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Who Wrote It?: Authorship in Fanfiction, AI and Ghostwriting

Elsas, Eva van

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Thesis

Eva van Elsas, s1946439

BDMS

Dr. Matthew Voigts, Dr. Peter Verhaar

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Who Wrote it?: Authorship in Fanfiction, AI and Ghostwriting

Abstract

The concept of authorship has changed many times throughout history, often as a result of technological innovation. The historical overview shows that originality and copyrightability are two conditions often placed upon authorship. This thesis examines how fanfiction, AI and ghostwriting affect authorship by investigating the originality and copyrightability of each scenario through case studies. This thesis finds that originality and copyrightability are not sufficient determiners of authorship because the case studies show that even when one or both are absent, some form of social or legal authorship may still be present. Each scenario has emphasized different aspects of authorship and emphasizes the distinction of legal and social authorship. Fanfiction has raised commercialization and professionalization as possible determinators of authorship. AI has emphasized the human aspect and raised an alternate qualification of authorship based on the level of AI use. All three scenarios have shown to be stigmatized in some way and that authorship may depend on the standing of the author or the genre. The implications of the results of the examination of these scenarios are that authorship goes beyond copyrightability and originality, and that authorship goes beyond the abstract theoretical. Readers care about authorship, even if there may not be a concrete answer as to why.

Table of Contents

Introduction	3
History of authorship	4
Copyright	9
Why does authorship matter?	13
Chapter 1: Fanfiction	15
What is fanfiction	15
Fanfiction and authorship	17
Fanfiction and copyright	19
Case studies	21
Conclusion	26
Chapter 2: Generative AI	28
What is AI	28
AI and authorship	31
AI and copyright	32
New forms of authorship	34
Case studies	35
Conclusion	40
Chapter 3: Ghostwriting	41
What is ghostwriting	41
Ghostwriting and copyright	45
Case studies	46
Conclusion	51
Conclusion	52
Bibliography	54

Introduction

Authorship as a concept has been hard to define due to its many changes throughout the years. What does and does not qualify as authorship has kept many a scholar or philosopher in business. Throughout history, the term authorship has been defined in many different ways and in many different contexts. It is important to note that authorship didn't start with (nor is it exclusive to) literate expressions, the oral cultures were also a form of authorship.¹

This thesis will focus on specifically literary authorship. *The Cambridge Handbook of Literary Authorship* describes this as 'authorship that is confined to the literary field'.² However, this definition is quite broad. Many have attempted to more clearly define authorship, often through the lens of specific fields such as gender studies or relating to specific eras.

Authorship in the context of this thesis will refer to the legal and social identities of being an author of a majority share of a text. Due to space constraints, this thesis will largely focus on single authorship, rather than forms of co-authorship or secondary authorship. This is also because as Mireille van Eechoud explains: 'national rules on authorship and copyright ownership are still based on the author as an individual autonomous agent operating in relative isolation'.³

As the historical overview of authorship will show, there are two prominent conditions often placed upon authorship, originality and copyrightability. Authorship, copyright and originality are integral to and intertwined with each other.⁴ This thesis will examine these two conditions of authorship in fanfiction, AI and ghostwriting to facilitate comparable analyses between the scenarios and how they change the conception of authorship.

In this thesis, I aim to explore this concept of authorship in three different scenarios. I will look at what the law states, what precedent there may be and what some of the moral

¹ John Potts, 'Chapter Four: A Brief History of the Author', in Potts, *The Near-Death of the Author: Creativity in the Internet Age*. 1st ed. (University of Toronto Press, 2022), pp. 63-92.

² Ingo Berendsmeyer, Gert Buelens, and Marysa Demoor, 'Introduction', in *Cambridge Handbook of Literary Authorship*, ed by Ingo Berendsmeyer, Gert Buelens and Marysa Demoor (Cambridge University Press, 2019), pp1-10, <https://doi.org/10.1017/9781316717516.001>[Opens in a new window].

³ Mireille van Eechoud, 'Voices Near and Far', in *The Work of Authorship*, ed. By Mireille van Eechoud, (Amsterdam University Press, 2014), pp 7-18, p. 11.

⁴ van Eechoud, 'Voices Near and Far', p.7.

ramifications may be. All to explore what authorship means in this day and age and how it may change and adapt to innovation.

History of authorship

Ancient Greece had a different view of authorship than what is described above, as John Potts discusses.⁵ Works from that time signify the transition from oral culture into written culture. Much of what we now refer to as ancient Greek literature was originally closer to song than book, and the text reflects that. There are mnemonic devices to aid the performer and a less formal sentence structure than would be found in contemporary texts. Epic poems were passed down and performed by many poets, who would each add to or adjust the poem in their own way. In the oral culture, originality, which has since become a key aspect of authorship, did not mean creating brand new material, but rather composing the original material in a new way.

Additionally, while famous works like *The Iliad* and *The Odyssey* have been ascribed to Homer, including by Plato, in the twentieth century, scholars like Milman Parry determined that *The Iliad* was most likely not composed by a single poet, but by multiple poets over a long time.⁶ Ruth Scodal, classicist at the University of Michigan writes that because of this dubiousity in authorship, 'many scholars would deny authorship to all archaic Greek literature'.⁷ However, even an anonymous author or an unknown author would still indicate authorship. Homer could never have existed, or could have functioned as a pseudonym, or, though proven extremely unlikely, could have been the legitimate singular author of these texts. The identity of Homer is less important to the authorship and authority he holds as the prescribed author of the work. These discussions about who exactly an author was or what makes them an author are not exclusive to ancient Greek literature.

⁵ Potts, 'Chapter Four'.

⁶ Potts, 'Chapter Four'.

⁷ Ruth Scodal, 'Authorship in Archaic and Classical Greece', in *Cambridge Handbook of Literary Authorship*, ed by Ingo Berendsmeyer, Gert Buelens and Marysa Demoor (Cambridge University Press, 2019), pp. 46-63 (p.52).

When we fast forward to Medieval England, one of that times' most famous authors, Geoffrey Chaucer, refers to himself as a *compiler*, rather than an author.⁸ This is related to the different roles involved in creating a medieval manuscript, or codex, as described by St. Bonaventure, a Franciscan monk.⁹ The *scriptor* copies the words of another exactly (unintended mistakes aside), a *commentator* adds on to someone else's work with their own words in order to clarify, an *auctor* writes predominantly their own words supplemented by the words of another to solidify their point, and a *compiler* writes a compilation of another's words. Chaucer calls himself a *compiler* both in reference to a translation he had done of *De Consolatioene Philosophiae* and in his most famous work *The Canterbury Tales*.¹⁰ In the case of the latter, this was because the Tales had been in circulation amongst the general public in one form or another in many ways, therefore Chaucer could not claim to be the author or claim them as his original work. Yet some believe this to have been a false statement of modesty that was instead intended to claim authorship in a roundabout manner.¹¹ Being classified a *compiler* would have severely impacted his chance at copyright were he publishing his works today, as this depends on originality (see copyright section of this chapter). This situation is very similar to what some scholars believe to be the case of Homer. However, generally both Homer and Chaucer are rewarded authorship over their respective texts both by scholars and in public opinion. After all, when one buys a copy of *The Canterbury Tales* or *The Iliad* today, Chaucer and Homer are respectively named as author on the cover.

The eighteenth century brought a big shift in authorship as a concept.¹² Especially due to 'the particular coming together of legal, economic, and cultural circumstances that needed and thus created a myth of originality'.¹³ The author as an identity became closely related to the printing press, the use of which grew exponentially during the eighteenth and

⁸ Andrew Kraebel, 'Modes of Authorship and the Making of Medieval English Literature', in *Cambridge Handbook of Literary Authorship*, ed by Ingo Berendsmeyer, Gert Buelens and Marysa Demoor (Cambridge University Press, 2019), pp. 98-114.

⁹ Potts, 'Chapter Four'.

¹⁰ Kraebel, 'Modes of Authorship and the Making of Medieval English Literature', p. 100.

¹¹ Potts, 'Chapter Four'.

¹² Betty A. Schellenberg, 'The Eighteenth Century: Print, Professionalization, and Defining the Author', in *Cambridge Handbook of Literary Authorship*, ed by Ingo Berendsmeyer, Gert Buelens and Marysa Demoor (Cambridge University Press, 2019), pp. 133-146.

¹³ Kristina Busse, 'The Return of the Author: Ethos and Identity Politics' in Busse, *Framing Fan Fiction: Literary and Social Practices in Fan Fiction Communities*, (University of Iowa Press, 2017), pp. 19-38 (p.21).

nineteenth centuries. The mechanization of process has led to a change in how we see creativity and authorship.¹⁴ The proliferation of writing brought along with it concerns of copyright, and the 1842 Copyright Act came to life. I will explore the concept of copyright and its evolution further along in this introduction. Where before authors, like for example Plato, would consider their written work their life's work or purpose, in the nineteenth century authorship grew to be commercialized due to the increased demand for books and rapid expansion of the printing press and writing became a more casual profession like any other.¹⁵ The proliferation of printing led to an increased demand for legal guidelines. Copyright was first introduced in 1710 in the United Kingdom, and it was common practice at the time for the printer to be the owner of a text, rather than the author. Printers also had *carte blanche* to alter the text whenever they wished, which would complicate the concept authorship; after all, the work would no longer be that of only the author if the printer changed or scrapped significant parts. There came a greater emphasis on originality and 'genius' in authorship.¹⁶

Originally, being an author was not a viable profession, in no small part due to lack of payment. Before print, authors relied on patrons to pay their expenses. It was not about how many books you sold.¹⁷ It was only during the nineteenth century that the power in publishing shifted fully from printer to author when authors banded together to create author societies and to demand fair compensation for their efforts.¹⁸ However, with the proliferation of print and a higher demand for written material, original text became less of a commodity. Therefore, while authors did have more say in how they were paid and what they wrote, the pay was as such diminished that to make a living, one must pump out huge quantities of work. Seth Latham writes that 'modern authorship can be defined by the "great divide" between the mass culture of pulp magazines on the one hand and the economy of prestige defined by the little magazines on the other'.¹⁹ Latham also emphasizes another

¹⁴ Busse, 'The Return of the Author', p. 21.

¹⁵ Alexis Easley, 'The Nineteenth Century: Intellectual Property Rights and "Literary Larceny"', in *Cambridge Handbook of Literary Authorship*, ed by Ingo Berendsmeyer, Gert Buelens and Marysa Demoor (Cambridge University Press, 2019), pp. 147-164.

¹⁶ Potts, 'Chapter Four'.

¹⁷ Potts, 'Chapter Four'.

¹⁸ Easley, 'The Nineteenth Century'.

¹⁹ Sean Latham, 'Industrialized Print: Modernism and Authorship', in *Cambridge Handbook of Literary Authorship*, ed by Ingo Berendsmeyer, Gert Buelens and Marysa Demoor (Cambridge University Press, 2019), pp. 165-182 (p. 174).

aspect of modern authorship. Namely the introduction of narratives and voices of those who had previously been silenced. When writing became more accessible, anyone with something to say could print it, which led to a shift in the market.

The twentieth century was the age of 'storytellers'.²⁰ Writing had become an industrialized trade that anyone could be involved in. The professionalization of authorship has been shaped by two main innovations. First was the introduction of literary and press syndicates that would travel abroad to meet and negotiate with authors to export their works to other countries and to facilitate international authorship. Second was the introduction of the literary agent as a middleman between the author and the publisher.

The late twentieth century has been classified as the postmodernist era. Most theorizations of this time fall into two categories: those that base the distinction on narrative and stylistic elements such as the introduction of new narrative strategies, and those who focus on the socio-cultural developments.²¹ A highly contested, yet popular view at the time was that we live within a narrative and that therefore our 'true self' is merely a linguistic construct.²² During the postmodernist era, the interpretive power over the book and the narrative once again shifted, this time from author to reader. This anti-humanist movement is often ascribed to two philosophers. Roland Barthes published an essay called 'the Death of the Author' and Michel Foucault published his own essay called 'What is an Author'.

Barthes argued in his essay that the modern author was nothing more than a *scriptor*, and that because everything is inspired by something else, nothing is original. This echoes how Geoffrey Chaucer described himself as a *compiler*, the difference being that Barthes felt even less of a degree of authority.

Foucault refers instead of to the author, to the author-function. Foucault felt that the author-function is determined by the reader and that the projected author is not necessarily the same as the real author. This makes authorship less about the author as a person, but rather the function or role they have in the network of legal and societal structures. Foucault feels that it is the author-function that should shape interpretation rather than the author as

²⁰ Latham, 'Industrialized Print' (p. 165).

²¹ Hans Bertens, 'Postmodernist Authorship', in *Cambridge Handbook of Literary Authorship*, ed by Ingo Berendsmeyer, Gert Buelens and Marysa Demoor (Cambridge University Press, 2019), pp. 183-200.

²² Bertens, 'Postmodernist Authorship' p. 184.

a person. Therefore, the interpretation of the reader was leading over what the author may or may not have intended and the reader would hold all the power, while the author became less important. Although this may have been the leading theoretical framework, in practice, author biographies and an author's reputation were more crucial than ever to a book's success.²³

Beginning in the late 20th century, the internet has invaded and fundamentally changed almost every part of everyday life, including literary authorship. Potts calls technology, specifically the internet, the cause of 'the near-death of the author' in the twenty-first century, due to its enabling of pirating and loss of royalties, income for authors and other copyright holders. Therefore he feels that copyright is made obsolete by the internet.²⁴

Adriaan van der Weel argues that authorship is determined by the historical context and that in the digital world, authorship is horizontal and democratic as opposed to the hierarchical top-down situation of the analogue world.²⁵ One thing that contributes to this change is the easy accessibility of publishing, whether that is traditional publishing, self-publishing or online publishing in easily accessible places like forums, blogs or fanfiction websites. Another is the change in social attitudes toward authorship. Because writing and publishing is so prevalent and easily accessible, there is much less of a distinction between 'real literary authorship' and 'just writing'. Lastly, the internet provides an opportunity for more collaboration between author and reader.

