

**CONSTRUCTED LANGUAGES AND COPYRIGHT: A BRIEF  
HISTORY AND PROPOSAL FOR DIVORCE**

*Michael Adelman\**

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## I. INTRODUCTION

For a variety of reasons, a small cadre of people dedicate time to constructing new languages. Most often this endeavor is a labor of love, undertaken with little hope of reward but rather to enrich the world's corpus of languages and the lives of those who learn them. At the outset, the inventor of a language enjoys absolute control over every feature of her new system of communication. The complete control over a corpus and grammar is what draws people to the enterprise — the ability to create a language free from the perceived flaws of natural language, uniquely suited to a particular mode of expression. However, once a constructed language finds an audience, it quickly escapes the exclusive control of its original creator, taking on new forms and generating unexpected contextual relationships.

Copyright law provides an author with more than a right to profit from a creative work. The owner of a copyright also holds the exclusive rights to authorize (or enjoin) any reproductions, derivative works, or public performances of her copyrighted material.<sup>1</sup> As a result, there is a strong temptation for the creator (or primary curator) of a constructed language to assert a copyright on it in order to prolong her control of the language's dissemination and development. But so far, no court in the United States has been called upon to determine the validity of such an assertion. And so it remains an open question: What elements of a constructed language can be subject to copyright protection?

Seizing the opportunity presented by this legal uncertainty, the curators of some constructed languages demand that newcomers acknowledge their continued authority over the language or else face legal action. This Note argues that language curators' deployment of copyright is both misguided and likely to fail. This Note instead argues for the establishment of a clear legal principle: Anyone interested in learning a constructed language has the right to use that constructed language however she sees fit.

Part II begins with a discussion of what a constructed language is and provides a working definition of that term. Part III then examines instances when language creators have attempted to control their constructed languages via copyright and the extent of their successes. Finally, Part IV concludes that copyright protection surrounding constructed languages should be minimal and argues why this rule should be made explicit.

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1. 17 U.S.C. § 106 (2012).

## II. WHAT IS A CONSTRUCTED LANGUAGE?

This Note uses the term “constructed language” to denote a language that has a phonology, morphology, syntax, and sometimes alphabet attributed to an individual human inventor. Danish linguist Otto Jespersen first coined the term in 1928 in a text where he introduced his own constructed language, called Novial.<sup>2</sup> While the term “artificial language” is a close synonym, some linguists believe the term “artificial” carries a pejorative connotation and therefore should be avoided.<sup>3</sup> Other linguists prefer the terms “invented language,”<sup>4</sup> or “planned language.”<sup>5</sup> “In short, [linguists] lack a generally accepted core term,”<sup>6</sup> and for this reason, constructed languages are best defined by their opposites: natural or ethnic languages.

Natural or ethnic languages “evolve out of other natural languages as far back as historical linguistics can determine.”<sup>7</sup> English, Hindi, and Russian are all examples of natural languages that evolved over centuries with historical roots that can be traced back to one Proto-Indo-European language.<sup>8</sup> The historical lineages of natural languages stand in contrast to constructed languages such as Volapük, a language completed in just one year by a German priest who claimed to receive the idea from God in 1879.<sup>9</sup>

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2. Detlev Blanke, *The Term “Planned Language,”* in *ESPERANTO, INTERLINGUISTICS, AND PLANNED LANGUAGE* 1, 1, 4 (Humphrey Tonkin ed., 1997) (citing OTTO JESPERSEN, *AN INTERNATIONAL LANGUAGE* (1929)).

3. ANDREW LARGE, *THE ARTIFICIAL LANGUAGE MOVEMENT*, at viii–ix (1985).

4. *See generally* ARIKA OKRENT, *IN THE LAND OF INVENTED LANGUAGES* (2009).

5. *See* Blanke, *supra* note 2, at 1. *But see* Nick Nicholas, *Artificial Languages*, in 1 *INTERNATIONAL ENCYCLOPEDIA OF LINGUISTICS* 154, 154 (William Frawley ed., 2003) (noting that all standardized languages are subject to some degree of language planning).

6. Blanke, *supra* note 2, at 2.

7. Nicholas, *supra* note 5, at 154.

8. WILLIAM O’GRADY ET AL., *CONTEMPORARY LINGUISTICS* 314–17 (5th ed. 2005).

9. David K. Jordan, *Esperanto and Esperantism: Symbols and Motivations in a Movement for Linguistic Equality*, in *ESPERANTO, INTERLINGUISTICS, AND PLANNED LANGUAGE*, *supra* note 2, at 39, 42; Donald J. Harlow, *Chapter 3: How To Build a Language*, *THE ESPERANTO BOOK*, <http://donh.best.vwh.net/Esperanto/EBook/chap03.html> (last updated July 4, 2006). Computer languages, also known as programming languages, share certain similarities to constructed languages. However, most computer languages are context-free, meaning “a sentence written in the computer language can be analyzed to find its grammatical construction without any need to understand the meaning of the words.” Marci A. Hamilton & Ted Sabety, *Computer Science Concepts in Copyright Cases: The Path to a Coherent Law*, 10 *HARV. J.L. & TECH.* 239, 265 (1997). Consequently, the question of whether an entire programming language can be copyrighted falls beyond the scope of this Note. For further discussion of whether a programming language can be copyrighted, see Michael P. Doerr, *Java: An Innovation in Software Development and a Dilemma in Copyright Law*, 7 *J. INTELL. PROP. L.* 127, 127 (1999).

