

Dr. Matthew H. Birkhold (Ohio State University)

The Rules of Eighteenth-Century Fan Fiction: A New History of the Literary Commons and Moral Rights

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Fan fiction is, according to the title of a 2013 publication, 'taking over the world'. As a mode of writing that – as the author of said tome puts it – 'continues, interrupts, or just riffs on stories and characters other people have already written about', fan fiction (or just 'fic' to the initiated) has for a long time lurked on the periphery of the literary sphere. Recently, however, it has shifted from the margins to the mainstream – the current benchmark perhaps being E. L. James's blockbuster *Fifty Shades* trilogy, which prior to becoming the biggest publishing sensation of recent times (global sales now top 125 million copies), started life as a creative reimagining of Stephanie Meyer's *Twilight* series. Fan fiction forums on the internet, meanwhile, have helped generate vast, and seemingly ever-expanding, universes of prequels, sequels and spin-offs – inasmuch as J. K. Rowling may have launched the official *Pottermore* site with the promise of filling in the gaps in the original seven-part narrative, a brief glance at the figures provided on the portal www.fanfiction.net suggests that she was beaten to the punch several hundred thousand times over.

Yet insofar as the explosion of fan fiction is – rightly – seen as being tethered to the emergence of modern digital technologies, the practice itself is no new phenomenon. The rise of the internet may have increased visibility and demand, but fan fiction has been around for centuries, enjoying periods of heightened popularity in various cultural-historical contexts. One such was that of 1700s Europe, during which time literary appropriations proliferated markedly. In the German-speaking lands in particular, fan fiction writing became a pervasively widespread tendency and – in consequence – a resonant vehicle for debates concerning contemporary understandings of concepts such as 'authorship', 'ownership' and 'property'.

This was the leading claim of the latest talk in the *laboratorium lucernaiuris* lecture series, delivered by Matthew H. Birkhold. Holder of a dual appointment as Assistant Professor of both German and Law at Ohio State University, the speaker would appear perfectly positioned to explore the history of fan fiction – and its legal ramifications – in eighteenth-century Germany. Proceeding from the most famous instance of German-language 'fic' of the era – Friedrich Nicolai's parody of Goethe's *Die Leiden des jungen Werther*, in which the title-figure survives his suicide attempt and marries Lotte – Birkhold began by mapping something of the breadth of the practice, before then turning his gaze to the legal context. A first observation pertained to the make-up of eighteenth-century Germany as a patchwork of over three hundred separate territories, each possessing its own laws and codes. With regards burgeoning intellectual property debates, this had two vital repercussions. One was that it ensured the absence of any standardized, cross-border statutory law governing the relationship between authors, readers, publishers and dealers. The other, meanwhile, was that, in limiting the prospect of resolution through law alone, it also prompted a set of broad-ranging discussions conducted by not only lawyers and jurists, but also philosophers, poets and literary critics.





Honing in on the specific issue of the appropriation of literary characters, Birkhold traced a number of the key contributions to these debates, including Fichte's distinction between idea and form (the latter being the author's exclusive property, the former communal property), and Kant's assertion of the moral right of the author to be acknowledged as the creator of his/her work and to control any subsequent use and/or changes (a claim that finds echo in art. 6(bis)1 of the 1971 *Berne Convention for the Protection of Literary and Artistic Works*). This supplied the lead-in to the main premise of the argument – namely, that despite the absence of positive law, the field of literary borrowings was not free and unregulated, as frequently asserted, but

rather circumscribed by a set of customary norms that protected the moral rights of the author. These the speaker identified via close analysis of a range of sources – publishing records, contracts, philosophical treatises and book catalogues, as well as both legal and literary texts – that, together, furnish a collection of 'rules' that governed the production and circulation of fan fiction – e.g. whether the source author was living or deceased, whether s/he was German or non-German, or whether the appropriated character was represented in a manner consistent with the original. Based on these findings, a convincing claim was made for the need for a fundamental reappraisal of both the tradition of moral rights in Europe, and the concept and character of the eighteenth-century 'literary commons'.

In his closing remarks, Birkhold briefly reflected on the implications of this 'new history' not only for the period in question, but also for the longer trajectory of intellectual property law. For where a number of critics currently bemoan the ongoing erosion of an earlier tradition of 'free culture' (Lawrence Lessig), a reading of the history of intellectual property through the lens of fan fiction would seem to suggest the opposite – namely, a return to, rather than a departure from, the customary practices of the eighteenth century. These are bold claims, though ones evidently founded on extensive and intimate knowledge of the subject – the larger study from which the lecture material was drawn is shortly due for publication in monograph form. To judge by the range and depth of insight, and the vigour of the ensuing discussion, it promises to deliver a significant, distinctive and provocative contribution to the field.



(Steven Howe)