This short historical overview shows that originality has grown from changing the existing in a new way, to the 'genius' of total originality, to the belief that nothing is ever truly original. Although the context of the term has changed, its close connection to authorship has remained constant. Copyright has grown to be as much of a condition of social authorship as it is of legal authorship.

The social aspects of authorship have similarly changed. The rise of new inventions and innovations lead to a constant reevaluation of what authorship is and how things like AI, fanfiction and ghostwriting fit into it as this thesis will examine. Overall, there are two

²³ Bertens, 'Postmodernist Authorship'

²⁴ Potts, 'Chapter Four'.

²⁵ Weel, Adriaan van der, 'Literary Authorship in the Digital Age', in *Cambridge Handbook of Literary Authorship*, ed by Ingo Berendsmeyer, Gert Buelens and Marysa Demoor (Cambridge University Press, 2019), pp. 218-234.

consistent conditions of authorship I will examine in this thesis: originality and copyrightability.

Copyright

Unless otherwise specified, the general contemporary legal scope of this thesis pertains to the United States of America. This is in large part due to the establishment of many international publishers there and thus that is where much of the influential litigation takes place. However, much of the historical development of copyright is based in UK tradition that influenced the US to establish their own copyright tradition in 1776. Therefore, the UK tradition will also be discussed in the following section.

Copyright is as of yet the most prominent way of establishing the legal identity of an author. Copyright can ‘make authors-in-law out of social non-authors’.²⁶ Therefore, in the discussion of contemporary authorship, it is important to understand what falls under the legal definition of author and how this copyright legislature came to be.

However, before copyright law, authorship was policed through censure and libel laws. During times of heavy censure, for example during early print culture (pre-nineteenth century), governments could decide which subjects or topics were taboo and, in some cases, illegal. The institution of censorship was eliminated around the same time the original licensing laws lapsed in 1695. This, combined with the printing boom led to a loss of control in the market. These events contributed to the establishment of, the Statute of Anne in 1710 as the first step in establishing copyright.²⁷

Libel law was a different way for authorship to be legally policed and shows how the identity of the author was inseparable from their work.²⁸ For example, Oscar Wilde could be personally prosecuted for being a sodomite and his personal and published writings could be used as evidence. Wilde attempted to defend himself by trying to separate his writing from his authorship, i.e. claiming they were unconnected. This separation of authorship and their work echoes the Death of the Author movement.²⁹ This movement is also echoed in

²⁶ van Eechoud, ‘Voices Near and Far’, p. 11.

²⁷ Jeff Jarvis, ‘Creativity and Control’, in Jarvis, *The Gutenberg Parenthesis: The Age of Print and Its Lessons for the Age of the Internet*, (Bloomsbury Academic, 2023), pp. 195-222, DOI: 10.5040/9781501394867.

²⁸ Latham, ‘Industrialized Print’.

²⁹ Latham, ‘Industrialized Print’.

contemporary ‘separate the art from the artist’ movements, which resulted from the #MeToo movement in 2017.³⁰ It establishes that when authors express opinions or act in a way that leads for them to be ‘cancelled’, their music or books et cetera should still be morally alright to consume.

Policing authorship was eventually taken over by copyright law. However as Jeff Jarvis writes, quoting Mark Rose, in *The Gutenberg Parenthesis*: ‘regulation of speech shifted from “public order” to “private right”, yet it was still a mechanism of control as copyright holders could “regulate and limit public discussion much as state censors had done earlier”’.³¹

Copyright provides a straightforward manner of assessing and controlling authorship. Copyright determines who has ownership of something, for how long, and what is allowed to be done with the intellectual property.

Copyright came into existence around two hundred years after the introduction of the printing press to the Western world.³² The first step in the emergence of copyright was the Statute of Anne in Britain in 1710. This established the right for a printer to exclusively print a book for fourteen years, which could be extended with another fourteen years if the author was still alive after the first fourteen. This statute was restrictive to books and did not cover other forms of publication, for example newspapers. Interestingly, this statute establishes the rights printers had to print books in addition to the right the author had to print their work. Which indicates they were considered to be of equal importance in the establishment of a book. However, once an author had passed, their work was allowed to be printed by all after the first fourteen years. There was no practice in place to protect the printers’ rights after an author’s demise, which would indicate that authors were in fact more important to consider owners of a book than printers.

The Copyright Act of 1842 changed the standards of copyright to provide protection to the author for fifty years postmortem. This was extended to 70 years in 1995 to be in line with EU law that is still in effect today. However, originally, the legal protection provided by

³⁰ Elle Coelho, ‘OPINION: We need to be separating the art from the artist’, *The Suffolk Journal*, 23 April 2024, <<https://thesuffolkjournal.com/44410/opinion/opinion-we-need-to-be-separating-the-art-from-the-artist/>> [Accessed 28 May 2025]; Song, Heather, ‘We cannot separate art from artists when we provide platforms to problematic creators’, *The Campanile*, 31 May 2025, <<https://thecampanile.org/30362/opinion/we-cannot-separate-art-from-artists-when-we-provide-platforms-to-problematic-creators/>> [accessed 28 May 2025].

³¹ Jarvis ‘Creativity and Control’, p. 219.

³² ‘The History of Copyright’, Australian Libraries and Archives Copyright Coalition, n.d. <<https://alacc.org.au/the-history-of-copyright/>> [accessed 28 May 2025].

copyright was confined to Britain. In 1886 the geographical scope was extended due to the Berne Convention and further by the Agreement on Trade-Related Aspects of Intellectual Property Rights in 1994. The Berne convention also states that protection under copyright should be automatic and not depend on formalities like registering.³³

The Copyright Act of 1988 in the U.K. specified different kinds of rights provided under copyright. There was ‘paternity right’, which meant that one had the right to be identified as the author, and ‘integrity right’ which protected the author’s ‘right to object to any derogatory treatment of their work’.³⁴ Additionally, authors had the right to not be wrongly held responsible for any work that is not theirs. This division in rights is echoed in other copyright statements like the Berne Convention.

However, not all authorship was regarded equally in copyright. There were different circumstances and (unspoken) rules for newspapers, for example, as opposed to novels. During the nineteenth century, it was common practice for newspapers and periodicals to ‘scissor and paste’ texts.³⁵ In short, sub-editors would commit ‘literary larceny’ by cutting out pieces of other publications and pasting them into their own, without crediting or even indicating it was not their original work, yet these editors were often seen as lazy and uncreative.³⁶ This was done largely due to the high demand for content within the genre.

This method of journalism, which would now be considered theft, extended beyond the country borders with regular exchange of content between the U.S., U.K. and Europe. In the U.K. at the end of the nineteenth century, a lawsuit was filed by the *Times* for the scissor and paste practices of another newspaper, the *St. James Gazette*.³⁷ This lawsuit resulted in a distinction between literary authorship and so-called ‘trivial authorship’ in the realm of copyright so that all forms of publication could be protected under copyright, not just books.

Additionally, for anonymous or pseudonymous authors there are slightly different rules. For example, the Berne Convention (1886) states that in those cases the copyright expires fifty years after publication, unless an author discloses their identity before the end

³³ ‘Summary of the Berne Convention for the Protection of Literary and Artistic Works (1886)’, WIPO, n.d. <https://www.wipo.int/treaties/en/ip/berne/summary_berne.html> [accessed 28 May 2025].

³⁴ Daniel Cook, ‘Copyright and Literary Property: the Invention of Secondary Authorship’, in *Cambridge Handbook of Literary Authorship*, ed by Ingo Berendsmeyer, Gert Buelens and Marysa Demoor (Cambridge University Press, 2019), pp. 384-399 (p. 384), <https://doi.org/10.1017/9781316717516>.

³⁵ Easley, ‘The Nineteenth Century’ (p. 142, 148).

³⁶ Easley, ‘The Nineteenth Century’ (p. 150).

³⁷ Easley, ‘The Nineteenth Century’ (p. 153).

of the fifty years. Dutch copyright law states in article 9 that if a work is published under a different name than the author's true name, that copyright can be pursued/executed by the publisher or the printer as long as they are credited in the original published work as being the publisher and printer.³⁸

British v. American v. European copyright

In The United Kingdom, an author is automatically protected under copyright. There is no national register, and authors need not apply for anything. In the United States of America, an author is technically also automatically provided copyright protection, however, they are encouraged to take additional measures to protect their copyright.³⁹ These measures include registering their work, which while not mandatory, is necessary to be able to protect one's work through litigation. Many countries also have national libraries that function as an archive by holding copies of all works published in that country. However, they are not involved in granting or rejecting copyright.

If an authority such as the U.S. Copyright Office deems a work unworthy of copyright, they can reject it.⁴⁰ The U.S. Copyright Office defines copyright as 'a type of intellectual property that protects **original works of authorship** as soon as an author **fixes** the work in a **tangible form of expression**' (emphasis theirs) and specifically defines original work as being 'independently created by a human author and [having] a minimal degree of creativity'.⁴¹

Dutch copyright works similarly to that of the United Kingdom.⁴² Neither mentions specifically that the author has to be human to be protected by copyright. The Australian government defines copyright as: 'a type of property that is founded on a person's creative skill and labour'.⁴³

³⁸ 'Auteurswet', Overheid.nl, n.d. <<https://wetten.overheid.nl/BWBR0001886/2025-02-04>> [accessed 28 May 2025].

³⁹ 'What is Copyright', U.S. Copyright Office, n.d. <<https://www.copyright.gov/what-is-copyright/>> [accessed 28 May 2025].

⁴⁰ Kate Knibbs, 'How One Author Pushed the Limits of AI Copyright', WIRED, 17 April 2024, <<https://www.wired.com/story/the-us-copyright-office-loosens-up-a-little-on-ai/>> [accessed 28 May 2025].

⁴¹ 'What is Copyright', U.S. Copyright Office

⁴² 'Auteurswet', Overheid.nl; 'How Copyright Protects Your Work', gov.uk, n.d. <<https://www.gov.uk/copyright>> [accessed 28 May 2025].

⁴³ 'Copyright Basics', Australian Government Attorney-General's Office, n.d. <<https://www.ag.gov.au/rights-and-protections/copyright/copyright-basics>> [accessed 28 May 2025].

Why does authorship matter?

First and foremost, authorship must be established to legally pursue any copyright infringement. Copyright exists to support and protect authors and their work from being copied or otherwise taken advantage of, while simultaneously adding limitations to their authority. One such limitation is fair use, which protects use of copyrighted material under specific circumstances such as education (for more details see chapter 1). When the concept of authorship changes, so too must copyright. Michelle van Eechoud writes that '[i]n Europe, two major forces drive copyright reform: the realization of the internal EU market for goods and services, and technological change'.⁴⁴ Rapid technological advancement, such as the invention of Artificial Intelligence, specifically generative AI, expose possible gaps in legislature. Thus the U.S. Copyright Office launched an inquiry as to whether current legislature is still adequate. When someone publishes a book written by AI, who gets the copyright? Is it the same for someone who enters a prompt and publishes whatever is provided as it is for someone who then spends hours upon hours personally editing and changing the results?

What about when authorship is complicated? Does fanfiction infringe on copyright because it is based on other material and therefore not original? Or are they original, in the ways of the ancient Greeks? And if so, where is the line? Are ghostwriters entitled to copyright over their work or is it instead the intellectual property of whomever hired them? If they do not hold the copyright (as is almost always the case) does that automatically disqualify them from authorship? These are all current legal dilemma's at play regarding authorship that will be explored further in their respective chapters.

Additionally, there are considerations for the social authorship. Does the author hold authority that goes beyond their work? Should their authority extend to when someone writes fanfiction about their work? Is it ethical to write fanfiction based on someone else's work? Or are there ways in which it can be ethical? Should a work largely written by AI be given the same awe and consideration as a work authored by humans? Does using a ghostwriter to aid one's biography have change an author's social standing? Under what circumstances can one call themselves an author? These are all questions with answers that

⁴⁴ van Eechoud, 'Voices Near and Far', p. 9.

will never be as straightforward as what is legal or illegal. Yet they should still be considered, because real life goes beyond laws.

Chapter 1: Fanfiction

‘to be second is not to be secondary or inferior; likewise to be first is not to be ordinary or authoritative’ – Linda Hutcheon⁴⁵

What is fanfiction

The simplest definition of fanfiction is fiction written by fans. These can be fans of a certain TV show, book series, celebrities and more. There are also many definitions that attempt to be more specific. Jacqueline Lipton, professor of Law at Duquesne University, describes fanfiction as ‘a genre of amateur writing based on characters and events from mass entertainment or popular culture’.⁴⁶ Ellen Williams states in *The Law & Psychology Review* that ‘fanfiction is a piece of media, based on an original fictional work or person, in which the creator distorts the source material to make a separate work—it both relies on and is independent from the source material’.⁴⁷ Both of these definitions agree that fanfiction is based on someone else’s original work. For example, a reader falls in love with a book series, the characters, the world and the plot. They may not want it to end, or perhaps they develop a what-if. Writing or reading fanfiction allows them to extensively explore these other avenues. David Cook states that fanfiction ‘extends the literary property – it fills in “missing scenes”, redoes endings, expands the book’s timeline, and elaborates the background stories of minor or additional characters, or creates cross-overs with other pieces’.⁴⁸

Fanfiction is not usually published in the traditional sense, whether that be through publishing houses or by self-publishing, due to copyright concerns. However, there are dedicated spaces for fanfiction authors to ‘publish’ their work. These most notably include websites such as *Wattpad* and *Archive of our own (AO3)* and *fanfiction.net*. The non-commercial nature of these platforms allow fanfiction to fall into a legal grey area (see Fanfiction and Copyright section). Nevertheless, fanfiction is not an invention of the digital

⁴⁵ Cook ‘Copyright and Literary Property’ (p. 385).

⁴⁶ Jacqueline D. Lipton, ‘Copyright and the Commercialization of Fanfiction.’ *Houston Law Review* 52, no. 2 (2014): 425-466.