*A. Classification of Constructed Languages by Their Form*

Within the taxon of constructed languages, linguists analyze the source of the new language's lexicon and grammar and then classify it as either *a priori* or *a posteriori*.<sup>10</sup> *A priori* languages are said to be "invented from whole cloth" and bear almost no resemblance to the mother tongue of the speaker.<sup>11</sup> The paradigmatic example of an *a priori* language is Solresol, developed by Jean François Sudre in the 1830s.<sup>12</sup> Sudre believed that since people throughout Europe enjoyed the same musical compositions, music was the key to developing an international language.<sup>13</sup> He designed a language whose vocabulary was constructed from the seven notes of the musical scale: do, re, mi, fa, sol, la, si.<sup>14</sup> Since his language relied on just seven notes, one could communicate not just by singing but also by playing the violin or whistling.<sup>15</sup> Though few people actually bothered to learn the intricate vocabulary of Solresol, a small core maintained a society dedicated to its propagation until the beginning of the twentieth century.<sup>16</sup>

*A posteriori* languages use elements of existing languages, but then simplify or modify them to serve a particular purpose.<sup>17</sup> Since Latin for many years served as the lingua franca of Europe's intelligentsia, several *a posteriori* languages have been raised on the foundations of classical Latin. Among the most famous is Latino sine Flexione, developed by University of Turin mathematics professor Giuseppe Peano at the turn of the twentieth century.<sup>18</sup> Peano formed the lexicon of Latino sine Flexione by using all words that existed in Latin as well as every word that was common to English, French, Spanish, Italian, German, and Russian.<sup>19</sup> In an effort to make Latino sine Flexione more user friendly, Peano also eliminated the complex inflections and declensions for number, gender, tense, and mood.<sup>20</sup> Although Latino sine Flexione gained some traction with the international scientific community, it never garnered mass support for everyday usage.<sup>21</sup>

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10. Nicholas, *supra* note 5, at 154.

11. *Id.*

12. See OKRENT, *supra* note 4, at 87.

13. See LARGE, *supra* note 3, at 60–62.

14. OKRENT, *supra* note 4, at 86–87 (demonstrating the sentence "Dore mifala dosifare re dosiresi," which translates to "I would like a beer and a pastry").

15. *Id.* at 87. Sudre was invited to give demonstrations of his language throughout Europe and even earned the endorsement of Napoleon III. LARGE, *supra* note 3, at 62.

16. Arden R. Smith, *Confounding Babel: International Auxiliary Languages*, in FROM ELVISH TO KLINGON 17, 25 (Michael Adams ed., 2011).

17. *Id.* at 20.

18. LARGE, *supra* note 3, at 142.

19. *Id.* at 143–44.

20. Joseph Lo Bianco, *Invented Languages and New Worlds*, 78 ENG. TODAY, Apr. 2004, at 8, 13.

21. LARGE, *supra* note 3, at 145.

Most constructed languages are in fact a mix of *a priori* and *a posteriori* elements, but linguists focus on certain characteristics to help classify them. *A priori* languages typically do not have irregular forms or exceptions from their rules of grammar,<sup>22</sup> and are also more likely to use a unique set of symbols or signs for their alphabets.<sup>23</sup> Conversely, the creators of *a posteriori* languages tend to take the social and cultural context in which they seek to deploy their languages more seriously.<sup>24</sup>

#### *B. Classification of Constructed Languages by Their Communicative Function*

Linguists also categorize constructed languages on the basis of their communicative function. The largest classes of constructed languages are intended to serve as International Auxiliary Languages: “culturally neutral or simple languages for use between native speakers of different languages.”<sup>25</sup> The end of the nineteenth century was a time of fertile development for International Auxiliary Languages. “In the years between 1880 and the beginning of World War II, over two hundred languages were published . . . .”<sup>26</sup> The most famous of these languages is Esperanto, created by Dr. Ludwig Lazarus Zamenhof in Eastern (Russian) Poland.<sup>27</sup> The son of a Jewish schoolteacher, Zamenhof spoke Russian in the home and Polish in the street, but through his studies became familiar with seven other languages.<sup>28</sup> A self-described idealist, Zamenhof sought to provide the world with a neutral language that could break down the barriers between hostile groups of Russians, Poles, Germans, and Jews.<sup>29</sup> Esperanto enjoyed its greatest prominence between the World Wars, when international organizations such as the Red Cross and the Universal Telegraphic Union recommended its adoption and allowed its use.<sup>30</sup> While Esperanto has never achieved the level of ubiquity that Zamenhof had hoped for, it retains a vital fellowship to this day.<sup>31</sup>

Other constructed languages are artistic in nature, intended to exist only in an imaginary space. These constructed languages can provide unique depth and richness to a fictional world. Author John

22. Lo Bianco, *supra* note 20, at 9.

23. *Id.* at 8.

24. *Id.* at 9.

25. Nicholas, *supra* note 5, at 154.

26. OKRENT, *supra* note 4, at 135.

27. Smith, *supra* note 16, at 32–33.

28. LARGE, *supra* note 3, at 71. Zamenhof studied French, German, Latin, Greek, and English in school, Hebrew in the synagogue, and learned Yiddish on the streets. *Id.*

29. *Id.*

30. Smith, *supra* note 16, at 37.

31. Current estimates of the number of speakers range from the thousands to the low millions. *Id.* at 38.

Ronald Reuel (“J.R.R.”) Tolkien developed multiple detailed languages for the races (elves, dwarves, ents, orcs, etc.) of Middle Earth in his fantasy novels.<sup>32</sup> As one reader described, “[r]eading Tolkien’s major works is like looking at a painting in which a beautiful garden is glimpsed in the background, and then discovering that the garden actually exists, having been planted by the artist before the picture was painted.”<sup>33</sup> For a similar purpose, linguist Marc Okrand created Klingon at the behest of Paramount Pictures for use in *Star Trek III: The Search for Spock* in 1984.<sup>34</sup> Since then, the ongoing relationship between the Star Trek franchise and the Klingon language has inspired a distinctive sub-culture, a successful array of commercial merchandise, a vibrant online community, and a serious body of academic scholarship.<sup>35</sup> The creators and students of these artistic languages typically do not aspire for their languages to become ubiquitous tools of communication.<sup>36</sup> Rather, they are satisfied knowing that those fans who wish to fully immerse themselves in a fictional world will have one more tool to do so.

