagination. Can works of fan fiction be original creations? Or do we consider them all copycats or work of actual plagiarism? Do they fall into the category of derivative work or pastiche, a slightly outdated term, but quite similar in meaning to this new type of predominantly digital work? We will try to address all these topics in the present work, along with the implications of AI (AI) in the development of fan fiction and some de lege ferenda proposals on this topic.

Keywords: derivative work, originality, copyright, pastiche, AI.

1. Introduction

Art has always inspired art, creation always inspired more creation. But where lies the limit between new works and actual *copycats*? Can we really say that all new creations must start from zero? Or, on the contrary, should we simply accept that inspiration lies everywhere and there is no way to avoid even a small dose of plagiarism¹ in new works of art?

Such questions are even more complicated when it comes to *fan fiction*. Fan fiction, like its name entails, represents written work that was made by fans of an existing book or story, usually in a more amateur manner², although nowadays it sometimes expands even beyond written works.

Why amateur? Because fans are not professional writers, but simple people who immensely enjoyed a written work, to such a degree that they decided to „pay a tribute” to its writer and produce their own creations, at the best of their ability, by incorporating elements from the original storyline. These can be characters, plotline, location of events and so much more. All in all, what matters most when it comes to fan fiction is the overall feeling, because when reading the work of the fan (being most likely a fan of the original work, yourself), you feel a glimpse of the original story, but from a different perspective.

That is how we separate „canon” from „fanon”: the canonic fictional universe is the original story with the original characters, while the universe created by fans is based upon the original. In other words, if the secondary work is so different that it has nothing to do with the canon anymore, we can no longer call it fan fiction, because it has passed the boundary of derivative work.

2. Where do we find fan fiction?

Fan fiction, as the name suggests, is mostly found in written works. *New Adventures of Alice* is one of the oldest examples of fan fiction it was written in 1917 by American John Rae and was a fantasy novel inspired by Lewis Carroll's famous *Alice* books³. Ironically, the book is about Betsy, a little girl who wished for another Alice book and falls into a dream full of adventure, much like the ones depicted in the original *Alice* series. We consider this an ironic approach, because fan fiction itself is mostly created when the writer wishes to continue a beloved

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¹ The concept of plagiarism is mostly referred to in the legal doctrine with reference to research and PhD papers, for example G.C. Băieș, *Verificarea sesizărilor de suspiciuni de plagiat. Procedură. Consecințe pentru autorul tezei, conducătorul tezei și școala doctorală*, in RRDPI no. 1/2022, pp. 65-80; L.M. Dima, C.M. Marcu Șiman, *Considerații critice pe marginea răspunderii etice în lumina Legii nr. 206/2004 privind buna conduită în cercetarea științifică, dezvoltarea tehnologică și inovare*, in RRDPI no. 2/2022, pp. 85-108; L. Cătuna, *Opere și idei. Plagiat. Excepția Excepției*, in RRDPI no. 1/2009, p. 53; E.G. Olteanu, *Considerații cu privire la conceptul de autoplagiat*, in RRDPI no. 4/2009, p. 48.

² https://en.wikipedia.org/wiki/Fan_fiction, last consulted on 12.11.2024.

³ https://en.wikipedia.org/wiki/New_Adventures_of_Alice, last consulted on 12.11.2024.

book or complete its storyline in some manner, therefore developing an alternative or *complementary* universe to the original one.

A more recent (and certainly more controversial) example of fan fiction is the *Fifty Shades of Grey* series by E. L. James. This consists of three initial books: *Fifty Shades of Grey* (2011), *Fifty Shades Darker* (2012) and *Fifty Shades Freed* (2012), to which the author later added two more works *Grey: Fifty Shades of Grey as Told by Christian* (2015) and *Darker: Fifty Shades Darker as Told by Christian* (2017). The books were later turned into a very successful movie series, *Fifty Shades of Grey* (2015), *Fifty Shades Darker* (2017) and *Fifty Shades Freed* (2018), which together amounted to over 1 billion dollars in worldwide box office⁴.