⁴⁷ Ellen Williams, ‘I’ll Take It From Here: The Psychology of Fanfiction and Its Relationship with Copyright Law.’ *Law & Psychology Review* 47 (2023): 225-247.

⁴⁸ Cook ‘Copyright and Literary Property’ (p. 386).

age. For example, in the eighteenth century it was not unheard of that ‘fans’ wrote entire sequels or reworked the original story to fit their own needs, although then it was more considered a form of collaborative authorship.⁴⁹ Now, in the age of copyright, which was first introduced in 1710, similar actions can have ramifications, as happened when a Swedish author wrote a sequel to *Catcher in the Rye* by J.D. Salinger and published it.⁵⁰ The details of this case will be discussed later in this chapter.

Williams specifies that that which fanfiction is based upon is original, insinuating the fanfiction is not. Both Williams and Lipton also stress that fanfiction is in essence non-commercial, as to commercialize it would open authors up to copyright litigation as will be discussed further in this chapter. Fanfiction shares elements with the retelling genre, wherein books are written about stories such as myths or folk tales that were either never protected under copyright or the copyright has since lapsed. Both borrow worlds or characters from a different source; however, the traditionally non-commercial purpose of fanfiction sets it apart, as does the copyright protection of the original source. Non-commercial fanfiction exists in a grey area of not being legal or illegal but tolerated (for a more detailed discussion of the legalities see the Fanfiction and Copyright section). Some authors, like J.K. Rowling, author of the *Harry Potter* series, have encouraged fanfiction, as long as it remains non-commercial, while other authors like Anne Rice, author of *the Vampire Chronicles*, have explicitly denounced fanfiction of their work.⁵¹

Although fanfiction is in essence non-commercial, there are ways to commercialize it. Non-commercialized fanfiction is often posted on websites or blogs, and the fanfiction creator receives no compensation for them. Commercialized fanfiction, however, can be further divided in licensed or unlicensed commercial fanfiction. *Kindle Worlds* was a program run by Amazon that allowed fanfiction creators to publish and sell their fanfiction through *Kindle Worlds* as long as Amazon had obtained that specific licensing. For example, if Amazon had obtained the license for *Twilight*, one could publish and sell their *Twilight* fanfiction through *Kindle Worlds* and Stephanie Meyer, the author of *Twilight*, would receive

⁴⁹ Matthew H. Birkhold, *Characters before copyright : the rise and regulation of fan fiction in eighteenth-century Germany*. First edition. (Oxford: Oxford University Press, 2019).

⁵⁰ Cook ‘Copyright and Literary Property’ (p. 392).

⁵¹ Lipton, ‘Copyright and the Commercialization of Fanfiction’ p. 429; Gita Jackson, ‘Anne Rice Really Hated When People Made Her Characters Bone’, VICE, 13 December 2021, <<https://www.vice.com/en/article/anne-rice-really-hated-when-people-made-her-characters-bone/>> [Accessed 28 May 2025].

a small percentage and the copyright over the fanfiction.⁵² *Kindle Worlds* shut down in 2018 and this licensing system has mostly shut down with it.

Fanfiction and authorship

Fanfiction is a perfect vehicle through which to explore the concept of authorship as according to Kristina Busse ‘many of the rifts and contradictions inherent in discourses of authorship are most evident and play themselves out especially clearly in fan authorship’.⁵³ For the most part, fanfiction is written by fans for fans and is an example of how in contemporary reading culture the reader plays a more prominent role in literary authorship as the reader can become the author. As Kristina Busse writes ‘fans, with their often dual role of reader and writer [...] can demonstrate how our understanding of the author has shifted from a seemingly unified entity to a more complex and shifting entity’.⁵⁴

According to authorship theory before the Death of the Author movement, the reader was meant to be the passive recipient of whatever the author intended to tell them, although reality was much less black and white.⁵⁵ Fanfiction allows fans to ‘hijack’ the author’s intended meaning and their authority.⁵⁶ However, there remains a stigma on fanfiction, with many not seeing it as ‘real’ authorship or ‘serious’ writing. There have been different reasonings for this phenomenon. It is in part due to wider cultural phenomena, as the fanfiction space is dominated by women and the LGBTQIA+ community that are generally marginalized.⁵⁷ Another part is the lack of an author identity in fanfiction.

Most fanfictions are ‘published’ under screennames, pseudonyms or anonymously. It is the norm within the space, but perhaps also roots in society’s contempt for fanfiction causing fanfiction authors to not want it connected to their real names. However, as Busse said ‘if authorship is about authority and control, then choosing not to reveal information may be as important as revealing it’⁵⁸. Therefore, a pseudonymous or anonymous screen

⁵² Lipton, ‘Copyright and the Commercialization of Fanfiction’

⁵³ Busse, ‘The Return of the Author’, p. 20.

⁵⁴ Busse, ‘The Return of the Author’, p. 20.

⁵⁵ Henry Jenkins, ‘Textual Poachers’ in *The Fanfiction Studies Reader*, ed. by Karen Hellekson and Kristina Busse, (University of Iowa Press, 2014), pp. 26-43, doi:10.2307/j.ctt20p58d6.6.

⁵⁶ Jenkins, ‘Textual Poachers’.

⁵⁷ Kristina Busse. ‘Introduction.’ In Busse, *Framing Fan Fiction: Literary and Social Practices in Fan Fiction Communities*, (University of Iowa Press, 2017), pp. 1-18 (p. 13).

⁵⁸ Busse, ‘The Return of the Author’, p. 22.

name does not necessarily indicate a lack of authorship, especially when a fanfiction author has created what Foucault called the 'author function' around that screen name.⁵⁹

Additionally, fanfiction authors can indeed form an established identity under a screen name. Fanfiction readers can 'follow' certain authors and read all their stuff while others tend to search by 'tags' i.e. content.

Fanfiction is fiction, and the subject matter leads to some not taking it seriously which can contribute to the fanfiction stigma. Lastly, the fact that fanfiction is based on other people's work, and therefore unoriginal causes some people to claim it is not 'real' or 'serious' writing. After all, as established in the introduction, originality has long been a requirement for authorship. However, as Lipton stresses 'creators of new works have never written in a vacuum' and continues that all creators have drawn inspiration from everything that came before.⁶⁰ This echoes the reason Chaucer called himself a *compiler* in the fourteenth century (see introduction), because the work already existed and he merely put it together in a novel way.

Lipton wrote that 'writing fanfiction is now acknowledged as a legitimate avenue toward becoming a professional author'.⁶¹ Fanfiction authors can, for example, gain recognition for their work and then be offered a book deal for an original work, or they can be offered to (with the help of a publisher) alter their fanfiction so that it can be published as an original work. It appears that while fanfiction authors may not possess full authorship, fanfiction can be a steppingstone toward that goal, perhaps simply because it is a great practice in the art of writing. This line of thinking stresses that one can only possess full authorship when their work is original. Although reality is rarely so black and white. Something originally 'published' as fanfiction, can be commercialized to be traditionally published as original work that is no longer an obvious piece of fanfiction. However, in that case the author would need to make adjustments to their text to avoid copyright litigation. While what results of this may no longer strictly be fanfiction, that is where its origins lie. Therefore, commercialized fanfiction is applicable to this thesis.

With fanfiction, the only road to achieving true professional authorship seems to be through commercialization and originality, while fanfiction is relegated to steppingstone.

⁵⁹ Busse, 'The Return of the Author', p. 19; Bertens 'Postmodernist Authorship', p. 188.

⁶⁰ Lipton, 'Copyright and the Commercialization of Fanfiction' p. 432.

⁶¹ Lipton, 'Copyright and the Commercialization of Fanfiction' p. 438.

Additionally, traditional authors are known as authors under the general public, while fanfiction authors are known as ‘fanfiction authors’, so that would also indicate only a qualified form of authorship.

However, fanfictions can have as many words and chapters as the average published original work, and there are innumerable fanfictions to be found online. Fanfiction authors seem to spend plenty of time in the act of writing, would that then not be enough to qualify them as authors? Or does this societal phenomenon instead indicate that the real condition for authorship is commercialization? Or is it professionalization? Many fanfiction authors see themselves not as professional authors but rather consider their fanfiction ‘a collective and domestic pastime’.⁶² So does it then indeed come down to originality? The short answer is all of the above and none of them. Scholars have not agreed on a single concrete theoretical definition of authorship or its conditions, it seems to be a more fluid concept that changes depending on the situation. For example, if fanfiction authors are qualified as having authorship, that would then change the legal ramifications of fanfiction and if all fanfiction authors possess social authorship, that concept would adapt. So how does authorship change with fanfiction?

Fanfiction and copyright

Copyright law provides a structured way to examine authorship, so I will now consider copyright in fanfiction. Copyright is automatically provided, but a copyright holder must legally prosecute to execute their rights. Fanfiction can generally conflict with three of the rights provided to the original author and publisher under copyright. These are reproduction rights, distribution rights and the rights to derivative works.⁶³

Reproduction rights in this case are not meant in the literal sense, as the fanfiction does not word-for-word copy the entirety of the original work. Instead, whether the reproduction rights are infringed upon depends on whether the contents of the fanfiction are canon or non-canon, meaning whether or not they are in line with the original work (see Hazelwood case study). Williams explains ‘non-canon compliant fanfics are more akin to

⁶² Busse, ‘The Return of the Author’, p. 34.

⁶³ Williams, ‘I’ll Take It From Here’.

creating an independent work that merely draws inspirations from another creator's work'.⁶⁴ When a fanfiction author directly quotes or even references copyrighted material, it would fall under violation of reproductive rights.

Distribution rights under the U.S. copyright act specify the physical distribution of the work, which rarely happens with fanfiction as it is generally 'published' and spread digitally. However, distribution rights can be violated when fanfiction authors or readers have their books physically bound and doubly so if they were to sell their bound copy, which would then possibly infringe on the reproduction rights too.⁶⁵ This comes down to whether a judge finds that distribution and reproduction are exclusive to the original work (so word-for-word copies) or also derivative works.

The rights relating to derivative works are the most explicitly violated by fanfiction, yet not always deemed so in court. In many cases, fanfiction authors will argue the so-called 'fair use defense' should mean their work does not break copyright restrictions. The fair use defense applies for example when the work is used for educational purposes or when relatively small amounts of work are taken.⁶⁶ It also depends on the purpose of copying the characters. For example, in fanfiction, characters usually maintain their original personalities and backstories, which would mean they are within canon. However, in 2001, *The Wind Done Gone* by Alice Randall was deemed not to break the copyright of *Gone With the Wind* by Margaret Mitchell due to its parodic nature.⁶⁷ The parody 'was unlikely to be confused with the original work', therefore copyright was not breached.⁶⁸ This is referred to as transformative use, meaning whether it 'adds something new with a further purpose or different character' to the original.⁶⁹

⁶⁴ Williams, 'I'll Take It From Here' p. 240.

⁶⁵ Williams, 'I'll Take It From Here' p. 242.

⁶⁶ 'U.S. Copyright Office Fair Use Index', U.S. Copyright Office, n.d. <<https://www.copyright.gov/fair-use/>> [Accessed 28 May 2025].

⁶⁷ Richard Schur, 'The Wind Done Gone Controversy: American Studies, Copyright Law, and the Imaginary Domain', *American Studies*, Spring/Summer 2003, Vol. 44, No. 1/2, New Voices in American Studies (Spring/Summer 2003), pp. 5-33.

⁶⁸ Williams, 'I'll Take It From Here' p. 244.

⁶⁹ 'Copyright and Artificial Intelligence Part 3: Generative AI training', U.S. Copyright Office, May 2025, <<https://www.copyright.gov/ai/Copyright-and-Artificial-Intelligence-Part-3-Generative-AI-Training-Report-Pre-Publication-Version.pdf>> [Accessed 8 June 2025] p. 37.

There is something called ‘the four-factor fair use test’ that serves as a guide to when fair use is applicable.⁷⁰ The four factors are the purpose of using the material (1), the nature of the copyrighted material (2), the extent of the use (3) and the (potential) market effect (4). The first factor is also based on transformativeness and commerciality.⁷¹ The four factors are usually interconnected. Fanfiction when commercialized could almost always be argued to affect the market of the original, which would indicate the fair use defense does not apply. However, in some cases fanfiction can also have a positive effect on sales of the original by reigniting interest.⁷²

All in all, there are no clear boundaries or laws as to what would and would not be allowed in fanfiction, it is mostly handled on a case by case basis, although there are guidelines to be found in precedent. However, most copyright cases regarding fanfiction never make it to court. Oftentimes the threat of legal action, i.e. a cease and desist letter, is enough for the fanfiction author to remove their fanfiction from fanfiction sites.⁷³ Additionally, some copyright holders and legal organizations have started providing guides as to what can and cannot be done legally in a fanfiction.⁷⁴ These help guide fanfiction authors to avoid legal ramifications without hindering all of their creativity. Almost all cases that do make it to court and receive a verdict are ones that have tried to commercialize their work or sought out legislation on their own. Therefore, the next section will look at some specific case studies of fanfiction.

Case studies

Those who reject their fanfiction origins

There are a few different approaches fanfiction authors can take in obtaining a traditional publishing career. First, there are those that try to get away from their fanfiction authorship. In 2007, Cassandra Clare published *City of Bones*, the first installment in the book series *The*

⁷⁰ ‘Measuring Fair Use: The Four Factors’, Stanford Libraries Copyright and Fair Use, n.d. <<https://fairuse.stanford.edu/overview/fair-use/four-factors/>> [Accessed 28 May 2025].

⁷¹ ‘Copyright and Artificial Intelligence Part 3: Generative AI training’, U.S. Copyright Office, p. 37.

⁷² Williams, ‘I’ll Take It From Here’.

⁷³ Williams, ‘I’ll Take It From Here’.