One final reason constructed language enthusiasts set out to devise new languages is to test the limits of language as a matter of psychology and logic. For example, the theory of linguistic relativity holds that the structure of a language influences how its speakers conceive of their world.<sup>37</sup> However, because every language was attached to a corresponding culture, the proponents of this theory despaired that there would never be a control group against which to test it.<sup>38</sup> This remained so until 1955, when a sociologist named James Cooke Brown began the project to construct Loglan, a language whose morphology and syntax are based on principles of predicate logic.<sup>39</sup> Dr. Brown believed that the observation of a community of Loglan speakers would provide a definitive answer to whether “the structure of

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32. See generally J.R.R. TOLKIEN, *THE FELLOWSHIP OF THE RING* (1954); J.R.R. TOLKIEN, *THE TWO TOWERS* (1954); J.R.R. TOLKIEN, *THE RETURN OF THE KING* (1955); J.R.R. TOLKIEN, *THE SILMARILLION* (Christopher Tolkien ed., 1977).

33. E.S.C. Weiner & Jeremy Marshall, *Tolkien’s Invented Languages*, in *FROM ELVISH TO KLINGON*, *supra* note 16, at 75, 107.

34. Marc Okrand et al., “*Wild and Whirling Words*”: *The Invention and Use of Klingon*, in *FROM ELVISH TO KLINGON*, *supra* note 16, at 111, 113.

35. Lo Bianco, *supra* note 20, at 11–12.

36. See, e.g., *About the Klingon Language Institute*, THE KLINGON LANGUAGE INST., <http://www.kli.org/kli/> (last visited Mar. 7, 2014) (describing Klingon speakers as Star Trek fans and role-playing game enthusiasts, as well as scholars in the fields of linguistics, philology, computer science, and psychology).

37. Phillip Bock, *Language and Cognition: Linguistic Relativity in Modern Perspective*, in 2 *INTERNATIONAL ENCYCLOPEDIA OF LINGUISTICS*, *supra* note 5, at 460, 460.

38. See LANGUAGE IN CULTURE: PROCEEDINGS OF A CONFERENCE ON THE INTERRELATIONS OF LANGUAGE TO OTHER ASPECTS OF CULTURE 279 (Harry Hoijer ed., The University of Chicago Press 1954); see also OKRENT, *supra* note 4, at 206.

39. James Cooke Brown, *Loglan*, 202 *SCI. AM.*, June 1960, at 55.

language determines the forms of thought.”<sup>40</sup> Furthermore, since Loglan’s spoken and written forms were intended to be isomorphic, Dr. Brown believed Loglan would be uniquely ideal for human-computer communication.<sup>41</sup> Students of Dr. Brown’s original language continue the project to this day, attempting to teach the language to enough people for Dr. Brown’s original goals to be realized.<sup>42</sup>

Since many language creators have sweeping ambitions for their constructed languages, the languages often can be described accurately as belonging to more than one of these categories. For example, Láadan is mostly an *a priori* language experiment, with a radical feminist pronoun system premised on the theory that no natural language adequately expresses the female experience.<sup>43</sup> But Láadan is also an artistic language, used in the science fiction novel *Native Tongue* and its sequels.<sup>44</sup>

While the precise contours of all these labels remain unsettled, there is enough agreement among linguists to apply them with relative consistency. And when appended to the title of a constructed language, these labels may hold some significance in assigning the language a place within the intellectual property regime.

### III. PREVIOUS ATTEMPTS TO CONTROL CONSTRUCTED LANGUAGES VIA COPYRIGHT

The involvement of a creator with her constructed language does not end when the first book or article describing the language is published. Creators of constructed languages take great interest in how these languages are distributed and developed by subsequent users. Some are content to allow users of their constructed language free reign to publish modifications or supplements to the original.<sup>45</sup> But others believe it is possible to control, via copyright, who is allowed to publish regarding the language.<sup>46</sup> What follows are four prominent examples of legal and extralegal controls asserted by the creators or primary curators of constructed languages, as well as an analysis of

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40. *Id.*

41. *Id.* at 63; see also Alex Leith, *What Is Loglan?*, LOGLAN.ORG (Jan. 22, 2007), <http://www.loglan.org/what-is-loglan.html>.

42. *Questions and Answers on Lojban*, LOJBAN.ORG, <http://lojban.org/publications/level0/brochure/lojbanmo.html> (last visited May 7, 2014).

43. Lo Bianco, *supra* note 20, at 11.

44. *Id.* The novels take place in a future dystopia where women are stripped of all civil rights. See Jo Walton, *Linguistics, Aliens, Dystopia: Suzette Haden Elgin’s Native Tongue*, TOR.COM BLOG (July 15, 2011, 12:15 PM), <http://www.tor.com/blogs/2011/07/linguistics-alien-dystopia-suzette-haden-elgins-native-tongue>.

45. See *infra* Part III.A.

46. See *infra* Part III.B–D.

whether original publications in a constructed language are protected by the doctrine of fair use.

*A. Dr. Zamenhof Makes Esperanto the “Property of Society”*

Dr. Ludovic Lazarus Zamenhof made his prototype version of Esperanto public in 1887, describing the basic rules of grammar and a modest vocabulary within a short booklet.<sup>47</sup> Inside the front cover, Zamenhof wrote that an “international language, like every national one, is the property of society, and the author renounces all personal rights in it forever.”<sup>48</sup> From this clear and unequivocal statement, the students of Esperanto went forth and began producing their own translations and writings in Esperanto. Within just four years, “[thirty-three] textbooks, propaganda booklets or dictionaries on Esperanto had been published in [twelve] languages.”<sup>49</sup>