The *Fifty Shades of Grey* series started as a modern adaptation of the love story found in *Twilight*, another very successful book series, turned international movie phenomena⁵. While the original work *Twilight* depicted Bella, a young, average girl falling in love with a century-old, but charming vampire, its fan fiction showed the story of Anastasia, another young, average girl who fell in love with a powerful, but charming businessman, with a complicated past.

In the example above, we can safely assume that John Rae, author of *New Adventures of Alice*, was much more than a simple fan of Alice. He was a fully developed writer who managed to also get his book published and maybe develop his own subsequent fans. And the same can be told about E.L. James, who wrote *Fifty Shades* - she was not just another teenage girl who fell in love with the story between Bella and Edward in the *Twilight* series, but a grown woman with actual experience in the film and television industry. That experience helped her develop a new, original story, which sold very well and was also turned into a popular movie franchise.

But this is not the case with most fan fiction creators. Usually, their works are only published online, on websites like Fanfiction.net or Wattpad.com. And they never become fully-formed books that we can find in libraries or online as Amazon eBooks. Other websites are fully dedicated to fan fiction of a specific writer or book, like Mugglenetfanfiction.com (for Harry Potter fans) or Lindahoyland.yolasite.com (for Lord of the Rings fans).

While fan fiction is usually composed of written works, it can sometimes include drawings, paintings, videos, GIFs or other types of digital art created by fans. What they all have in common is that this art usually depicts glimpses of an alternative or complementary storyline to the original book or novel. For example, in the artwork below, the author imagined an alternative plotline of the Harry Potter saga, where Harry and Hermione end up being a couple, not just friends.



Source: hobbylark.com, „Good Butterbeer, Better Friends“ by Asha47110

When it comes to the Harry Potter universe, another popular alternative storyline that fans often explore is the one where Harry does not become an orphan, but is brought up by his parents, Lily and James who are not killed by Voldemort like in the original books.

⁴ Fifty Shades of Grey Franchise Box Office History - The Numbers, last consulted on 12.11.2024.

⁵ 'Fifty Shades of Grey' Started Out As 'Twilight' Fan Fiction - Business Insider, last consulted on 12.11.2024.



Source: quora.com

Other fields where we find fan fiction are musicals and movies. „Wicked”, one of the most famous Broadway musicals, is loosely based on the Oz adventures by author L. Frank Baum. Most people are only familiar with the „Wizard of Oz” book, which was also adapted into the 1939 movie featuring Judy Garland⁶. But the adventures of Dorothy, Toto, the Tin Man, the Scarecrow and the Lion represent only one story from a total of 14 books written by L. Frank Baum. „Wicked” also received a very successful movie adaptation at the end of 2024, featuring Ariana Grande as Glinda, the *good* witch and Cynthia Erivo as Elphaba, the *wicked* witch. This movie proves again how important is the exclusive patrimonial right to derivative work, as it can produce great financial gain for the author⁷.



Sursa: freemalaysiatoday.com

Another famous musical that is considered fan fiction by some is „Hamilton” by Emanuel Lin-Manuel Miranda. The musical has even passed the 1 billion in sales mark⁸ in year 2020, making it one of the most successful Broadway shows ever. Its recording is also featured on the Disney+ streaming platform and can be watched by fans in any part of the world, who would maybe not have the privilege to travel to New York and see the live Broadway performance.

The reason why some consider Hamilton fan fiction is because the show is loosely based on the Alexander Hamilton biography by Ron Chernow, but adapted for the stage with R&B, pop and soul tracks. However, we ourselves do not consider this work to be actual fan fiction, because the storyline still consists of the actual life

⁶ <https://www.imdb.com/title/tt0032138/>, last consulted on 26.11.2024.

⁷ L. Zidaru, *Considerații privind noua reglementare a drepturilor patrimoniale de autor*, in RRDPI no. 1/2005, p. 30.