⁷⁴ Natalie Elizaroff, ‘The Fine Line between Fan Art, Fan Fiction, and Finding Yourself Sued’, @theBar Chicago Bar Association, n.d., <<https://cbaatthebar.chicagobar.org/2022/11/11/the-fine-line-between-fan-art-fan-fiction-and-finding-yourself-sued/>> [Accessed 28 May 2025]; ‘Fan Content Policy’, EPIC Games, n.d., <<https://www.epicgames.com/site/en-US/fan-art-policy>> [Accessed 28 May 2025].

Mortal Instruments. This first book was a smashing success and as of April 2025 has an average rating of 4.07 with over two million readers rating it on the popular book review site Goodreads.⁷⁵ The series ran for six books, ending in 2014, and has been adapted into graphic novels, a movie in 2010, and a TV series that ran from 2015 to 2019. All in all, the *Mortal Instruments* was a quite successful endeavor and has amassed over ten thousand fanfictions of the series on AO3.⁷⁶

Remarkably, Cassandra Clare herself also started out as a fanfiction author. Cassandra Clare originally wrote *Harry Potter* and *The Lord of the Rings* fanfiction. It has also been rumored, though not confirmed by Clare, that *City of Bones* started as a *Harry Potter* fanfiction and that the two main characters started out as Draco Malfoy and Ginny Weasley.⁷⁷ Although Clare may not have confirmed this particular origin, whole passages and story elements of Clare's fanfiction reappear in *The Mortal Instruments* series, so they are certainly related.⁷⁸ Since launching her traditional writing career, Clare has scrubbed her fanfictions from the web and seemingly no longer wishes to be associated with them. Clare's website makes no mention of her fanfiction days, although it does state her approval of people writing fanfiction of her work.⁷⁹ This separation of her identity as a fanfiction author and a traditional author could be for many reasons. First, Clare's fanfictions have been involved in some controversy.⁸⁰ Most notably, Clare was accused of plagiarism in her fanfictions which led her to be banned from the website she was publishing on, *Fanfiction.net*. Second, Clare could simply want to get away from the stigma around fanfiction to gain respect as a traditional author.⁸¹

The plagiarism allegations are interesting when considering the complications of copyright within fanfiction. The fact that there can be plagiarism allegations within the

⁷⁵ 'City of Bones', Goodreads, n.d. <https://www.goodreads.com/book/show/256683.City_of_Bones> [Accessed 28 May 2025].

⁷⁶ 'Fandoms > Books & Literature', Archive Of Our Own, n.d. <https://archiveofourown.org/media/Books%20*a%20Literature/fandoms#letter-M> [Accessed 28 May 2025].

⁷⁷ Camille Nagy, 'Cassandra Clare is Why I Read', The Michigan Daily, 29 October 2024, <<https://www.michigandaily.com/arts/b-side/cassandra-clare-is-why-i-read/>> [Accessed 28 May 2025].

⁷⁸ Nagy, 'Cassandra Clare is Why I Read'

⁷⁹ 'My Bio', Cassandra Clare, n.d. <<https://cassandraclare.com/about/>> [Accessed 28 May 2025].

⁸⁰ Sabrina Rojas Weiss, 'Everything You Need To Know About Cassandra Clare's Controversies', *Refinery 29*, 13 January 2016, <<https://www.refinery29.com/en-us/2016/01/100329/cassandra-clare-plagiarism-controversy>> [Accessed 28 May 2025].

⁸¹ Williams, 'I'll Take It From Here' p. 246.

fanfiction community indicates that while taking characters et cetera from established authors and books is accepted as a prerequisite of the genre, taking plot points and ideas from other fanfiction creators or works outside of the one the fanfiction is explicitly based on, is frowned upon, at least enough to warrant a permanent ban from the website. However, no legal action was taken.

Cassandra Clare seems to be a success story, showing how fanfiction can be an avenue to becoming a traditionally published author. As Williams put it: 'Clare's writing is a great example of how fanfiction can be a vehicle for independent ideas'.⁸² By the time *City of Bones* was published, all elements borrowed from other franchises were successfully changed, leading to what can now be considered an original piece of work. Clare's case, at least in her own eyes, seems to echo the sentiment that fanfiction authors do not (yet) possess real authorship.

Those who claim their fanfiction origins

On the other end of the spectrum are authors that proudly claim their fanfiction authorship days. One prime example is Ali Hazelwood, author of *The Love Hypothesis*, published in 2021, which originally started as a *Star Wars* fanfiction. *The Love Hypothesis* has also been wildly successful and has earned a 4.12 star average from more than 1.5 million readers on Goodreads.⁸³ Hazelwood appears not to be as opposed to the possible stigma surrounding fanfiction, neither as an author nor as a reader. In fact, the 'about me' section on her website proudly states 'prowling A03' as one of her favorite pastimes.⁸⁴ Additionally, one can still find and read Hazelwood's fanfictions, with the exception of the ones she eventually published and sold.

Hazelwood was able to traditionally publish her fanfiction about Rey and Kylo Ren from the *Star Wars* universe with minimal changes. One change she did make was the character's names. However, she chose the name Adam for her male main character in reference to actor Adam Driver who portrayed Kylo Ren in the *Star Wars* franchise. Hazelwood is clearly not embarrassed about her fanfiction roots. Williams calls *The Love*

⁸² Williams, 'I'll Take It From Here' p. 235.

⁸³ 'The Love Hypothesis', Goodreads, n.d. <https://www.goodreads.com/book/show/56732449-the-love-hypothesis?ac=1&from_search=true&qid=7z82kddqFV&rank=1> [Accessed 28 May 2025].

⁸⁴ 'About Ali', Ali Hazelwood, n.d. <<https://alihazelwood.com/about/>> [Accessed 28 May 2025].

Hypothesis a ‘thinly veiled fanfiction’ and writes that ‘[Hazelwood] made no clear effort to distance her work from the source material’.⁸⁵ Hazelwood was able to do this without breaching copyright because despite the similarities between the characters, they are not exactly as they are within the *Star Wars* universe. In other words, they were non-canon. Because *The Love Hypothesis* plays out in a different universe, copyright does not restrict the use of the characters. This indicates that, at least legally, one’s work does not have to be fully original for Hazelwood to publish and obtain copyright to *The Love Hypothesis* without the author of *Star Wars* to pursue litigation. That would then also legitimize fanfiction authorship as being authorship. In this case, the only significant difference between Hazelwood’s fanfiction and published work would be the commercialization of it.

Author E.L. James falls somewhere between Hazelwood and Clare. James rose to fame with her *50 Shades of Grey* trilogy that started out as a *Twilight* fanfiction but has since been edited and changed to be able to be traditionally published without infringing copyright. The first installment of the book series has more than 2.5 million reviews on Goodreads and the trilogy has since been made into three successful movies.⁸⁶ In her ‘about me’ section on her website, James, like Clare, does not mention her days of writing fanfiction.⁸⁷ Additionally, she has removed her fanfiction from the internet after successfully publishing her first traditional book. However, contrary to Clare, the fanfiction origins of her *50 Shades* trilogy are an open secret. So much so, that Stephanie Meyer, the author of *Twilight*, has commented about it, stating ‘[James] had a story in her and so it would’ve come out another way’.⁸⁸ This would indicate that authorship would not depend on being a commercial or purely original work. Fanfiction in this case is a steppingstone but does not diminish the authorship aspect.

Those who deny writing fanfiction

Then there are those fanfiction authors that write sequels or continuations without really claiming them as fanfiction. Almost all fanfiction gets edited to lose the borrowed elements before being traditionally published. This is of course to avoid plagiarism and copyright

⁸⁵ Williams, ‘I’ll Take It From Here’ p. 237.

⁸⁶ ‘Fifty Shades of Grey’, Goodreads, n.d. <https://www.goodreads.com/book/show/10818853-fifty-shades-of-grey?from_search=true&from_srp=true&qid=c0JBtnS9NR&rank=1> [Accessed 28 May 2025].

⁸⁷ ‘About Me’, E.L. James, April 2021, <<https://www.eljamesauthor.com/about-me/>> [Accessed 28 May 2025].

⁸⁸ Williams, ‘I’ll Take It From Here’ p. 236.

litigation but makes the finished result less fanfiction-like. However, some people do not adjust their work to become more original. One such case is the previously mentioned *Catcher in the Rye* sequel written by Fredrik Colting. J.D. Salinger, the writer of the original work published in 1951, sued the Swedish author of the sequel in 2010.⁸⁹ Originally, the defendant argued that his work was not meant to be a sequel, despite the title being *60 years later: Coming Through the Rye*. He also said that there were significant differences between the original and his work, only to later change his stance to saying it was meant to be satirical and a critical commentary on the original work. If that were the case, the fair use defense would apply as it did in the *Wind Be Gone* case. However, it was ruled to be substantially similar to *Catcher in the Rye*, and neither satirical nor a critical commentary and therefore to breach copyright. Colting never called his own work fanfiction, rather positioned it as literature, but except for the attempt at traditional publishing, his work has all the elements of fanfiction. Public opinion also hardly refers to this case as fanfiction. Perhaps this is due to the genre and subject matter being seen as more 'legitimate literature' than works like *Twilight*.

Another case of fanfiction sequels involved in legislation was when a *The Lord of the Rings* fanfiction author sued the Tolkien estate and the creators of *The Rings of Power* tv show on Amazon.⁹⁰ He claimed that they had infringed upon his copyright. Demetrious Polychron had written a sequel to *The Lord of the Rings* called *The Fellowship of the King*. He intended it to be the first in a series of seven books that built upon *The Lord of the Rings* book series. Polychron claimed that *The Rings of Power* infringed upon his copyright by using parts of his book in the show. Polychron apparently was of the opinion that by publishing and therefore commercializing his work, he owned full copyright. Eventually, it was ruled that neither the Tolkien estate nor Amazon could infringe on his copyright, considering he infringed the copyright of *The Lord of the Rings* in the first place. In other words, you cannot steal that which is already stolen. The Tolkien estate filed their own injunction to stop the distribution of *The Fellowship of the King* which was granted. Polychron also had to pay the

⁸⁹ 'Salinger v Colting', U.S. Copyright Office, 2010, <<https://www.copyright.gov/fair-use/summaries/salinger-colting-2dcir2010.pdf>> [Accessed 28 May 2025].

⁹⁰ Yasmin Rufo, 'Lord of the Rings fan fiction writer sued for publishing own sequel', BBC, 18 December 2023, <<https://www.bbc.com/news/entertainment-arts-67753073>> [Accessed 28 May 2025].

other parties' lawyer costs.⁹¹ This case clearly states that in the eyes of the law, fanfiction without attempting to make the work more original is wrong. However, it also shows that fanfiction authors like Polychron believe that they do in fact possess full authorship, regardless of the originality of their work. In this case, the work was both unoriginal and attempted to be commercialized, one of which seems to be a condition of authorship, and the other a condition of fanfiction.

Conclusion

Fanfiction functions as a great lens through which to examine authorship. Fanfiction is based on the original work of another, is generally non-commercial, and can be altered to be original on its own. This unoriginality, however, does not stop some from regarding fanfiction as authorship, nor does it stop some fanfiction authors from regarding themselves as possessing traditional authorship. This indicates that originality may not be so rigid a condition of authorship as some in history have regarded it to be.

It is necessary to alter fanfiction in order to publish it traditionally without encroaching on the copyright of the original. Fanfiction most explicitly encroaches on the derivative rights established by copyright, although it can also encroach on reproduction and distribution rights. Copyright has not necessarily adjusted to the emergence of fanfiction. In fact, fanfiction appears to operate largely outside the bounds of copyright due to its non-commercialized nature. Usually, fanfiction copyright infringement cases do not make it before a judge, but if they do it most often comes down to whether the fair use defense applies. These are protected instances wherein copyrighted material can be used anyway. However, this largely depends on the effect on the market and the nature of the use.

Fanfiction does not qualify as original and cannot be copyrighted because of the original copyright. Therefore, on its own, fanfiction cannot be said to establish legal authorship. However, fanfiction authors often do possess a form of social authorship. Fanfiction authorship appears to be a separate concept from traditional authorship because

⁹¹ Rufo 'Lord of the Rings fan fiction writer sued for publishing own sequel'; Safi Bugel, 'Copyright claim against Tolkien estate backfires on Lord of the Rings fanfiction author', The Guardian, 18 December 2023, <<https://www.theguardian.com/books/2023/dec/18/copyright-claim-against-tolkien-estate-backfires-on-lord-of-the-rings-fanfiction-author>> [Accessed 28 May 2025].

some authors claim one without claiming the other. Additionally, fanfiction can be used as a steppingstone to establish traditional legal and social authorship, although not all fanfiction authors seek to do so.

Not all who achieve traditional authorship claim their fanfiction origins, possibly due to the social ramifications of fanfiction being looked down upon as not real literature. Others claim it proudly, while others still do not distinguish between fanfiction authorship and traditional authorship. All in all, this chapter shows that while fanfiction does not appear to meet the originality clause, nor the copyrightability clause, it does not fall outside the concept of authorship in practice.

Chapter 2: Generative AI

'Authorship is encapsulated in the iron cage of a commercial language technology whose precise workings are unfathomable to the outside user' - Hannes Bajohr⁹²

What is AI

Generative Artificial Intelligence has grown exponentially in recent years. However, the questions of generative AI's relationship to authorship can be traced at least to Alan Turing and the Turing Test, which he developed in 1950. The test asks whether a user could tell that there was a program on the other end of their interactions or whether they felt they were conversing with another human, a feat that seems much more realistic now.