Nearly as soon as Zamenhof released Esperanto to the world, however, other linguists began proposing changes and reforms.<sup>50</sup> Zamenhof was receptive to criticism, and in 1888 he officially made one change to a temporal correlative suffix.<sup>51</sup> But in 1894, when Zamenhof proposed more extensive reforms, the readers of the official journal, *La Esperantisto*, rejected them in a vote.<sup>52</sup> By the time Zamenhof published the *Fundamento de Esperanto* in 1905, he had taken the position that changes to Esperanto should only be made by an authoritative, elected committee, and only after the governments of several nations had officially accepted Esperanto.<sup>53</sup> “[U]ntil this time,” Zamenhof wrote, “the foundation of Esperanto must most strictly remain absolutely unchanged,” because Esperanto only could be useful as an International Auxiliary Language if it remained stable.<sup>54</sup>

Zamenhof’s strategy of relying on consensus to preserve regularity in his language worked initially, but in 1907 a schism emerged within the Esperanto community. Louis Couturat, a French philosopher, presented the Delegation for the Adoption of an International Language with a pamphlet setting out his new language of Ido, based on Esperanto but remedying its supposed flaws.<sup>55</sup> The Delegation

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47. Lo Bianco, *supra* note 20, at 14; LARGE, *supra* note 3, at 72.

48. LUDOVIC LAZARUS ZAMENHOF, DR. ESPERANTO’S INTERNATIONAL LANGUAGE (Gene Keyes ed., 2006, R.H. Geoghegan trans., 1889), available at [http://www.genekeyes.com/Dr\\_Esperanto.html](http://www.genekeyes.com/Dr_Esperanto.html).

49. LARGE, *supra* note 3, at 74.

50. Smith, *supra* note 16, at 38.

51. *Id.*

52. Jordan, *supra* note 9, at 42–43.

53. LARGE, *supra* note 3, at 76.

54. *Id.*

55. *Id.* at 82 (“The word Ido in fact is an Esperanto suffix meaning ‘derived from,’ and might therefore be translated as ‘Offspring.’”).



adopted Ido, causing a split within the Esperanto community.<sup>56</sup> An estimated twenty-five percent of the Esperanto movement became Idists and created an alternate set of journals, dictionaries, and grammar books.<sup>57</sup> While not crippling to the Esperanto movement, the Ido schism “demonstrated the ever-present threat of internal disintegration which faces” constructed languages that rely solely on community cohesiveness and the authoritative voice of a creator.<sup>58</sup>

### B. Tolkien’s “Secret Vice” and Ownership of Elvish Languages

The English writer and philologist J.R.R. Tolkien is best known for his novels *The Hobbit* and *The Lord of the Rings*. The stories provide a portal into Middle Earth, the fantasy world that Tolkien spent much of his life developing, especially its Elvish languages. Constructing new languages was perhaps Tolkien’s greatest passion; as he remarked in a letter, “[t]he ‘stories’ were made rather to provide a world for the languages than the reverse.”<sup>59</sup> By the end of his life, Tolkien had provided extensive detail on two constructed languages in particular: the Elvish languages of Quenya and Sindarin.<sup>60</sup>

Tolkien released *The Lord of the Rings* in 1954–55 and almost immediately readers began scouring the book and its appendices to learn all they could about the elves’ euphonic languages. More formal publications analyzing the grammar and lexicon of the Elvish languages followed, and the number of publications shot up once many of Tolkien’s notes and letters were made available posthumously.<sup>61</sup> The authors of these scholarly inquiries into the Elvish languages all claimed copyright in their works, but only a few took the extra step of securing permission from Tolkien’s publishers to use the Tengwar and Angerthas scripts (the original alphabets, developed by Tolkien, in which the Elvish languages are written).<sup>62</sup>

Among the community of enthusiasts who analyze the Elvish languages, there is some confusion as to whether the Tolkien Estate

56. Smith, *supra* note 16, at 39.

57. LARGE, *supra* note 3, at 83.

58. *Id.*

59. J.R.R. TOLKIEN, THE LETTERS OF J.R.R. TOLKIEN 219 (Humphrey Carpenter ed., 1981).

60. DAVID SALO, A GATEWAY TO SINDARIN, at xiii (2004).

61. See Lisa Star, *Linguistic Bibliography for J.R.R. Tolkien’s Work*, TYALIE TYELLELIEVA (2004), <http://www.oocities.org/athens/parthenon/9902/lingbib.html>.

62. Compare RUTH S. NOEL, THE LANGUAGES OF TOLKIEN’S MIDDLE EARTH, at copyright page (1980) (with permission from Tolkien’s publishers), with SALO, *supra* note 60, at copyright page (no permission indicated). It is similarly debatable whether the typefaces that Tolkien created for the Elvish languages are copyrightable. Compare 37 CFR § 202.1 (2013) (“The following are examples of works not subject to copyright and . . . (e) Typeface as typeface.”), with *Boisson v. Banian, Ltd.*, 273 F.3d 262, 271 (2d Cir. 2001) (mentioning in dicta that letter shapes may be eligible for copyright protection).

holds a copyright in the languages themselves, or just particular texts in those languages.<sup>63</sup> The Tolkien Estate, which controls the copyrights of all J.R.R. Tolkien's works, asserts that "the Elvish languages are original literary and artistic works which were created by JRR Tolkien and therefore qualify for copyright protection in most (if not all) jurisdictions worldwide."<sup>64</sup> And it is not just the Tolkien Estate that believes the languages are copyrightable. Carl Hostetter, organizer of the Elvish Linguistic Fellowship, contends that books and journals on Elvish grammar are fundamentally different from other compilations of information like telephone directories, and therefore deserve copyright protection.<sup>65</sup>

The mere specter of copyright litigation has had appreciable effects on scholars of the Elvish languages. In 1999, Helge Fauskanger received two unpublished Quenya texts written by J.R.R. Tolkien. After writing a sixty-page analysis of the material, Fauskanger sent his manuscript to Christopher Tolkien (the son of J.R.R. Tolkien and curator of his works) for feedback.<sup>66</sup> In response, Fauskanger received a letter from the Tolkien Estate's lawyer threatening that publication of his analysis would be treated by the Estate as copyright infringement.<sup>67</sup> Fauskanger believed he was within the bounds of fair use, but fearing the costs of any litigation, he shelved his manuscript.<sup>68</sup>

Despite occasional threats, the Tolkien Estate has not filed any lawsuits against amateur linguists. Scholarly literature on Quenya and Sindarin, as well as original compositions in those languages, continue to flourish in books, journals, and especially online.<sup>69</sup> One scholar, seeking to dissipate any chill on speech regarding the Elvish languages, went so far as to secure a legal opinion from the former general counsel of the National Endowment for the Arts on whether Tolkien's languages could be copyrighted.<sup>70</sup> But ultimately, most scholars of Tolkien's languages are making the calculated gamble that since they are publishing obscure texts to limited audiences for no money, the Tolkien Estate will not actually haul them into court.