⁸ <https://www.forbes.com/sites/dawnchmielewski/2020/06/08/lin-manuel-mirandas-hamilton-crashes-broadways-billion-dollar-club>, last consulted on 26.11.2024.

of US founding father Alexander Hamilton, the characters in the play are still the real people from Hamilton's life and, most importantly, the historical facts existed even before Chernow wrote the biography. In other words, simply stating real facts and putting them to music does not turn your work into fan fiction.

So why fan fiction is usually created? It usually stems, no surprise, as a need to artistically explore an alternative plotline in the original story or to fill potential gaps, mini-plots that the original author did not explore themselves. While, at the same time, wanting to share this new work, not to keep it to oneself, therefore creating a sense of community and belonging in a group of people who are all fans of that original work. This sense of community is what most likely caused the great success of fan fiction websites, because even under the veil or anonymity or pseudonyms⁹, individuals from all over the world can come together and share ideas, concepts, bound over their love for an author or their works.

This can even become a good alternative to the original Fan Clubs or even the traditional Book Clubs, where avid readers would explore books together. Now they can not only read, but also write their own works to share with like-minded people, get feedback and feel like their artistic voices are heard by individuals with similar interests.

3. What is the legal regime of fan fiction?

When it comes to art, fan fiction can for sure enrich a creative universe and give it new perspective. But as far as legal aspects and potential copyright infringement are concerned, things can get a lot more complicated.

According to Romanian law, fan fiction might fall under what we call *pastiche*¹⁰. According to the official Romanian dictionary, a *pastiche* is a literary, musical or artistic work, usually lacking originality and value, where the author slavishly takes over the themes or means of expression of a great creator¹¹. This is considered sometimes similar to a parody, but not quite, since a parody is mostly created in order to produce laughter, while a pastiche (or fan work, for that matter) is not necessarily done for that purpose. Also, the two terms are used together in Romanian Law no. 8/1996 regarding copyright, therefore suggesting that the terms and their area of application is different.

Art. 37 letter b) of Romanian Law no. 8/1996 mentions that the transformation of a work, without the consent of the author and without payment of remuneration, is allowed if the result of said transformation is a caricature, parody or pastiche, provided that the result does not create confusion regarding the original work and its author¹². Also, in art. 128² para. (5) letter b) of the same law, it is mentioned that when it comes to providers of online content sharing services, they have the obligation to obtain the necessary authorizations, but also benefit from a few legal exceptions, for example when it comes to use of content for purposes of caricature, parody or pastiche.

Art. 37 and art. 128 are the only two mentions we find in the Romanian Law on copyright regarding the pastiche, so the subject is not very vast. We also rarely find this term mentioned or studied in legal doctrine or even in real life, for that matter. The term pastiche (or *pastișă* in Romanian) can sometimes be found in press¹³, online shops¹⁴ or even introduced in the classroom as educational material¹⁵, but on such rare occasion that it

⁹ As it is also under other jurisdictions, according to Romanian law, authors can choose to publish under anonymity or pseudonyms according to their moral right to name. See V. Roș, D. Bogdan, O. Spineanu-Matei, *Dreptul de autor și drepturile conexe. Tratat*, All Beck Publishing House, Bucharest, 2005, p. 218.

¹⁰ In Romanian, *pastișă*.

¹¹ <https://dexonline.ro/definitie/pastisa>, last consulted on 12.11.2024.

¹² Art. 37, lit. b) din Legea nr. 8/1996: „Transformarea unei opere, fără consimțământul autorului și fără plata unei remunerații, este permisă în următoarele cazuri: (...) la dispoziția publicului;

b) dacă rezultatul transformării este o caricatură, parodie sau *pastișă*, cu condiția ca rezultatul să nu creeze confuzie în ce privește opera originală și autorul acesteia”

¹³ Referalls to artwork that copies Banksy's street art as patiche (<https://www.agerpres.ro/zig-zag/2019/02/18/pastisa-sau-original-un-posibil-banksy-pro-vestele-galbene-pe-un-zid-din-bordeaux--260309>, last consulted on 19.11.2024).