Artificial intelligence refers simply to when a computer can exhibit human-like intelligence or think like a human can. Jaime A. Teixeira Da Silva and Panagiotis Tsigaris describe AI as 'a machine learning tool that is not an autonomous, independent cognitive unit but needs to be directed, trained or supervised by humans'.⁹³

There are different forms of AI, but this chapter will focus on generative AI. Generative AI uses Large Language Models (LLMs) to generate new texts. Today, generative AI is pervasive in everyday life. Whether that be a chatbot as a customer service worker, a summary of the search results presented with a Google search, or a function in Microsoft Outlook that will write or correct your email for you. ChatGPT is a popular, easily accessible program that uses generative AI and is available to anyone with an internet connection. A user enters a prompt, for example 'what is generative AI?' and ChatGPT will use the information it has been trained on to provide an answer. However, one could also prompt ChatGPT to write an entire novel, poem, or other literary texts. The user can then adjust the prompt, edit the text on their own, publish the text as is, and anything in between. The crafting of prompts to optimize results is sometimes referred to as 'prompt engineering'.⁹⁴

⁹² Hannes Bajohr, 'Writing at a Distance: Notes on Authorship and Artificial Intelligence.' *German Studies Review* 47, no. 2 (2024): 315–337 (p. 324). doi:10.1353/gsr.2024.a927862.

⁹³ Jaime A Teixeira da Silva, and Panagiotis Tsigaris. 'Human- and AI-based Authorship: Principles and Ethics.' *Learned Publishing*, vol. 36, no. 3, (2023), pp. 453–62 (p. 455), <https://doi.org/10.1002/leap.1547>.

⁹⁴ 'Copyright and Artificial Intelligence Part 2: Copyrightability', U.S. Copyright Office, January 2025, <<https://www.copyright.gov/ai/Copyright-and-Artificial-Intelligence-Part-2-Copyrightability-Report.pdf>> [Accessed 28 May 2025] p. 5.

Generative AI is also being used in literary capacities.⁹⁵ However, one big limitation on generative AI is that it does not consider the meaning of words. Rather, ChatGPT combines words in a pattern it recognizes from its trained material. Therefore, there is no guarantee the output is factual, nor that it makes sense. Some users ask it to write whole novels they can then publish, while others ask it to check their original work, and others fall somewhere in between. These different scenarios will be explored in more detail later in this chapter. People have used computer assisted technologies for years without their intellectual ownership of their literary work being called into question. One example of such a technology is the editor tool in Microsoft Word that check grammar and spelling. Is generative AI just another tool that aids the author, without taking away from their authorship? Or does this changing landscape provide cause for another reevaluation of authorship?

As the historical overview of authorship shows, authorship as a concept grows with and adjusts to changes in the literary landscape when they occur. This chapter will look at the effects of AI in literature and whether the use of AI indicates authorship to be exclusive to humans and why.

Attitude

Just like there is a stigma surrounding fanfiction (see chapter 1) there is also a stigma surrounding AI-created works. There are a few different reasons for this. First, there is the general resistance to change, as happens for example with management changes, which has a lot to do with control and fear of the unknown.⁹⁶ People prefer the devil they know, rather than the devil they do not, so to speak.

Second, there are environmental concerns regarding AI. It takes considerable water and electricity to train and use AI which has environmental implications.⁹⁷ To many, including

⁹⁵ A.O. Scott, 'Literature Under the Spell of AI', *The New York Times*, 27 December 2023, <<https://www.nytimes.com/2023/12/27/books/review/writers-artificial-intelligence-inspiration.html>> [Accessed 28 May 2025].

⁹⁶ Noga Sverdlik, and Shaul Oreg. 'Beyond the Individual-level Conceptualization of Dispositional Resistance to Change: Multilevel Effects on the Response to Organizational Change.' *Journal of Organizational Behavior* 44, no. 7 (2023): 1066–77. doi:10.1002/job.2678.

⁹⁷ Adam Zewe, 'Explained: Generative AI's Environmental Impact', *MIT News*, 17 January 2025, <<https://news.mit.edu/2025/explained-generative-ai-environmental-impact-0117>> [Accessed 28 May 2025].

myself, using AI is therefore seen as irresponsible when it is not vital or when other avenues are already widely available without such environmental consequences.

Third, there is a general sense of anger at AI because creativity is supposed to be a purely human endeavor.⁹⁸ Additionally, these programs are being trained on this very human creativity by taking the work of authors without their consent. These authors rely on payment for their craft, thus AI enabling the circumvention of the human element interferes in the market authors rely on for survival (see AI Copyrightability).⁹⁹

Fourth, there is something called ‘the AI authorship effect’.¹⁰⁰ Kirk and Givi explain this in the context of marketing as follows. AI is seen as inauthentic, especially when it is not clearly disclosed to the reader that AI was involved. This inauthenticity then leads to a moral disgust, people feel lied to. Additionally, this effect is strengthened when the content is of an emotional capacity. After all, AI is a computer, not a human, and therefore has no feelings nor emotional capacity, which strengthens the feelings of inauthenticity. Kirk and Givi explain that in marketing, this then leads to less positive word of mouth and less loyalty. However, I feel this is also applicable in the literary context. If an established author were to use AI for a next installment, without disclosing that fact, readers could feel lied to and spread this disappointing news across social media, leading to a decrease in sales. Therefore, using AI both whether the author discloses it to the reader or not can be seen as a risk by authors.

Lastly, the introduction of AI makes authorship more accessible, for example as an accessibility aid for people with disabilities. This could expand the market, which could displease those who were acting in it before the shift. Similar to how during the industrialization of the book, when authorship became about making money rather than an author’s life’s work and everyone could suddenly become an author.¹⁰¹ This has exacerbated even more so, because now, one need not even write the book themselves. The increased accessibility to authorship can be considered to devalue the market, which some may not be happy with.

⁹⁸ John Potts, ‘Chapter Eight: AI vs. the Author’, in Potts, *The Near-Death of the Author: Creativity in the Internet Age*. 1st ed. (University of Toronto Press, 2022), pp. 146-159 (p. 152).

⁹⁹ Scott, ‘Literature Under the Spell of AI’.

¹⁰⁰ Colleen P. Kirk, and Julian Givi. ‘The AI-Authorship Effect: Understanding Authenticity, Moral Disgust, and Consumer Responses to AI-Generated Marketing Communications.’ *Journal of Business Research* 186 (2025): 114984-. doi:10.1016/j.jbusres.2024.114984

¹⁰¹ Latham, ‘Industrialized Print’.

AI and authorship

As the introduction showed, originality is a prominent condition placed upon authorship. The originality clause is not affected negatively or positively by the integration of generative AI into the writing process. In fact, an identical prompt issued in a single program would not yield the exact same output each time, which would make works even more likely to be original. However, Ada Lovelace, sometimes referred to as the first coder, was of the opinion that ‘the machine could not, in principle, produce anything new because all of its products could be traced back to the instructions of a human programmer’.¹⁰² This has since changed a bit in that generative AI will sometimes ‘hallucinate’ and produce non-factual output with information that is not prompted. It is not yet clear how to keep AI from doing this.¹⁰³

A possibly problematic aspect of generative AI is that it is trained on copyrighted material. OpenAI, the company behind ChatGPT claims that using copyrighted works to train their AI falls under fair use and therefore does not breach copyright. However, many rightsholders disagree while others feel that there is more to gain than to lose by allowing it; as of yet, this lively debate has no clear resolution.¹⁰⁴ The New York Times for example, is suing OpenAI and Microsoft for exploiting their content to train their AI without compensation or permission. Additionally, they claim that the AI programs are now in direct competition with the newspaper.¹⁰⁵ A group of authors such as George R. R. Martin and John Grisham have filed a similar lawsuit.¹⁰⁶ With how ChatGPT is trained, one could ask it to write a novel in the style of a particular author. How could that work then truly be considered original? Using generative AI to do so would be different from a human attempting to emulate their favorite author. Additionally, emulating tone or manner of

¹⁰² Bajohr ‘Writing at a Distance’, p. 236.

¹⁰³ Cade Metz and Karen Weise, ‘A.I. Is Getting More Powerful, but Its Hallucinations Are Getting Worse’, The New York Times, 5 May 2025, <<https://www.nytimes.com/2025/05/05/technology/ai-hallucinations-chatgpt-google.html>> [Accessed 8 June 2025].

¹⁰⁴ ‘Generative AI’, Author’s Alliance, n.d. <<https://www.authorsalliance.org/resources/generative-ai/>> [Accessed 28 May 2025].

¹⁰⁵ Bobby Allyn, ‘Judge allows ‘New York Times’ copyright case against OpenAI to go forward’, NPR, 26 March 2025, <<https://www.npr.org/2025/03/26/nx-s1-5288157/new-york-times-openai-copyright-case-goes-forward>> [Accessed 28 May 2025].

¹⁰⁶ Alexandra Alter and Elizabette A. Harris, ‘Franzen, Grisham and Other Prominent Authors Sue OpenAI’, The New York Times, 20 September 2023, <<https://www.nytimes.com/2023/09/20/books/authors-openai-lawsuit-chatgpt-copyright.html>> [Accessed 28 May 2025].

storytelling is different than copying entire speech patterns, which is what generative AI is trained to do.

One could argue that AI is trained on a tremendous volume of work, and it would therefore be more akin to the collective cultural background that all works are based on, creating this 'myth of originality'.¹⁰⁷ After all, as mentioned previously, many feel that no work is ever created in a vacuum, whether AI is involved or not. However, this, like most things, is not a question that can be answered with a simple yes or no. Instead, it is very dependent on the context. For example, if one asks ChatGPT to write something in a general style like a haiku or a sonnet, what follows could very well be considered original. We enter murky waters, however, when one asks ChatGPT to base its work on a specific literary work. I would argue that these works may not fill the originality condition of authorship, because it is not a person's original work, but based on another's original work(s) and written by a machine. After all, one could very well profit off of another author without correct compensation or permission, facilitated by AI. Additionally, given how AI pulls its output from all of these different sources and puts them together, can we even call what AI does writing? Or is it just 'mimicry and recombination'?¹⁰⁸

AI and copyright

Copyright law usually follows precedent. This means that copyright law tends to change in response to technological (or other) innovations, when current situations show that the existing law is no longer adequate. With the rise of AI, people (including former President of the United States of America Joe Biden) have started asking for more clarity and specific laws relating to copyright in AI. This has led the U.S. Copyright Office to investigate whether the current copyright law is sufficiently applicable to AI or if it needs to be adjusted.

They concluded that copyright is dependent on a human aspect. After all, the supreme court had decided that 'the author is [...] the *person* who translates an idea into a fixed, tangible expression entitled to copyright protection' (emphasis mine).¹⁰⁹ This means that if an entire work is written by AI, that work cannot obtain copyright protection. This is

¹⁰⁷ Busse, 'The Return of the Author', p. 21.

¹⁰⁸ Potts 'Chapter Eight' p. 152.

¹⁰⁹ 'Copyright and Artificial Intelligence Part 2: Copyrightability', U.S Copyright Office, p. 7.

because, while the human-written prompt provides the idea, there is no human aspect in the execution of it. The prompt itself also does not appear word for word in the output, nor is it a significant share of the output. Therefore, the output is fully machine generated.

This need for a human aspect is not exclusive to AI. For example, the U.S. Copyright Office also decided that a selfie taken by a macaque could not be copyrighted because they argued that non-human entities, in this case a monkey, do not fall under the Copyright Act.¹¹⁰ This appears to me to be a fitting conclusion. After all, neither monkeys nor AI care about copyright.

The U.S. Copyright Office also considered whether the prompts, which are human written, could be protected under copyright as intellectual property. However, they decided prompts are not copyrightable for a number of reasons. First, there is a lack of control.¹¹¹ The same prompt does not always result in the same output. Second, for joint authorship to apply, both parties must make a 'copyrightable contribution' and merely describing what a commissioned work should look like is not that.¹¹²

Similarly, Dutch copyright law states that when a work is completed under employ, the 'author' is determined to be the employer. Meaning they obtain the rights, rather than the individual writer. One could argue that a human employed AI to do the work which based on Dutch law should mean that they hold the rights. However, since there is no contract involved as proof of employment this argument is easily refuted.

Nonetheless, in most cases, the author provides a human aspect beyond the prompt. Whether that be by editing the output, inserting passages of their own writing, or perhaps they only used ChatGPT to edit their original work. In these cases, copyright is applicable to the extent of the human contribution.¹¹³ Meaning an author only holds copyright to their part in the output. The whole work could then be considered a derivative work of their original.

The U.S. Copyright Office also looked into the implications of training AI and whether that violates copyright.¹¹⁴ The argument that AI does not violate copyright is usually based in the Fair Use Doctrine. However, the U.S. Copyright Office found that especially factors one

¹¹⁰ 'Copyright and Artificial Intelligence Part 2: Copyrightability', U.S Copyright Office, p. 8.

¹¹¹ 'Copyright and Artificial Intelligence Part 2: Copyrightability', U.S Copyright Office, p. 20.

¹¹² 'Copyright and Artificial Intelligence Part 2: Copyrightability', U.S Copyright Office, p. 10.

¹¹³ 'Copyright and Artificial Intelligence Part 2: Copyrightability', U.S Copyright Office, p. 24.

¹¹⁴ 'Copyright and Artificial Intelligence Part 3: Generative AI training', U.S. Copyright Office.

and two were violated, most notably because there is significant market dilution.¹¹⁵ For example, if ChatGPT is trained on copyrighted romance novels to generate a romance novel when prompted, the output can then be placed in the same market as the original, leading to the original being less likely to be bought. In that case it does not matter whether the AI generated novel word-for-word contains significant parts of the original work. However, the report stresses that it would be case-dependent whether legal action should be taken. The U.S. Copyright Office does not provide any solutions to AI being trained on copyrighted material.

New forms of authorship

Whether or not one wishes otherwise, a bell cannot be unrung, and AI is here to stay. Therefore, the concept of authorship needs to grow and adapt. Hannes Bajohr proposes a way of nuancing the concept of authorship to accommodate AI. He does this by introducing degrees of authorship. Primary authorship would be traditional authorship, where a human author puts pen to paper or types up their own work. Secondary authorship would be 'writing a text that writes a text'.¹¹⁶ For example, there was a computer that was programmed to write poetry given specific rules and with specific terms as input. The general inflexibility would qualify it as secondary authorship. Tertiary authorship and quaternary authorship apply when programs basically get free reign where there may be certain guidelines or requirements, but the program is not bound by a select number of phrases or words it can choose from. The only difference between tertiary and quaternary authorship is whether or not the user programs the program themselves. ChatGPT would fall under quaternary authorship as the user 'prompts' a preprogrammed program and they do not have opportunity to adjust the program.