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63. E.g., *Is Elvish Copyrighted???*, THE TOLKIEN FORUM, <http://www.thetolkienforum.com/archive/index.php/t-6692.html> (last updated July 3, 2009, 09:15 PM).

64. E-mail from Cathleen Blackburn, Partner, Maier Blackburn, to author (Dec. 7, 2012, 7:09 EST).

65. Carl F. Hostetter, *The Tolkienian Linguistics FAQ*, THE ELVISH LINGUISTIC FELLOWSHIP (Dec. 18, 2006), <http://www.elvish.org/FAQ.html#copyright%5C>.

66. Erik Davis, *The Fellowship of the Ring*, WIRED, Oct. 2001, available at [http://www.wired.com/wired/archive/9.10/lotr\\_pr.html](http://www.wired.com/wired/archive/9.10/lotr_pr.html).

67. *Id.*

68. *Id.*

69. See Carl F. Hostetter, *Resources for Tolkienian Linguistics*, THE ELVISH LINGUISTIC FELLOWSHIP (Jan. 29, 2006), <http://www.elvish.org/resources.html>.

70. Robert P. Wade, *Legal Opinion on Languages and Alphabets*, TYALIE TYELELLIEVA (Feb. 23, 1999), <http://www.oocities.org/athens/parthenon/9902/legalop.html>. For further discussion of how the doctrine of fair use treats constructed languages, see *infra* Part III.E.

## C. Klingon and Paramount

The alien race of Klingons had appeared in the Star Trek universe as early as a 1967 episode of the television show, but they did not converse in their own language until the premiere of the film *Star Trek III: The Search for Spock*.<sup>71</sup> The producers of the movie hired Marc Okrand, a professional linguist with a Ph.D. from U.C. Berkeley, to devise a “tough sounding [language], befitting a warrior race.”<sup>72</sup> Okrand obliged the producers by constructing a distinctly unnatural language: Its phonologic inventory juxtaposes sounds that normally do not occur together and it uses an object-verb-subject sentence structure (a virtually nonexistent combination that occurs in only six of the thousands of known languages).<sup>73</sup>

After the filming of *Star Trek III* wrapped, Okrand began writing a book explaining the dialogue in the film, but quickly found it necessary to add additional grammatical features and vocabulary to make Klingon intelligible.<sup>74</sup> The first Klingon dictionary was published in 1985,<sup>75</sup> ostensibly as a novelty item, but it went on to sell over 250,000 copies and become a key element of the Star Trek brand.<sup>76</sup> Since then, Okrand has published two additional books on the Klingon language,<sup>77</sup> and a group of enthusiasts has formed the Klingon Language Institute (“KLI”) to promote the study and use of the Klingon language.<sup>78</sup> The KLI produces a quarterly academic journal titled *HolQeD* that focuses on Klingon linguistics and culture.<sup>79</sup>

To this day, Okrand remains the binding authority on Klingon grammar and usage and is acknowledged as such by nearly all members of the community.<sup>80</sup> There is even a clever conceit among Klingon enthusiasts that Okrand has sole access to a Klingon prisoner named Maltz, from whom all knowledge of the Klingon language has been derived.<sup>81</sup> But behind Okrand, there stands a much bigger authority: Paramount Pictures. Paramount owns the copyright to all of Okrand’s books on the Klingon language, as well as the trademarks of

71. Marc Okrand et al., *supra* note 34, at 111, 112–13.

72. OKRENT, *supra* note 4, at 267.

73. Gavin Edwards, *Dejpu’bogh Hov rur qabli!\**, WIRED, Aug. 1996, available at [http://www.wired.com/wired/archive/4.08/es.languages\\_pr.html](http://www.wired.com/wired/archive/4.08/es.languages_pr.html).

74. Okrand, *supra* note 34, at 120.

75. MARC OKRAND, THE KLINGON DICTIONARY, at copyright page (1985).

76. Edwards, *supra* note 73.

77. MARC OKRAND, KLINGON FOR THE GALACTIC TRAVELER (1997); MARC OKRAND, THE KLINGON WAY: A WARRIOR’S GUIDE (1996).

78. *Bylaws of the Klingon Language Institute*, THE KLINGON LANGUAGE INST., <http://www.kli.org/kli/KLI.Bylaws.html> (last visited May 7, 2014).

79. See *HolQeD: The Journal of the KLI*, THE KLINGON LANGUAGE INST., <http://www.kli.org/study/HolQeD.html> (last visited May 7, 2014). *HolQeD* is catalogued by the Modern Language Association and the Library of Congress. *Id.*

80. See OKRENT, *supra* note 4, at 279.

81. *Id.* See also OKRAND, *supra* note 75, at 12.