¹⁴ Here the work pastiche is actually used in conjunction with fan art, maybe referring to the fact that the canvas in question copies the painting manner of Margaret Keane, famous for her big eyed characters <https://www.emag.ro/tablou-canvas-o-printesa-ilustrata-vibranta-pastisa-magica-complicata-detaliat-si-creativ-fanart-modern-contemporan-high-end-arta-digitala-25x40-cm-multicolor-202-cvs-25x40/pd/DRBCY5MBM/>, last consulted on 19.11.2024.

¹⁵ A Romanian student is inquiring online how can he produce a pastiche, as requested by his Romanian language teacher <https://www.tpu.ro/educatie/ce-e-aia-pastisa-am-primit-la-romana-sa-fac-o-pastisa-de-50-de-cuvinte-despre-poezia-calin-file-din-poveste/>, last consulted on 19.11.2024.

makes us wonder: has this word become an archaism? In the sense that it is rather old and not used anymore¹⁶, which based on the above seems to be the case.

On the other hand, Romanian Law no. 8/1996 on copyright does not contain a single reference to *fan*, *fans* or even less, *fan fiction*. Which is not at all unusual, since we are referring to a law that came into force almost 30 years ago, with few revisions since. While we see the word *pastiche* as being archaic, on the other hand, *fans* and *fan fiction* lean more towards being neologisms, the opposite of archaisms.

Going back to finding a legal framework for fan work, a term that incapsulates it best, besides *pastiche*, is derivative work or *operă derivată*¹⁷ in Romanian. According to art. 8 of Romanian Law no. 8/1996 on copyright, derivative work includes two main types of work: work that was transformed¹⁸ in some way (translations, adaptations, musical arrangements) or pieces of work that were gathered together in a cohesive way¹⁹ (encyclopedias, anthologies, data bases). Fan fiction is of course not a collection of works, but a transformation of an existing book or story, which would make it fall under art. 8 letter a) of Law no. 8/1996.

But are fan creations always original, can they be protected by copyright in all cases? Here things get more complicated, because for a fan work to be considered proper *derivative work* it also has to be a self-standing intellectual creation. In other words, art. 8 of Law no. 8/1996 not only defines the two main types of „*operă derivată*”, but also imposes an important condition: the new, resulting work that stems from the original ones, need to be an intellectual creation itself.

For example, a collection of works must be edited in a well-thought manner. You cannot simply put multiple stories back to back and call that a derivative work, protected by law. The order of the stories, the manner in which they are chosen must be well designed, they can have annotations and introductions that link them all together. On the other hand, when it comes to translations it might be easier to see how each new work is different, because each translator has their own creativity, choice of words and does their own intellectual correlations.

And what about changing a storyline, in a fan-fiction style? Here, the existence of originality (or lack thereof) will definitely be determined from case to case. If a Harry Potter fan reimagines a story where he changes only the name of the characters and turns both Hermione and Harry into redheads, like Ron, while not changing anything else about the story dynamic or the events, we will for sure not have an original derivative work. But, on the other hand, the fan fiction could be protected by copyright, by gaining originality if the story is taken from Hogwarts school of magic and transported into a day-to-day American school, where children pay football, not Quiddich and they fight over who is the most popular at prom, not who learns the best spells.

Therefore, while we are determined to qualify proper fan fiction as derivative work under copyright law (a possibly *pastiche*, although the term is quite old and unused nowadays), we will have to be careful and determine from case to case if the new work of the fan is indeed a new intellectual creation to such a degree, that it can be protected by copyright.