This is a very rigidly structured subdivision of a concept that is generally more fluid, and Bajohr does not claim it to be all-encompassing or perfect. However, this does show how authorship can change with new inventions and prompts us to consider the implications. Would primary authorship be 'worth' more than tertiary authorship? Or are they more like apples and oranges where in the end, they are all fruit and should be

¹¹⁵ 'Copyright and Artificial Intelligence Part 3: Generative AI training', U.S. Copyright Office, p. 65.

¹¹⁶ Bajohr 'Writing at a Distance', p. 233.

considered equally? Should using ChatGPT qualify one for editorship, rather than authorship as Bajohr suggests? These questions are best examined with case studies.

Case studies

Books fully written by AI

Those most deserving of the negative stereotype surrounding AI, in my opinion, are those who contribute nothing of their own. An example can be found in Belgium. A butcher and his brother-in-law had always dreamt of writing their own cookbook.¹¹⁷ One would assume that meant they had collected or written recipes of their own. However, AI gave them the opportunity to have their dream come true in a low effort way and the men took it. Every recipe and image in the cookbook was AI generated. The book is available for purchase, despite the fact that the men have personally only tried three of the recipes AI provided. They also plan to publish more cookbooks like this in the future. The men see no issue with this and are open about the involvement of AI. They see it as a harmless way to earn money and achieve their dreams. Were it not for the environmental implications and other previously mentioned negatives, I could understand that point of view. After all, they do not seem too concerned with the copyright status of their cookbook, so it could fall under a grey area and be tolerated similar to how fanfiction is. Additionally, one negative that is often mentioned is the oversaturation of the market. While I can understand that concern, it is not new or exclusive to AI. A similar sentiment was expressed when the mass production of books occurred.¹¹⁸ It appears that legally, there is nothing objectionable about the cookbook while morally it is subjective. As for authorship, the work is original, though not the brothers' original work. Additionally, it cannot be copyrighted, both because copyright in cookbooks is complicated (because ingredient lists cannot be copyrighted) and because of the complete AI involvement, it would imply that this is not a 'true' form of authorship.¹¹⁹

¹¹⁷ Annefleur van Wanroij and Sjoerd Fennema, 'Hoe boeken geschreven door AI het lezen kan beïnvloeden: "iedereen trekt nu alles in twijfel"', EenVandaag, 26 August 2024, <<https://eenvandaag.avrotros.nl/item/hoe-boeken-geschreven-door-ai-het-lezen-kan-beinvloeden-iedereen-trekt-nu-alles-in-twijfel/>> [Accessed 28 May 2025].

¹¹⁸ Latham, 'Industrialized Print'

¹¹⁹ 'What Does Copyright Protect', U.S. Copyright Office, n.d. <<https://www.copyright.gov/help/faq/faq-protect.html>> [Accessed 8 June 2025].

Zoe Kleinman received a book written by herself as a gift, only she never wrote it.¹²⁰ Instead, her friend Janet commissioned a company for a book written by AI that was written as if it were written by Kleinman. Neither Kleinman nor her friend claim authorship over this book. Neither does the company it was ordered from, although they do hold the copyright. It is not sold commercially and therefore does not affect the market of any copyrighted material. The book was written in Kleinman's style and with her name and photo on the cover seems to be a complete impersonation, although it does clearly state to be written by AI within the book. Kleinman herself says it mimics her writing so it cannot quite be called original, although it did also 'hallucinate' at times, for example, there were passages about her cat when Kleinman has none. This shows how easy it is for AI to impersonate someone and while this book was a gag gift that Kleinman could appreciate, I can imagine not everyone would feel the same. This company does seem to operate ethically, but with the widespread availability of AI, there is nothing stopping others from impersonating anyone using AI. This seems like a prime environment for violations of copyright, however there are very few legal guidelines in place for both prevention and legislation. Since AI has become a fixture, it would be prudent for better regulations to be put in place.

Both of these are books fully written by AI; this information is in both cases not hidden from the public. There are most likely also books fully written by AI that are passed off as being written by a person. Those could then also make claims to copyright and may be copyrightable (depending on the circumstances of course). When masquerading as human written, they may also be considered original. They would then fall under authorship, however that would then imply that authorship is not necessarily contingent on a human aspect, but rather whether a reader can tell who or what wrote the text, and the definition of Artificial Intelligence is that they could not. This brings us full circle, back to the Death of the Author as Barthes describes it. After all, the reader would determine the meaning and the worth of the book and the author takes on the role of *compiler*, as they merely reorder existing material. However, Kenneth Goldsmith suggested that 'while the author won't die, we might begin to view authorship in a more conceptual way: perhaps the best authors of the future will be ones who can write the best programs with which to manipulate, paste

¹²⁰ Zoe Kleinman, 'How an AI-written book shows why the tech "terrifies" creatives, BBC, 31 January 2025, <<https://www.bbc.com/news/articles/cp8k5gezykyo>> [Accessed 28 May 2025].

and distribute language based practices'.¹²¹ Goldsmith interestingly awards authorship more so to the programmers of the AI systems than the users and moves away from terminology like books and texts.

Books written in part with AI

However, in most cases, AI is used in combination with human writing. Sean Michaels wrote *Do You Remember Being Born*, a novel about a collaboration between a poet and an AI system trained to write poetry. The poet is based on Marianne Moore, a real-life poet who died in 1972. The passages written by the program in the novel, were written by AI, and the rest was written by Michaels. The AI was trained on Moore's work, which could be controversial considering Moore did not give permission and her work is protected under copyright. The novel explores conversations between the two to 'help bend Marian's life towards human connection' as per the description.¹²² The novel has been nominated for or awarded multiple awards, such as 'A best book of 2023'.¹²³ Michaels is an established author and the awards for this novel appear to solidify his claim to authorship. Perhaps, because he is already an established author, he feels more warranted in claiming authorship despite his use of AI, as opposed to a novice who may feel the need to 'prove' themselves first. The book has been rated 3.79 stars on Goodreads.¹²⁴ It appears to be copyrightable, although that can often only be proved once someone sues for breach of copyright after a (perceived) infringement. The New York Times Book Review calls it '[a] timely and lovely new novel', indicating the condition of originality is met. Neither of the book descriptions on Amazon nor Goodreads make mention of AI being used in the writing process. However, Michaels

¹²¹ Jakob Stougaard-Nielsen, 'The Author in Literary Theory and Theories of Literature' in *Cambridge Handbook of Literary Authorship*, ed by Ingo Berendsmeyer, Gert Buelens and Marysa Demoor (Cambridge University Press, 2019), pp. 270-287 (p. 284)

¹²² 'Do You Remember Being Born', Goodreads, n.d., <<https://www.goodreads.com/book/show/123856309-do-you-remember-being-born>> [Accessed 28 May 2025].

¹²³ 'Do You Remember Being Born?: A Novel', Amazon, n.d., <https://www.amazon.nl/dp/1662602324/ref=sr_1_1?mk_nl_NL=%C3%85M%C3%85%C5%BD%C3%95%C3%91&crd=3G6FSODMWET9V&dib=eyJ2IjojMSJ9.FbPD36GdA0vmqQg9dk4BodLnaOGPDVfGcpcpw3xIHsRNeREhKZlYxUijhw8UNSP_oatUsJjCV43zKx8i850yE0d_56YneQqa2ko4fNgK9-VsxRscaiO6WTPiCCukCyUImMcAKgSgYh5a42xFAjinoQ.31FWm2vp-VJ8GxYoiQPmu2OruG4L_9ahZvzGJ4GzvwM&dib_tag=se&keywords=do+you+remember+being+born&qid=1746527396&sprefix=do+you+remember+being+born%2Caps%2C92&sr=8-1> [Accessed 28 May 2025].

¹²⁴ 'Do You Remember Being Born', Goodreads.

does clearly state so on his website.¹²⁵ This case shows that using AI would not disqualify someone from social authorship.

A prestigious literary prize in Japan was awarded to Rie Kudan in 2023. Kudan revealed in her acceptance speech that she used AI to generate an estimated 5% of her novel.¹²⁶ She said that AI helped her in her creativity. As established, creativity is sometimes regarded as a purely human trait and Kudan notably did not claim the AI was creative, only that it assisted her in her creativity. The use of AI mirrors the plot of the novel, in which an architect lives in a society that depends on AI. Kudan has also been open about using AI in her personal life and has said to continue using AI to make the most of her creativity. While the choice to have a book partially written by AI win the award was a little controversial, Kudan clearly has also been awarded legitimate authorship.¹²⁷ After all, the work is again copyrightable and original. There is no Goodreads rating or other way to gauge the international reception of the book, as the English version will not be published until August 2025.

AI as a tool

Then there are those who use AI as a tool. I expect that most who use AI in their editing process do not do so openly. However, I'm sure they exist. Another way in which AI can be a tool in the writing process is as a disability aid. AI has been used in that manner for years, for example in text-to-speech technologies. Generative AI is 'empowering creators with disabilities' as stated by the U.S. Copyright report.¹²⁸ One such example is Elisa Shupe. As mentioned in the introduction, while copyright is automatically granted once a work is completed, in the United States, one must register their work with the U.S. Copyright Office to be able to legally pursue all rights and protections provided by copyright. Shupe attempted to register her work in late 2023. Shupe is a U.S. veteran who openly admits to

¹²⁵ 'Do You Remember Being Born', Sean Michaels, n.d., <<https://byseanmichaels.com/#doYou>> [Accessed 28 May 2025].

¹²⁶ Sonja Anderson, 'ChatGPT Helped Write This Award-Winning Japanese Novel', Smithsonian Magazine, 24 January 2024, <<https://www.smithsonianmag.com/smart-news/this-award-winning-japanese-novel-was-written-partly-by-chatgpt-180983641/>> [Accessed 28 May 2025].

¹²⁷ Christy Choi and Francesca Annio, 'The winner of a prestigious Japanese literary reward has confirmed AI helped write her book', CNN Style, 19 January 2024, <<https://edition.cnn.com/2024/01/19/style/rie-kudan-akutagawa-prize-chatgpt/index.html>> [Accessed 28 May 2025].

¹²⁸ 'Copyright and Artificial Intelligence Part 2: Copyrightability', U.S Copyright Office, p. 37.

using AI in her writing process, in fact she mentioned it in her original copyright registration form. Her original application was rejected because of her AI use, however Shupe appealed the decision and won. She claimed that as she was determined to be 100% disabled, she used AI as a disability aid, rather than as a stand-in for human writing and to deny her copyright application was discriminatory. Copyright was eventually granted, but with a caveat. Shupe was not considered the author of the full text, but rather ‘the author of the “selection, coordination, and arrangement of text generated by artificial intelligence”’.¹²⁹ The wording of this order is similar to the language used by Goldsmith about manipulating, pasting and distributing. This decision is in line with Part 2 of the U.S. Copyright Office report on Copyright and Artificial Intelligence that was published in January 2025 which states that copyright can be granted, but only to the extent of the human element.¹³⁰

While the work is technically copyrightable, the citing of the text being generated by AI indicates that the U.S. Copyright Office would not see it as an equal level of authorship to those with primary authorship. They, at least, see a difference in valuation of authorship between the levels. Shupe, however, disagrees. She claims that she worked up to fourteen hours per day working on her draft, editing and rearranging the AI output. Shupe believes that due to the time and effort she put in, she should be able to claim the whole output as being hers, however, she is content with the compromise of a narrower copyright. In their report the U.S. Copyright Office writes ‘there is an important distinction between using AI as a tool to assist in the creation of works and using AI as a stand-in for human creativity’ and I find myself in agreement.¹³¹ The difficulty remains in where the line is. Should one put in 1000 hours before they ‘deserve’ authorship? More? Why should it matter? Of course, to pursue legal action, it must be clear who the author is, but what if there is no need for that? Is it too puritan and outdated to think that one should not be able to call oneself a ‘true’ author if they are not the one who wrote the text? After all, beyond the legal aspect, anyone can call themselves anything. In fact, no one is legally obligated in any way to admit to using AI, nor to admit to the extent of it. There could be many more cases of AI (assisted) literature. These are all valuable considerations; however it is undeniable that AI changes how we view authorship.

¹²⁹ Knibbs ‘How One Author Pushed the Limits of AI Copyright’.

¹³⁰ ‘Copyright and Artificial Intelligence Part 2: Copyrightability’, U.S Copyright Office, p. 24.

¹³¹ ‘Copyright and Artificial Intelligence Part 2: Copyrightability’, U.S Copyright Office, p. 12.

Conclusion

This chapter explored the ways in which the technological advancement of Generative AI has changed legal and social authorship. Generative AI works on pattern recognition of trained material, rather than thought. The use of copyrighted material to train AI has been determined not to fall under fair use, especially because of the market dilution AI causes.

There is a stigma surrounding AI use based on environmental concerns, the effect on the market and 'the AI authorship effect'. Additionally, creativity is often seen as a purely human trait. This sentiment is echoed in the U.S. Copyright Office's determination that copyright can only be granted to the extent of the human element.

AI can be argued to satisfy the originality aspect of authorship, because prompts never result in the exact same output and AI programs can hallucinate new non-factual information. However, because it is trained on copyrighted material and said to mimic and recombine that material, it is often assumed not to be truly original. Therefore, material purely written by AI cannot be said to indicate legal authorship. However, in the majority of cases AI is used as a tool or in combination with human writing and can a level of originality and copyrightability can be achieved to establish legal authorship.

AI provides advancements in disability aids which allows for more accessibility in literature. This increased accessibility can then affect the market. AI cannot be said to always achieve legal authorship, yet AI (assisted) literature can be published and can receive prizes which indicates that social authorship would not be affected by AI use. The rise of AI has inspired a new classification of authorship that quantifies authorship based on the level of AI involvement. All in all, examining authorship in AI shows that authorship goes beyond originality and copyrightability.

