

Communication

[Literature](#), [Russian Literature](#)



J. D. Salinger v. Fredrik Colting 641 F. Supp. 2d 250 In this case, Colting was said to have written a novel whose key character, Mr. C, is said to have been patterned after Holden Caulfield in JD Salinger's 'The Catcher in the Rye'. Salinger's sued, and in the defense Colting said that he was parodying the work of Salinger essentially. This argument by Colting was trashed by the court, which ruled in essence that there is no original creation in the act of extending the life of an existing literary character into the present time, as Colting did in imagining an older Caulfield, where the distinctiveness of the character's personality traits for instance are preserved, and can be seen as being a derivative of the original work in which Caulfield is found The issue at hand was whether there was a substantial similarity in the work of Colting, entitled '60 Years Later: Coming Through the Rye', and the original work of Salinger. The later argument that Colting's work was a critique of Salinger's was undermined, it is said, by earlier statements made by Colting to the effect that his work as essentially a sequel of the original Salinger work, and it is this that the court found to be an insufficient defense to merit the legal publication, marketing and distribution of what amounts to a work that violates the intellectual property rights of Salinger to his character creation and the right to essentially either write a sequel or withhold from writing a sequel to the iconic work (Nolan 567-568; Gilden and Greene). The court noted too, that after first establishing the concrete delineation of the character of Caulfield in the work to such a clarity and concreteness as to be able to indistinguishably define the novel in terms of the character of Caulfield, that Colting's work and character essentially mirrors Salinger's creation and therefore that Colting infringed on the intellectual copyright of

Salinger and his estate to the creation (United States Court of Appeals Second Circuit). The concept of fair use is a key point of defense and a leading copyright legal concept that was heavily discussed in this case. Tied to this concept is the concept of 'transformative use', also a key concept tied to copyright law. In the current case, it was ruled that the use for which the character and the work was employed had no discernible elements that constituted what could be construed as a critique of the work of Salinger. On the other hand, what the work of Colting amounted to in essence was a continuation, and not a critical look, of the original Rye novel. This being the case, the argument of 'transformative use' was ruled by the court to be inapplicable. If the work was a parody, as Colting and his lawyers argued, then the 'transformative use' defense would have worked. On the other hand, that the work was deemed not a parody at all but was even marketed as a sequel to the work of Salinger, without the consent of Salinger or of his estate, meant that 'transformative use' cannot be validly used as a defense by Colting (Gilden and Greene). Then there is the additional point raised by the court with regard to the potential harm that the work of Colting could do to the way Salinger and his estate could profit and make use of the original Salinger novel, as a copyrighted work. That Salinger himself did not signify any intention, either overtly or through his actions through the years, to publish a sequel to the work does not preclude the author from later on doing a 180-degree turn and deciding to publish a sequel. On the other hand, by marketing the work of Colting as a sequel to the work, Colting was essentially robbing Salinger of that fundamental right to make use of his own copyrighted work for that purpose. There is attendant to the copyrighted

work the right of the author and his estate to explore opportunities to create and market sequels at some future time, if they so desire. Colting's work preempts the estate of Salinger from doing so, and is therefore a very critical breach of the copyright of the estate to the work that Colting essentially extended and made his own in '60 Years'. Derivative works licensing, an aspect of copyright law, is a protected economic activity tied to the ownership of intellectual copyrights, and in this case there was no such licensing that occurred, having determined that the transformative use defense was flawed, and given that the right to profit from derivative works also means that the copyright holder may choose not to license the creation of derivative works. In this case Salinger's refusal to create a sequel or to sanction others to do so also is an action that is protected by copyright law (Gilden and Greene). The last point on the right of the author to either pursue or hinder the creation of works that derive from the original copyrighted work is not trivial but is an important concept in copyright law. Copyright protection is being pushed for expansion to incorporate the right to such derivative works and the money and profits to be had from the creation of the works derived from the original may be an important motivation in the creation of the original work. This is true, for instance, where the computation of overall gains is not isolated to the original work, and is actually projected to include all of the works that are to be derived from that first work. It may be for instance that the costs of producing the original work may exceed any profits to be made from that, so that to recoup costs and generate a profit it is necessary for the copyright owner to have copyright protection to derived works. Otherwise there is no incentive to

come up with new original work. On the other hand, in the case of Salinger, this is not the case, and the overt desire not to publish a sequel must also fall within the ambit of the protections provided copyright holders by copyright law (Zybert 1087-1088). Works Cited Gildea, Andrew and Timothy Greene. "Fair Use for the Rich and Fabulous?" *The University of Chicago Law Review*. 2013. Web. 10 October 2013. Nolan, Jason. "The Role of Transformative Use: Revisiting the Fourth Circuit's Fair Use Opinions in *Bouchat v. Baltimore Ravens*". *Virginia Journal of Law and Technology* 16(4). Winter 2011. Web. 10 October 2013. United States Court of Appeals, Second Circuit. "Colleen M. SALINGER and Matthew . Salinger, as Trustees of the J. D. Salinger Literary Trust, Plaintiffs-Appellees, v. Fredrik COLTING, writing under the name John David California, Windupbird Publishing Ltd., Nicotext A. B., and ABP, Inc., doing business as SCB Distributors, Inc, Defendants-Appellants". *FindLaw*. 2013. Web. 10 October 2013. Zybert, Sarah. "The Derivative Work Right: Incentive or Hindrance for New Literature?" *Connecticut Law Review*. February 2013. Web. 10 October 2013.