Derivative work can also be found in many other fields, including the controversial *sampling*²⁰. We mostly find this phenomenon in the music industry, when an older track is used to produce a new song, practice that is generally accepted, but stands on the border between an artists's right to express their creativity and the rights held by the first creator of the track, in the form of copyright. This artistic practice gave birth to important litigation files, like *Andy Warhol v. Goldsmith*²¹, regarding the art created by Warhol using a photo of the musician Prince, taken by photographer Lynn Goldsmith. The court decided in Warhol's favor, considering that it was legal to reuse the original photo by using color and shapes, in the author's emblematic pop art style. So, as we see, sampling does not limit itself to music, but much like fan fiction, can be extended to other artistic fields, as well.

¹⁶ In Romanian, archaism <https://dexonline.ro/intrare/arhaism/3323>, last consulted on 19.11.2024.

¹⁷ For more considerations regarding derivative work according to Romanian law see C.R. Romișan, *Drepturile morale de autor*, Universul Juridic Publishing, Bucharest, 2007, p. 41; V. Roș, *Dreptul proprietății intelectuale*, vol. 1, C.H. Beck Publishing House, Bucharest, 2016, p. 255; L. Cătuna, *Drept Civil. Proprietatea intelectuală*, All Beck Publishing House, Bucharest, 2013, p. 56.

¹⁸ Art. 8 letter a) of Romanian Law no. 8/1996: „traducerile, adaptările, adnotările, lucrările documentare, aranjamentele muzicale și orice alte transformări ale unei opere literare, artistice sau științifice care reprezintă o muncă intelectuală de creație”.

¹⁹ Art. 8 letter b) of Romanian Law no. 8/1996: „culegerile de opere literare, artistice sau științifice, cum ar fi: enciclopediile și antologiile, colecțiile sau compilațiile de materiale sau date, protejate ori nu, inclusiv bazele de date, care, prin alegerea sau dispunerea materialului, constituie creații intelectuale”.

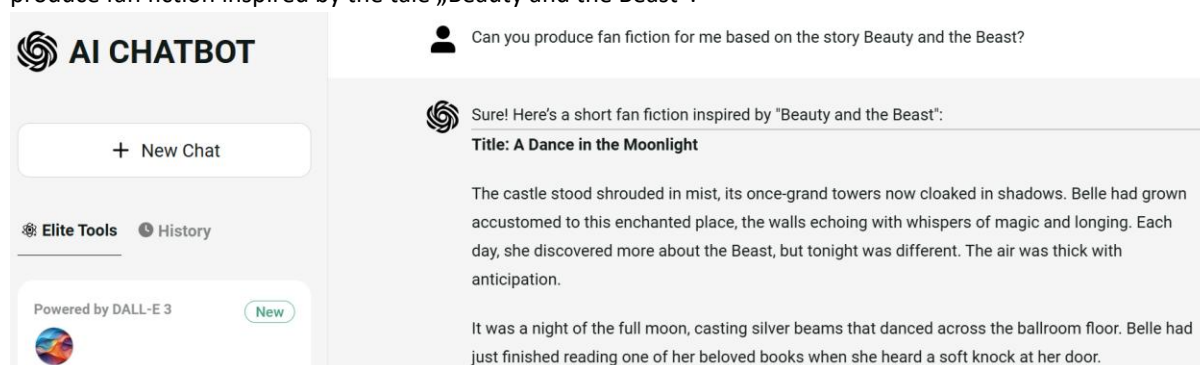
²⁰ A. B. Mușat, *Sampling-ul muzical între libertatea artistică și încălcarea drepturilor de autor*, in RRDPI no. 3/2022, pp. 98-125.

²¹ *Idem*, p. 122.