Chapter 3: Ghostwriting

‘For the thousandth time in my ghostwriting career, I reminded myself: It’s not your effing book.’ -J.R. Moehringer¹³²

What is ghostwriting

Ghostwriting is sometimes used to refer to authors writing ghost characters. In this thesis, I refer to ghostwriting in the context of when the majority of the text is written by someone other than the named author. For the sake of clarity, in this chapter I will refer to the ghostwriter as the ghostwriter and the named entity as the author, regardless of their authorship status.

Ghostwriting happens in many fields: legal, medical, literary, and more. In all genres, this complicates the concept of authorship, even though the concept of authorship also differs between the fields. Especially in medical literature, which is a field that relies on publications and traditionally allows space for multiple authors, for someone to put in a significant amount of work but to not receive credit (or perhaps to be pressured to relinquish their credit) is seen as ‘unethical authorship practice’ and has led to the creation of authorship criteria to prevent it.¹³³ In this context AI can also function as a ghostwriter when it is not clearly stated that AI was used. With human ghostwriters this often comes down to young researchers that do not get named as authors but provide significant parts of the finished product.¹³⁴ Brandt wrote that ‘ghostwriting can both artfully exploit and at times offensively violate normal assumptions of writing and reading’.¹³⁵

¹³² J.R. Moehringer, ‘Notes From Prince Harry’s Ghostwriter’, *The New Yorker*, 8 May 2023, <<https://www.newyorker.com/magazine/2023/05/15/j-r-moehringer-ghostwriter-prince-harry-memoir-spare>> [Accessed 28 May 2025].

¹³³ Fiona Draxler, Anna Werner, Florian Lehmann, Matthias Hoppe, Albrecht Schmidt, Daniel Buschek, and Robin Welsch. ‘The AI Ghostwriter Effect: When Users Do Not Perceive Ownership of AI-Generated Text but Self-Declare as Authors.’ *ACM Transactions on Computer-Human Interaction* 31, no. 2 (2024): 1–40 (p. 5). doi:10.1145/3637875.

¹³⁴ Teixeira da Silva, Tsigaris ‘Human- and AI-based Authorship’.

¹³⁵ Deborah Brandt, “‘Who’s the President?’: Ghostwriting and Shifting Values in Literacy.” *College English* 69, no. 6 (2007): pp. 549–571 (p. 551). doi:10.58680/ce20075871.

Ghostwriting is related to death in more ways than just the name and inclusion of ghostly characters. It is remarkably similar to the Death of the Author movement in the sense that the central agent in the creation of the book is no longer the author. At most, the true author is considered 'a ghost haunting the limits of the literary work of art', which furthers the ghost analogy.¹³⁶

Ghostwriting is especially prevalent in the memoir genre where the subject matter complicates authorship further. In those situations, the ghostwriter writes about the experiences and life of another. One could argue that the ghostwriter would fulfill more of a *compiler* role, where they type out and combine pre-existing stories.

Through an extensive process of interviews, conversations, and rounds of feedback, ghostwriters try to embody and almost impersonate the author.¹³⁷ The only difference being it was at the author's behest. Some ghostwriters even go so far as to dress like their authors to truly emulate their mind.¹³⁸ Traditionally, ghostwriters are meant to be a ghost, to be invisible in the finished product so that the reader would not realize their presence, they are but a tool in the writing process.¹³⁹ If the reader feels the presence of the ghostwriter, especially when they are not clearly credited, they may feel lied to, similar to how readers feel lied to when AI-use is undisclosed (see chapter 2). Professor Gregory Lastowka has referred to ghostwriting as 'socially deceptive' and feels that regardless of the agreement between ghostwriter and author, the ghostwriter should be disclosed.¹⁴⁰

However, in for example the celebrity memoir genre, it is an open secret that ghostwriting is exceedingly common. Therefore, the reader may feel less strongly. As Sutherland put it (quoted by Yelin): 'the general rule about ghosting is that the lower the literature, or aspiration, or our esteem for the author, the less we're upset'.¹⁴¹ This is reminiscent of the derision felt for fanfiction as opposed to 'literature' and how that affects fanfiction authorship, or how AI use may be more accepted in less 'serious' literatures like

¹³⁶ Stougaard-Nielsen, 'The Author in Literary Theory and Theories of Literature' p. 270.

¹³⁷ Brandt "'Who's the President'".

¹³⁸ Moehringer, 'Notes from Prince Harry's Ghostwriter'.

¹³⁹ Hannah Yelin, "'A Literary Phenomenon of the Non-Literate": Classed Cultural Value, Agency and Techniques of Self-Representation in the Ghostwritten Reality TV Star Memoir.' *Celebrity Studies* 7, no. 3 (2016): 354–372. doi:10.1080/19392397.2015.1117392.

¹⁴⁰ Lionel Bentley, and Laura Biron, 'Discontinuities between legal conceptions of authorship and social practices', in *The Work of Authorship*, ed. By Mireille van Eechoud (Amsterdam University Press, 2014), pp. 237-276, p. 266.

¹⁴¹ Yelin "'A Literary Phenomenon of the Non-Literate'" p.357.

cookbooks (see chapters 1 and 2). Celebrity memoirs are culturally significant because of the widespread readership and commercial power they wield, yet the genre remains looked down upon by many.¹⁴² Ghostwriting within this genre is then seen as further deriding an already derided cultural phenomenon.

There are different levels of admission when it comes to ghostwriting.¹⁴³ The oldest and purest form is when the ghostwriter writes the entire text that was published under someone else's name and receives no credit whatsoever. Sometimes this was done without the ghostwriter's knowledge, especially in journalism.¹⁴⁴ This practice is generally frowned upon now, as it is considered stealing, yet undoubtedly still happens.¹⁴⁵ The second form of ghostwriting is when the ghostwriter is left uncredited, but with their knowledge. Sometimes, in contract negotiations the author and ghostwriter would decide to do so, because either the ghostwriter or the author will prefer the ghostwriter remain undisclosed. The third form is when the ghostwriter is disclosed to the reader. This will sometimes be in the form of a co-authorship where, for example, the memoir of an athlete will have both the athlete and ghostwriter listed as authors, with the athlete appearing in the first position. However, in the U.K., for joint authorship to legally apply, 'an author must display "something akin to penmanship" in the sense of being directly responsible for the expressive form of the work'.¹⁴⁶ This becomes problematic in the case of ghostwriting when, as is common, the named author is not significantly involved with fixing the end product into a permanent expression. Other times, the ghostwriter will be listed in a lesser capacity than co-author, as happened with Paris Hilton's memoir that was published as 'Paris Hilton with Merle Ginsberg'.¹⁴⁷ Lastly, the ghostwriter could be acknowledged in a more ambiguous fashion, either in the acknowledgements or where the publisher and edition are listed inside the book.

When ghostwriting is suspected, but not credited, there is no other option but to ascribe authorship to the named author.¹⁴⁸ However, I suspect that in those cases,

¹⁴² Yelin "A Literary Phenomenon of the Non-Literate"

¹⁴³ Yelin "A Literary Phenomenon of the Non-Literate"

¹⁴⁴ Moehringer, 'Notes from Prince Harry's Ghostwriter'.

¹⁴⁵ David Roy, 'Is Ghostwriting Legit? Or is it Lame? – Let's Find Out!', Woodbridge Publishers, n.d., <<https://www.woodbridgepublishers.co.uk/blogs/is-ghostwriting-legit/>> [Accessed 28 May 2025]

¹⁴⁶ Bentley and Biron, 'Discontinuities between legal conceptions of authorship and social practices', p.238-239.

¹⁴⁷ Yelin "A Literary Phenomenon of the Non-Literate" p. 361.

¹⁴⁸ Brandt "Who's the President", p. 553.

authorship is granted with a caveat. The listed author may not be extended the full authority or social credit they would have received, would there not have been suspicions of ghostwriting. However, the fact that authorship would be questioned in the first place indicates that authorship goes beyond the abstract theoretical of scholars. Readers care about authorship, even if it may not be entirely clear why.

There are a few reasons someone may choose to employ a ghostwriter. The most common are lack of time and lack of skill.¹⁴⁹ Writing is a time-consuming activity, especially when one takes into account the edits and re-writes; so some prefer to outsource it. There are also those that may not possess the skills to be able to express themselves on the page in a way that readers find enjoyable.¹⁵⁰ Then there are those that may not possess the knowledge they need.¹⁵¹ This is more common in for example political situations where a politician may not possess the knowledge of specific local laws and therefore employs a ghostwriter to write a speech about the situation. Lastly, there can be a lack of access.¹⁵² Think for example of when someone may not have access to a computer and therefore uses a ghostwriter to fill out and send online (governmental) forms in their name.

Ghostwriting is closely related to the authority part of the author function. Having the name of a celebrity, politician, or of otherwise significant person as the named author lends authority to a piece of writing.¹⁵³ A reader may be more inclined to believe the contents of Prince Harry's memoir if his name is on the cover than that of someone relatively unknown. Similarly, a successful CEO as an author for a book about running a million dollar company may invoke more authority than someone who is not a well-known CEO. Even though they may have both done all of the research, interviewed multiple successful CEO's and obtained multiple perspectives, leading to a similarly successful book in theory.

Although a ghostwriter is fully aware from the start that their work is not their own, but belongs to another, as will the author credit, some feel 'an authorial stake and

¹⁴⁹ Draxler, Werner, Lehman, Hoppe, Schmidt, Buschek and Welch 'The AI Ghostwriter Effect' ;Brandt ""Who's the President""

¹⁵⁰ Draxler, Werner, Lehman, Hoppe, Schmidt, Buschek and Welch 'The AI Ghostwriter Effect' ;Brandt ""Who's the President""

¹⁵¹ Brandt ""Who's the President"".

¹⁵² Brandt ""Who's the President"".

¹⁵³ Brandt ""Who's the President"".

intellectual ownership' over their words.¹⁵⁴ Whether a ghostwriter feels they can claim authorship is often related to how much control and agency they feel they have over their work.¹⁵⁵

With the secrecy surrounding ghostwriting, how does one even find a ghostwriter? Often times it happens through word of mouth, but the Association of Ghostwriters in the U.S. also has a directory on their website to connect with their members should you be in need of a ghostwriter.¹⁵⁶

If one makes a career in ghostwriting, and does not publish anything under their own name, should they be denied authorship? Some, like John Potts, feel that way.¹⁵⁷ He argued that 'the author is a named cultural producer who receives ongoing financial reward from the exploitation of copyrighted works'.¹⁵⁸ Therefore, because ghostwriters are often unnamed, paid in a lump sum and not rewarded the copyright, they would not qualify as authors. However, I would argue it is a more nuanced situation. After all, anonymous authorship is still a form of authorship, whether named or not. Additionally, as the fanfiction discussion in chapter 1 showed, just because copyright is not held by the writer does not mean they do not qualify as authors socially. Lastly, they may not be paid continually, but they are paid for their work and especially when one is able to maintain a living as a ghostwriter, should that really make them less of an author just because they do not publish under their own name? That would indicate that another condition of authorship may perhaps be notoriety.

Ghostwriting and copyright

Copyright is the only legal way to establish authorship. This means that authorship status affects the value of property, which is why authorship does indeed matter, both in copyright and in ghostwriting.¹⁵⁹ The language of copyright legislation is centered around the act of

¹⁵⁴ Brandt "'Who's the President'", p. 555.

¹⁵⁵ Draxler, Werner, Lehman, Hoppe, Schmidt, Buschek and Welch 'The AI Ghostwriter Effect'.

¹⁵⁶ 'About', Association of Ghostwriters, n.d., <<https://associationofghostwriters.org/about-us/>> [Accessed 28 May 2025].

¹⁵⁷ John Potts, 'Chapter One: "Heroes with Names": What is the Author', in Potts, *The Near-Death of the Author: Creativity in the Internet Age*. 1st ed. (University of Toronto Press, 2022), pp. 8-22

¹⁵⁸ Potts 'Chapter One', p. 17.

¹⁵⁹ Marjorie Garber, 'Chapter 1: Shakespeare's Ghost Writers', in Garber, *Profiling Shakespeare*, (New York: Routledge 2008) pp. 4-28

writing. As U.S. copyright law states, copyright belongs to the person who brings ideas into a fixed expression. Strictly speaking, this would always refer to the one who performs the act of writing, i.e. fixing the words onto the page. Unless the named author contributes significantly, this would mean the ghostwriter should receive the copyright. Additionally, creation and creativity have also long been associated with both the act of writing and authorship. However, when it comes to ghostwriting, the ghostwriter almost never holds the copyright, even when credited. This is usually worked out in the contract negotiations, similar to when a work is commissioned by an organization, they hold the copyright, both in U.S. copyright law and Dutch copyright law.¹⁶⁰

However, the legal determination of authorship has not traditionally been determined through attribution. The attribution of authorship in cases like with ghostwriting has been relegated to a contractual agreement. Here, the dichotomy between the social author and legal author becomes apparent. This ‘social attribution of authorship to persons who would not likely be regarded as authors-in-law is [...] legally facilitated’ through the contracts.¹⁶¹ This indicates that it is in fact the copyrigher who would legally be regarded the author but the contract enables the named author to be so.

Case studies

Shakespeare

Perhaps one of the most famous authors in literary history was Shakespeare, the man who wrote countless plays and sonnets. However, that has famously been called into question in one of the most well-known authorship debates. Marjorie Garber writes that some believe that Shakespeare used (a) ghostwriter(s).¹⁶² This is based on the belief that the son of a glovemaker would not have the education or standing to warrant the knowledge expressed in his work. Or perhaps the author ‘Shakespeare’ functioned as a pseudonym that multiple people wrote under, similar to the Rainbow Magic children’s books that were all published

¹⁶⁰ ‘Auteurswet’, Overheid.nl (Artikel 7); ‘Chapter 2: Copyright Ownership and Transfer’, U.S. Copyright Office, n.d. <<https://www.copyright.gov/title17/92chap2.html>> [Accessed 28 May 2025] (201 b).