“Star Trek” and “Klingon.”<sup>82</sup> The KLI operates as an authorized user of the copyrights and trademarks, and when KLI volunteers published a Klingon translation of Shakespeare’s *Hamlet*, that copyright went to Paramount as well.<sup>83</sup>

Therefore, when it comes to the question of whether the Klingon language can be copyrighted, the resources of Paramount (and its parent corporation Viacom), “relative to the resources of a tiny nonprofit like the KLI, make it pretty moot indeed.”<sup>84</sup> Despite the power asymmetry, Dr. Lawrence Schoen, the founder of the KLI, believes the relationship between Paramount and the KLI has been largely symbiotic, with the KLI helping to keep the Star Trek brand alive, and Paramount permitting the members of the KLI largely free reign to pursue their specialized academic interests.<sup>85</sup>

#### D. The Loglan v. Lojban Dispute and a Trip to the Federal Circuit

In 1960, James Cooke Brown published his rough sketch of Loglan (a logical language designed to test the theory of linguistic relativity) in the magazine *Scientific American*.<sup>86</sup> The article generated considerable interest from readers, and Dr. Brown received hundreds of letters asking for more information about the language.<sup>87</sup> The development of the language proceeded in fits and starts; the next major step forward did not occur until 1975, when Dr. Brown published a Loglan dictionary and incorporated the Loglan Institute.<sup>88</sup> Freshly inspired, members of the Loglan Institute began discussing the language and contributing new ideas for its improvement in *The Loglanist*, an academic-style journal.<sup>89</sup>

In the early 1980s, developments in computer technology led members of the Loglan Institute to develop a more robust way of forming compound words, an overhaul referred to as “the Great Morphological Revision.”<sup>90</sup> However, Dr. Brown sought to maintain close control over this development, and even went so far as to censor discussion in the journal of any topics of which he did not personally

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82. *About the Klingon Language Institute*, THE KLINGON LANGUAGE INST., <http://www.kli.org/kli/> (last visited May 7, 2014) (“Klingon, Star Trek, and all related marks are Copyrights and Trademarks of Paramount Pictures.”).

83. WILLIAM SHAKESPEARE, *THE KLINGON HAMLET*, at copyright page (Nick Nicholas & Andrew Strader trans., Pocket Books 2000) (1996).

84. E-mail from Lawrence Schoen, Dir., Klingon Language Inst., to author (Dec. 6, 2012, 01:12 EST).

85. *Id.*

86. James Cooke Brown, *Loglan*, 202 SCI. AM., June 1960, at 53.

87. OKRENT, *supra* note 4, at 212.

88. Robert LeChevalier, *The Loglan-Lojban Dispute*, LOJBAN.ORG, <http://www.lojban.org/tiki/The+Loglan-Lojban+Dispute> (last modified Aug. 29, 2005, 7:22 PM EDT).

89. *See id.*

90. JAMES COOKE BROWN, *LOGLAN 1: A LOGICAL LANGUAGE* ch. 6.15 n.26 (4th ed. 1989), available at <http://www.loglan.org/Loglan1/chap6.html#sec6.15>.

approve.<sup>91</sup> Dr. Brown's controlling attitude began to chafe dedicated members of the Loglan Institute. The final straw came in 1986 when volunteer Robert LeChevalier wrote a computer program that made flashcards of Loglan vocabulary.<sup>92</sup> Incensed by this perceived threat to his authority, Dr. Brown insisted that LeChevalier sign a copyright acknowledgement, in which Dr. Brown claimed the copyright to all individual words of the language, and pay the Loglan Institute royalties from the shareware program.<sup>93</sup>

In the face of this coercive legal tactic, LeChevalier and most of the other disgruntled Loglan volunteers decided to reinvent Loglan with a "public domain vocabulary."<sup>94</sup> LeChevalier originally titled this offshoot version of the language Loglan-88, but soon renamed it Lojban (from the Loglan words *logji*, "logic," and *bangu*, "language").<sup>95</sup> In the meantime, Dr. Brown took the step of registering "Loglan" as a trademark for dictionaries and grammars.<sup>96</sup> In 1987, Dr. Brown threw down the gauntlet in the form of a cease and desist letter to LeChevalier.<sup>97</sup> The newly formed Logical Language Group (a non-profit created to promote Lojban) responded by petitioning the United States Trademark Trial and Appeal Board to cancel the Loglan trademark for genericness.<sup>98</sup> After the Board ruled for the Logical Language Group and ordered cancellation of the trademark, the Loglan Institute appealed to the Court of Appeals for the Federal Circuit.<sup>99</sup>

It is important to step back and consider why the parties chose to litigate on the basis of trademark law, as opposed to copyright (or patent). Both Wesley Parsons, the lawyer for the Loglan Institute, and William Herbert, the lawyer for the Logical Language Group, were agnostic as to whether constructed languages can be protected by patent, trademark, copyright, or some combination.<sup>100</sup> But both parties were severely constrained in their resources and decided that trademark would be the most cost-efficient ground on which to litigate.<sup>101</sup> The trademark dispute presented a simple question: Was the word "Loglan" a generic term for a language, or a mark in commerce spe-

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91. *Id.*

92. LeChevalier, *supra* note 88.

93. *Id.*

94. *Id.*

95. OKRENT, *supra* note 4, at 226.

96. Loglan Inst., Inc. v. Logical Language Grp., Inc., 962 F.2d 1038, 1039–40 (Fed. Cir. 1992); *see also* LOGLAN, Registration No. 1,484,248 (canceled on Jan. 11, 1993).

97. OKRENT, *supra* note 4, at 226.

98. Loglan, 962 F.2d at 1040.

99. *Id.*

100. Telephone Interview with Wesley Parson, Counsel for Loglan Inst., Inc. (Dec. 7, 2012); Telephone Interview with William Herbert, Counsel for Logical Language Grp., Inc. (Dec. 6, 2012).

101. Telephone Interview with Wesley Parson, *supra* note 100; Telephone Interview with William Herbert, *supra* note 100.

cific to the Loglan Institute?<sup>102</sup> In contrast, litigating over whether works in Lojban, using different vocabulary but similar grammatical rules to Loglan, constituted derivative works under copyright doctrine would have been a more complex (and thus more expensive) argument.