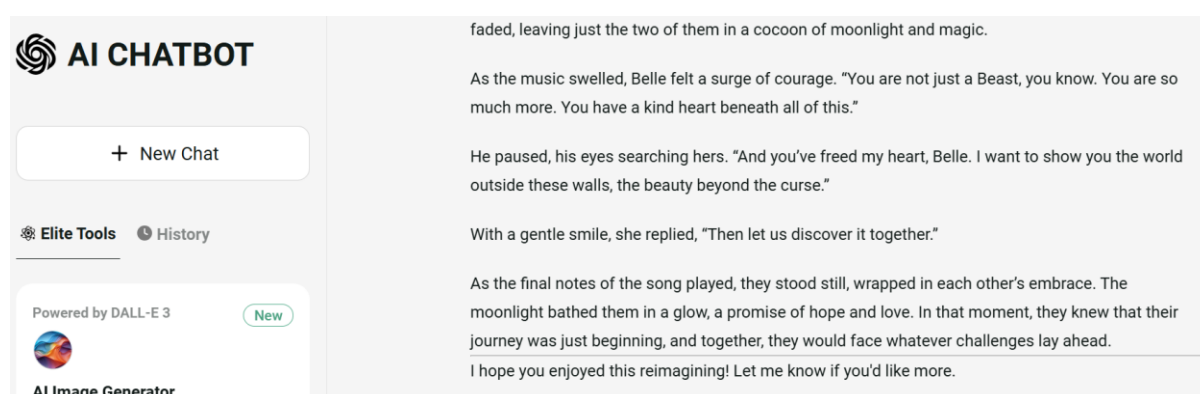
4. AI and fan fiction

But are things so clear nowadays, with the evolution of Google translate and AI programs? We can simply ask ChatGPT to translate an entire book for us and the platform will do so without fail. Would it be best to have an actual translator look through the result of this work and search for errors? For sure, a human touch would be helpful to ensure that the end product is up to standards. But could ChatGPT also produce a work that needs no alterations and is perfect just the way it is? Definitely yes.

Coming back to fan fiction, this might be a less used function of AI, compared to translations. But ChatGPT can still produce it, without much effort. See below an excerpt from this OpenAI product, after we asked him to produce fan fiction inspired by the tale „Beauty and the Beast”:



The story produced by the AI bot was a lot longer. And if you want to be further impressed by its human-like abilities, see the finale „I hope you enjoyed this reimagining! Let me know if you'd like more”. So the AI bot is encouraging feedback from its users, like a human writer would enjoy to know the opinion of its readers. Also, it proposes to develop even a longer, more elaborate story, should the user want that.



The usage of AI to produce derivative work can become somehow problematic, especially since over the years it was proved that derivative work can even become more successful than the original one²². For example, a screen adaptation can bring more money to the author than their original book or screenplay. But, by law, producing derivative works is the exclusive patrimonial right of the author.

5. Plagiarism in fan fiction?

We shortly referred above to the problem of originality when it comes to fan fiction. Not all fan art is truly original, some of it lacks enough differentiators from the original work to be considered proper derivative work according to copyright law (much less to be protected by copyright).

Therefore, we cannot help but ask the question: can we then consider fan fiction as being plagiarism? And if not, what could possibly protect these creative fans, in contrast to other individuals who simply copy existing works to their own benefit?

²² L. Zidaru, *Considerații privind noua reglementare a drepturilor patrimoniale de autor*, in RRDPI no. 1/2005, p. 30.

First of all, we should strongly consider the context and manner in which the fan work is presented. For example, if a high school student who loves the Star Wars series writes a short story where they draw inspiration from its fantastic world and characters and publishes it online, on Wattpad.com or Fanfiction.net under the title „Star Wars fan fiction – the world beyond”, we are nowhere near a plagiarism case. The context of this publications, its transparency, even the particularities of its author, all point out to any standard reader that this text is meant to evoke, not copy an existing piece.

On the other hand, if a person living in communist Romania, where the American Star Wars saga was not yet presented, tries to write and sell a Science Fiction book where they copy most of its storyline and characters, without giving credit to the original story at all and for the sole purpose of making profit, because nobody will know about this fantastic realm that was originally imagined in America, then the situation is entirely different. The later can without a doubt be considered as plagiaristic work, which pays no tribute to the original Star Wars and simply copies a story with the intention of not being caught in the process, because the original information is not accessible to Romanian speakers. While in the first case, the writer actually pays tribute to the original work, not only by naming it as such, but also by using online platforms dedicated to this exact role, where a general user expects to read actual fan work and is not tricked to think otherwise.