¹⁶¹ Bentley and Biron, ‘Discontinuities between legal conceptions of authorship and social practices’, p.256.

¹⁶² Garber ‘Chapter 1: Shakespeare’s Ghost Writers’.

under the author Daisy Meadows but were in fact written by multiple other authors.¹⁶³ This identity of Daisy Meadows does not exist, however William Shakespeare, the Early Modern son of a glovemaker, did. This case of possible ghostwriting functions as a case study in this thesis, not because I believe it to be true, but rather because the presence of the debate indicates that ghostwriting does change how we perceive and attribute authorship and that that can have real life consequences.

The discussion around possible ghostwriting of Shakespeare started at the same time as Foucault describing the author-function as part of the ‘system of ownership’ of copyright in the late eighteenth and early nineteenth centuries.¹⁶⁴ This would indicate that authorship would matter insofar as it affects copyright and other legal consequences of authorship. This is corroborated by a legal case pursued by a motion picture manufacturer, William Seling, who sued two people in 1916 who were trying to disprove Shakespeare’s authorship, Elizabeth Wells Gallup and Colonel Fabyan.¹⁶⁵ Seling wished to film some scenes from Shakespeare’s plays and felt that by questioning the validity of Shakespeare’s authorship, the value of his product was affected. However, the judge ruled that Francis Bacon, lord chancellor of England in the early seventeenth century, was the true author, as Gallup and Fabyan believed. Therefore, Seling was ordered to pay Colonel Fabyan \$5000 as damages. This verdict was later overturned.¹⁶⁶

The debate was especially lively in the mid-nineteenth century, although the ‘flood of publications’ continues to present day.¹⁶⁷ Those with higher educations were especially fervent in their pursuits, with Harvard University being prescribed the role of ‘Ghost Underwriter’ in the debate.¹⁶⁸ It is not surprising that particularly that group would concern themselves with this question of authorship, after all, authorship is primarily an abstract literary concept. Yet, even with that in mind, why would it matter? Especially since Shakespeare died in 1616 and the copyright, even if it had existed at the time, would have by all means lapsed why would the authorship still matter? Marjorie Garber believes this is likely due to four factors: institutional, professional, psychological and territorial

¹⁶³ ‘Daisy Meadows’, Simon and Schuster, n.d., <<https://www.simonandschuster.com/authors/Daisy-Meadows/191732327>> [Accessed 28 May 2025].

¹⁶⁴ Garber ‘Chapter 1: Shakespeare’s Ghost Writers’, p.7.

¹⁶⁵ Garber ‘Chapter 1: Shakespeare’s Ghost Writers’, p.7.

¹⁶⁶ Garber ‘Chapter 1: Shakespeare’s Ghost Writers’, p. 7-8.

¹⁶⁷ Garber ‘Chapter 1: Shakespeare’s Ghost Writers’, p. 7.

¹⁶⁸ Garber ‘Chapter 1: Shakespeare’s Ghost Writers’, p. 9.

investments.¹⁶⁹ However, I believe that when it comes to the personal motivations, beyond institutional sunk cost fallacies, the psychological investments are the greatest.

Interestingly, the debate is most lively amongst Americans. Perhaps the English are bound by a pride of country. However, Garber splits their motivation in three parts. First, is the desire for 'reverse colonization'.¹⁷⁰ Second, the American fascination with aristocracy as a whole. Third, the desire to mythicize Shakespeare as more than a man who was the son of a glovemaker and wrote brilliant plays. In the end, the question of why does not require an answer. The presence of the question is enough to determine ghostwriting would affect authorship.

Shakespeare also serves as an example of the status and social identity of an author.¹⁷¹ He earned his living by selling his plays to the theatre company, at which point he lost control over them, until he became a salaried playwright of the company, received a weekly wage as an actor in the company, later became a shareholder of the theatre company and his patronages to Lord Strange and King James were also a 'good source of money'.¹⁷² Now, Shakespeare is considered one of the greatest literary authors in history, but in his own time, while he was a popular playwright, he was by no means considered the genius he is today.

Plays were, in Shakespeare's time, not considered a form of literature. Additionally, playwrights were considered to be unoriginal, as the stories in their plays were considered to be taken from 'the public domain'.¹⁷³ Shakespeare also held no form of copyright over his work. In fact, if there were a version of copyright in his lifetime, it would most likely have belonged to his aristocratic patron that 'owned' the theatre company. Even when Shakespeare became a shareholder, copyright most likely would have gone to the majority share, which would have been the patron.

Therefore, if his work was not original, for the reasons discussed above, nor copyrightable, because copyright did not yet exist, by modern standards, Shakespeare would

¹⁶⁹ Garber 'Chapter 1: Shakespeare's Ghost Writers', p. 10.

¹⁷⁰ Garber 'Chapter 1: Shakespeare's Ghost Writers', p. 11.

¹⁷¹ Potts 'Chapter Four'.

¹⁷² Boika Sokolava, 'Shakespeare's Money', Shakespeare's birthplace trust, n.d., <<https://www.shakespeare.org.uk/explore-shakespeare/podcasts/60-minutes-shakespeare/shakespeares-money/#:~:text=As%20a%20young%20actor%2C%20he,for%20each%20performed%20new%20play>> [Accessed 9 June 2025].

¹⁷³ Potts 'Chapter Four', p. 80.

not be considered to possess authorship. Yet, I believe one would be hard-pressed to find anyone to deny social authorship to Shakespeare. The debate surrounding Shakespeare's ghostwriters shows that ghostwriting affects authorship in tangible and intangible ways. The high profile nature of the debate around Shakespeare's authorship has inspired wider questions about authorship and the biases surrounding the arts.¹⁷⁴

J.R. Moehringer

In January 2023, Prince Harry the Duke of Sussex' memoir *Spare* was published. The cover sports a close-up of his face and prominently displays his name as the author. Yet the book was written with a ghostwriter. J.R. Moehringer worked closely with Prince Harry as his ghostwriter and in May 2023 published an article in *The New Yorker* wherein he details his experience.¹⁷⁵ In this article, Moehringer consistently refers to Prince Harry (and the others he collaborated with as a ghostwriter) as the 'author'. Indicating he does not view ghostwriting to be a form authorship.

While Moehringer staunchly upholds this separation of himself from the role of author, he does express multiple times struggling with the consequences of this. For example, he reminds himself repeatedly that *Spare* was not his book.¹⁷⁶ He even describes a discussion he had with Prince Harry about including a specific line in the book, saying that Prince Harry was 'pleading' for it to be included. Moehringer also relates himself to 'a tyrannical coach' and 'a demanding parent'. This language shows that Moehringer felt he has the higher authority of what was to be included in the book, even if the real authority lay with Prince Harry, after all, he employed Moehringer and could let him go whenever he wanted.

Ghostwriting parallels editorship, both in reference to the ghostwriter and the author. The named author would be able to comment on the drafts provided by the ghostwriter as an editor would. Additionally, the ghostwriter and author would spar together on which elements to include in a book, similar to the relationship between author

¹⁷⁴ Lauren Jones, 'The Authorship Debate: Who Is the Real Shakespeare?', *The Collector*, n.d., <<https://www.thecollector.com/the-authorship-debate-who-is-the-real-shakespeare/>> [Accessed 10 June 2025].

¹⁷⁵ Moehringer, 'Notes from Prince Harry's Ghostwriter'.

¹⁷⁶ Moehringer, 'Notes from Prince Harry's Ghostwriter'.

and editor. And one party holds more power and authority than the other. The ghostwriter over the finished product, and the author over the employ of the ghostwriter. Yet, traditionally, literary editors are not considered to be authors.¹⁷⁷ Maxwell Perkins, a revered editor of mid-twentieth century America, said that ‘an editor at most releases energy’ and that ‘[h]e creates nothing’, which would disqualify them from authorship.¹⁷⁸ This again emphasizes the difference between social authorship and legal authorship, because legally, if the contributions of an editor were significant, they could qualify for a co-author position, yet socially they cannot.

Moehringer writes that he had never set out to be a ghostwriter. Instead he fell into the role. His early days spent at *The New York Times* doing ‘legwork’ resulted in seeing his ‘exact words, under someone else’s name’.¹⁷⁹ Moehringer’s first big foray into ghostwriting was for Andre Agassi’s memoir. After it was published, Agassi did some interviews and even though Moehringer declined his name on the cover, he felt conflicted about not receiving public credit. Thereafter, Moehringer decided to focus on his personal writings. However, his personal works were not too well received.

With his personal writings, Moehringer accomplished authorship in his own right, as they were both original and copyrightable. As a ghostwriter, his work is arguably unoriginal, as it is another person’s life and stories, and he does not possess the copyright. The question I wish to raise is whether the authorship as an author and authorship as a ghostwriter are different. With one he is mostly unsuccessful while with the other he has not raised any level of the social capital associated with the author-function, despite success. He clearly feels some authority and ownership in his authorship in both cases and performs the action of writing in both. Both make him money, though arguably one more than the other.

I find myself not willing to completely deny Moehringer authorship in his ghostwriting even if he does not hold the copyright nor are the stories and such originally his. Especially considering the roll he describes Prince Harry fulfilled relating significantly to that of editor and Moehringer did the bulk of the writing and describes to hold much of the authority over the finished product. Therefore, while I cannot claim Moehringer to possess

¹⁷⁷ Bentley and Biron, ‘Discontinuities between legal conceptions of authorship and social practices’, p.248.

¹⁷⁸ Bentley and Biron, ‘Discontinuities between legal conceptions of authorship and social practices’, p.249.

¹⁷⁹ Moehringer, ‘Notes from Prince Harry’s Ghostwriter’.

full authorship, because he does not fulfill the requirements I have so far used to determine authorship, neither does Prince Harry. If anything, I would feel they shared authorship.

Conclusion

Ghostwriting has provided new insights into authorship. In non-literary fields it can be seen as unethical. Ghostwriters generally do not possess legal authorship due to the contractual agreements even though based on the legal definition of author they could qualify as such. Sometimes the contractual agreement state that ghostwriting remains fully undisclosed which would deny them social authorship fully. However, usually they are mentioned in a lesser capacity than as the primary author. Originality is largely present, although could be contested in the memoir genre where the stories are not the ghostwriter's.

Ghostwriting is closely related to the author-function, specifically the authority aspect, as described by Foucault. Many ghostwriters, while aware they will not socially or legally be classed as the author, feel authority over their work. This is largely dependent on the level of control they feel they have.

Both the ghostwriter and the named author possess fulfill similar qualities that an editor would. When undisclosed, ghostwriting can inspire the feeling of being lied to, similar to the AI authorship effect. One of the greatest authorship debates in history concerns Shakespeare's authorship. Some believe that his work was ghostwritten. That the question is asked, and so widespread, indicates that (social) authorship would indeed be changed by ghostwriting. Theoretically, when the previously established conditions of originality and copyrightability are not met, authorship would not be granted. However, realistically I feel ghostwriting is proof that authorship goes beyond these aspects.

Conclusion

'Writing can be sold and authorship can be bought' – Deborah
Brandt¹⁸⁰

This thesis examined the concept of authorship and how it adjusts to different scenarios in literature, namely fanfiction, AI and ghostwriting. The history of authorship extends at least from the oral culture of Ancient Greece, to Geoffrey Chaucer in the fourteenth century, to the professionalization and industrialization of the eighteenth and nineteenth centuries until today. Authorship has ebbed and flowed in importance, from being the ultimate authority to the Death of the Author movement that determined the interpretive authority lay with the reader and that the author-function was more important than the authorship identity.

Historical considerations have raised originality and copyrightability as two prominent indicators of authorship. However, this has not always been the consensus. Some believe that originality can never truly be achieved as everything is inspired by something else and drawn from a collective pool.

Copyright was first established in 1710 with the Statute of Anne and has since been through many changes. Copyright legislation has both expanded, for example geographically, and narrowed to be more precise, to include that authorship is human. Copyright has recently been complicated with AI and the U.S. Copyright Office established a report stating that copyright can only be granted to the extent of the human element.

Copyright legislation has provided the legal author, printer, and publisher with differing privileges and limitations through time. However, copyright has undeniably established authorship as a mode of possession. This is also the largest indication of the importance of authorship. After all, it is needed to establish possession, which is needed to participate in the market.

The examination of the three scenarios has raised other possible determining aspects of authorship because fanfiction, AI and ghostwriting do not ubiquitously satisfy the originality and copyrightability clauses of authorship. Yet there are cases that prove social and legal authorship are possible. Fanfiction has raised commercialization and

¹⁸⁰ Brandt "'Who's the President'" p. 552.

professionalization as possible determinators of authorship. AI has emphasized the human aspect and raised an alternate qualification of authorship based on the level of AI use. Ghostwriting questions whether social authorship and legal authorship are mutually exclusive. The case studies in ghostwriting show that copyrightability and originality are not sufficient to base authorship on. All three scenarios have involved some sort of stigma or social consequences. They indicated that social authorship may be dependent on the genre or social standing of the author.

These three scenarios are not as separate in reality as they have thus far been treated. In reality, AI could be and has been used both as a ghostwriter (when undisclosed) and to write fanfiction. This would serve to muddle the waters of authorship further, although it may be interesting to examine how in future research. AI and ghostwriting are similarly used as tools in the writing process with seemingly differing effects on authorship.

The value of the examination of authorship lies not in the answer, but rather in the question itself, in identifying why authorship matters and what consequences it may have. Most prominently this relates to the legal possession in copyright. However, I believe much can be sought in the social ramifications. We, as a society, clearly care about authorship because the question keeps getting raised, even if we cannot quite pinpoint why it matters.

Much knowledge is still to be gained from inquiring amongst both authors and non-authors about how they feel. To go beyond the hypothetical into the real world contemporary practices. Additionally, this thesis is limited to a western-centered view. There is much to gain in comparisons beyond the Western world.

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