In the end, the Federal Circuit found that Loglan was a name for a language, like English or French, and was therefore a generic term not eligible for trademark protection.<sup>103</sup> The court also refused to consider the Loglan Institute's claims of unclean hands and estoppel based on "wrongfully acquired . . . trade secrets," effectively preempting any debate on whether a constructed language could be a trade secret.<sup>104</sup>

Since the Federal Circuit decision, Lojban has continued to foster an active community of linguistic hobbyists, while support for Loglan has dwindled down to a tiny core of supporters.<sup>105</sup> The Logical Language Group considers all language definition information to be in the public domain, "and most Logical Language Group publications are distributed under a policy which allows not-for-charge copying and redistribution."<sup>106</sup>

#### *E. What Qualifies as Fair Use and How Does It Protect Users of Constructed Languages?*

The doctrine of fair use provides that usage of a copyrighted work for "criticism, comment . . . teaching . . . scholarship, or research, is not an infringement of copyright."<sup>107</sup> Therefore, even if it turns out that constructed languages can be copyrighted, it seems that fair use would protect most of the activities described in Part III.A–D. A look at the four factors considered in a fair use determination shows why.

First, one must evaluate "the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes."<sup>108</sup> The analysis, literary criticism, and poetry by students of Esperanto,<sup>109</sup> Quenya, Sindarin,<sup>110</sup> Klingon,<sup>111</sup> and

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102. Loglan, 962 F.2d at 1039.

103. *Id.* at 1041.

104. *Id.* at 1042.

105. *Compare Frequently Asked Questions About Lojban*, LOJBAN.ORG (Apr. 23, 2011, 10:58 AM EDT), <http://www.lojban.org/tiki/Frequently%20Asked%20Questions%20About%20Lojban#G4> (listing number of books sold and number of active participants), *with Welcome to Loglan.org*, LOGLAN.ORG (Oct. 13, 2013), <http://www.loglan.org> ("This [mailing] list is often rather quiet, but people are listening.").

106. *Questions and Answers on Lojban*, LOJBAN.ORG, <http://lojban.org/publications/level0/brochure/lojbanmo.html> (last visited Feb. 28, 2014).

107. 17 U.S.C. § 107 (2012).

108. *Id.* § 107(1).

109. ESPERANTO USA, <http://www.esperanto-usa.org> (last visited May 7, 2014) ("Esperanto-USA is the non-profit educational association of Esperantists in the United States . . .").

Lojban<sup>112</sup> are all published by nonprofit entities, without hope for remuneration beyond printing costs. In addition, many of the constructed language nonprofits explicitly list education as their primary mission (the Klingon Language Institute even administers a Klingon Language Certification Program, complete with exams and gold pins).<sup>113</sup>

Second, one must evaluate “the nature of the copyrighted work.”<sup>114</sup> The Supreme Court has recognized that “some works are closer to the core of intended copyright protection than others, with the consequence that fair use is more difficult to establish when the former works are copied.”<sup>115</sup> For constructed languages, this second factor is where the *a priori* or *a posteriori* nature of a language, and its communicative intent, may matter. Presumably, *a posteriori* languages would be ripe for subsequent fair use owing to their already derivative nature. In contrast, *a priori* languages, with their imaginative morphologies and syntaxes, would receive thicker protection.

Also, one would have to factor in the communicative function of a constructed language. International Auxiliary Languages, such as Esperanto, would presumably be more suitable for subsequent fair use because their authors intend them to be used for widespread, factual communication. On the other hand, artistic constructed languages are often intended to serve as a complement to a narrative work, and would therefore probably receive greater protection. As the Supreme Court described, “[t]he law generally recognizes a greater need to disseminate factual works than works of fiction or fantasy.”<sup>116</sup>

The third factor in a fair use analysis is “the amount and substantiality of the portion used in relation to the copyrighted work as a whole.”<sup>117</sup> Typically, scholarly articles or poems copy verbatim only small amounts of a constructed language’s foundational text. However, if one takes the view that the entire constructed language is copyrighted, then derivative works written in Loglan or Klingon would be made up almost entirely of copyrighted material.

110. Carl F. Hostetter, *Vinyar Tengwar*, THE ELVISH LINGUISTIC FELLOWSHIP, <http://www.elvish.org/VT/> (last visited May 7, 2014) (“*Vinyar Tengwar* . . . is a not-for-profit refereed journal of the Elvish Linguistic Fellowship, devoted to the scholarly study of the invented languages of J.R.R. Tolkien.”).

111. *About the Klingon Language Institute*, THE KLINGON LANGUAGE INST., <http://www.kli.org/kli/> (last visited May 7, 2014) (“The Klingon Language Institute is a nonprofit 501(c)3 corporation . . .”).

112. LOJBAN.ORG, <http://www.lojban.org/tiki/Lojban> (last visited May 7, 2014) (“This site is the official repository of materials from The Logical Language Group (LLG), the non-profit corporation which has led Lojban development since 1987.”).

113. OKRENT, *supra* note 4, at 9.

114. 17 U.S.C. § 107(2) (2012).

115. *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569, 586 (1994).

116. *Harper & Row Publishers, Inc. v. Nation Enters.*, 471 U.S. 539, 563 (1985).

117. 17 U.S.C. § 107(3).

The fourth factor is “the effect of the use upon the potential market for or value of the copyrighted work.”<sup>118</sup> The Supreme Court has held that “[t]his last factor is undoubtedly the single most important element of fair use.”<sup>119</sup> Unlike a news report that scoops the juiciest details of an autobiography, as in *Harper & Row*,<sup>120</sup> dictionaries, grammar books, scholarly analysis, and artistic compositions in a constructed language would only draw more people to the original source material produced by the language creator. Indeed, it is probably the recognition of this symbiotic relationship that has kept copyright holders such as Paramount and the Tolkien Estate from taking legal action against the communities of Elvish and Klingon language enthusiasts.

Although most derivative uses of constructed languages would seem to fall squarely within the fair use limitation on copyright, determining whether a particular use of a copyrighted work qualifies as fair use is always a fact-specific inquiry.<sup>121</sup> And since in the legal context “fact-specific” almost always translates to “expensive,” most constructed language enthusiasts would rather forgo writing an article about Klingon grammar than face a potential lawsuit, even if their fair use defenses would be strong.