Which brings us to the second point: there is a time and a place for any artistic endeavors. And fan fiction websites offer exactly that, a safe space for fans to project their fantasies and give life to their imagination. In other words, if all fan fiction were considered plagiarism, how would a website like Wattpad.com still exist? Such online platforms can even help the original author and their brand, by building upon it, not by stealing its light. For example, a new user of a fan fiction website can come across a story that he finds very interesting, and after finding out it is based upon the ACOTAR series (A Court of Thorns and Roses) by American writer Sarah J. Maas, they can decide to buy the original books from a library or download them for a fee on their Kindle, which only helps the original author in their work.

Also, the extent to which fans develop fan fiction works can offer great feedback to a new author on the market. If Fanfiction.net becomes flooded with works after their latest book, the author will for sure be encouraged to write more, in order to give their fans more materials. Or by seeing how fans are developing alternative plotlines, the author can get a new, innovative idea for the next volume in their series. The possibilities of written work are endless. And readers can nowadays have a more active role, not only contribute in a passive manner by reading books and raising their sale numbers.

6. Conclusions the possible future of fan fiction and Romanian law

At present, as we mentioned above, most of the fan fiction work is housed on the internet. So, we are referring to mostly digital work, be it written or graphic, that appeals to a large audience and is usually found on specific websites, where users know what to expect. And they know from the beginning that they are enjoying the work of fans, not of people willing to copy other's works, hence the exclusion of potential plagiarism.

But even given all that and the international appeal of fan fiction, we do consider it important to review and update this subject also according to Romanian law. And to this end, we see that a series of *de lege ferenda* proposals are necessary.

Firstly, it would be useful to include the term *fan fiction* (or, under an approximate Romanian translation, *opere de ficțiune ale fanilor*) under the types of derivative art included by art. 8 of Law no. 8/1996 regarding copyright. This article holds two categories of work, transformations of an existing piece under letter a) and collections of existing works under letter b), so fan fiction would best be included in the first category. Normally, we would encourage even a term like *pastiche* to be included in this „collection” of works, as the law already has a few mentions of it (compared to fan fiction which, as expected, has none). But we do consider it to be a rather old and outdated word, so its mention would most like be unnecessary.

Secondly, going more in depth, a short definition of fan fiction would be useful, moreover since we suggested it to be included in the list of derivative art. While the law offers explanations or even definitions for certain types of art, some are completely ignored. But given the fact that fan work is a somehow new and innovative concept, defining it would help a judge or otherwise, another person not very present on the internet, to completely understand its meaning and properly apply the law in a specific case.

However, if such a *de lege ferenda* proposal regarding fan fiction would be considered too modern, a safer alternative would be at least referring more in depth to the term *pastiche*, for a very important reason: we also

find this word in modern EU copyright law. More exactly, Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC²³. This Directive mentions under art. 17 point 7 letter b that works representing caricature, parody or pastiche would represent exceptions in the Member States when referring to content and its potential infringement, alongside quotation, criticism, review, mentioned by letter a in the same text²⁴.

In other words, pastiche is directly recognized as a „safe” manner of converting existing works, which in our opinion also refers to the category of *fan fiction*.

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²³ <https://eur-lex.europa.eu/eli/dir/2019/790/oj/eng>, last consulted on 19.01.2025.

²⁴ Art. 17 point 7 of Directive (EU) 2019/790: „The cooperation between online content-sharing service providers and right holders shall not result in the prevention of the availability of works or other subject matter uploaded by users, which do not infringe copyright and related rights, including where such works or other subject matter are covered by an exception or limitation. Member States shall ensure that users in each Member State are able to rely on any of the following existing exceptions or limitations when uploading and making available content generated by users on online content-sharing services: (a) quotation, criticism, review; (b) use for the purpose of caricature, parody or pastiche”.