#### IV. CONSTRUCTED LANGUAGES SHOULD BE USED FREELY AND WITHOUT FEAR OF LEGAL CONSEQUENCES

Part III has shown how the creators and curators of constructed languages attempt to exercise control of their languages once they are released to the general public. These gatekeepers fear that without a central authority, the communities of these constructed languages will splinter and fragment (and these fears are not without reason).<sup>122</sup> But this Note now argues that there is insufficient theoretical justification for copyright law to be the means of exercising that control. Awarding a copyright on an entire constructed language would not serve to incentivize language creation, nor do an author’s moral rights justify control over an entire language. Perhaps most importantly, a copyright on a constructed language would stunt an otherwise fertile opportunity for semiotic democracy.

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118. *Id.* § 107(4).

119. *Harper & Row*, 471 U.S. at 566.

120. The news report at issue in that case contained excerpts of President Ford’s memoirs about the decision to pardon Nixon, before the book was available in bookstores. *Id.* at 542–43.

121. *See* *Campbell*, 510 U.S. at 578–79.

122. *See supra* Parts III.A, III.D.



*A. Copyright Protection Does Not Incentivize the Creation of New  
Constructed Languages*

Under traditional economic incentive theory, embodied in the Constitution's Copyright Clause,<sup>123</sup> the exclusive rights of copyright are awarded by the government as an incentive to spur the creation and dissemination of creative works. Implicit in this premise is the notion that creative works have some kind of social value, and that in offering protection for this work, Congress is seeking to deliver that social value to the public.<sup>124</sup>

The social value in any language comes from its ability to facilitate communication. It is the infinitely generative capacity of a language, the ability to communicate new thoughts and ideas, that makes a set of sounds and grammatical rules into a language.<sup>125</sup> A few snippets of foreign-sounding dialogue were all that were necessary to accomplish the discrete artistic goal of making Klingons sound alien in a *Star Trek* movie.<sup>126</sup> But as Marc Okrand recognized, to create a Klingon language that others could use, he needed to devise additional grammatical features and vocabulary that did not appear in the movie.<sup>127</sup> Both the movie and the Klingon language possess forms of social value, but the language only attains social value once it reaches a generative capacity. Therefore, while the movie (and the snippets of Klingon dialogue within it) qualify for copyright protection, the language itself is too generative to be held within a single copyright.

When considering the actual mechanics of constructing a new language, the economic incentive theory seems quite distant from reality. There is little market demand for constructed languages, and the organizations that exist to foster them tend to operate without a profit motive.<sup>128</sup> Instead, most language creators seem to be driven by an "instinct for 'linguistic invention' — the fitting of notion to oral symbol, and [the] *pleasure in contemplating the new relation established*."<sup>129</sup> Even without external motivation for fame or fortune,

123. U.S. CONST. art. I, § 8, cl. 8 ("The Congress shall have Power . . . To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.").

124. See Neil Weinstock Netanel, *Copyright and a Democratic Civil Society*, 106 YALE L.J. 283, 368–69 (1996).

125. See NOAM CHOMSKY, SYNTACTIC STRUCTURES 13 (1957).

126. Okrand, *supra* note 34, at 112, 115.

127. *Id.* at 120–21.

128. See, e.g., *Products Available from the Klingon Language Institute*, THE KLINGON LANGUAGE INST., <http://www.kli.org/stuff/Merchant.html> (last visited May 7, 2014) (offering a one-year Klingon Language Institute membership for \$10).

129. J.R.R. Tolkien, *A Secret Vice*, in THE MONSTERS AND THE CRITICS 198, 206 (Christopher Tolkien ed., 1983) (emphasis in original).

people construct languages at an amazing rate. Linguist Arika Okrent estimates that more than nine hundred constructed languages have been produced since the eleventh century.<sup>130</sup>

*B. A Personhood Theory of Rights over Creative Works Is Insufficient To Justify Control over an Entire Language*

The personhood theory of intellectual property contends that creative works are produced containing part of the creator's identity, and therefore, that a creator has certain moral rights over the fruit of her labors.<sup>131</sup> These moral rights include the right of disclosure, the right of retraction, the right of attribution, and most importantly for authors of constructed languages, the right of integrity.<sup>132</sup> At first glance, it may appear that the integrity right's prohibition against distortion or mutilation of an author's work provides the type of control that constructed language authors crave: the right to prevent others from creating derivative works that amend the original language.<sup>133</sup>

However, even assuming *arguendo* that such moral rights justify the creation of intellectual property protections, there is still a difference between a copyright in the discrete texts one produces, and a copyright in anything produced in a language. No one would dispute that J.R.R. Tolkien's integrity right in *The Lord of the Rings* would be infringed if someone released a version identical to the original except with all references to "Mordor" replaced by "Candyland."<sup>134</sup> Closer to the line are instances of fan fiction, such as *The Black Book of Arda*, which retells the events of *The Silmarillion* from the perspective of the evil characters Melkor and Sauron.<sup>135</sup> But it would be impossible to say exactly which copyrighted work of Tolkien's would be infringed by a student of Elvish languages who writes her own original poem in Quenya. Tolkien cannot hold a right to all compositions in Quenya any more than Noah Webster of *Webster's Dictionary* can hold a right to all compositions in English.

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130. OKRENT, *supra* note 4, at 10, 295–96 (listing five hundred constructed languages in chronological order).

131. Linda J. Lacey, *Of Bread and Roses and Copyrights*, 1989 DUKE L.J. 1532, 1541–42 (1989).

132. 3 MELVILLE B. NIMMER AND DAVID NIMMER, NIMMER ON COPYRIGHT § 8D.01–.04 (2012).

133. *Id.* In practice, United States courts have given little recognition to moral rights in rendering copyright decisions, in spite of purported adherence to the Berne Convention. *Id.*

134. In Tolkien's novels, Mordor is the inhospitable land ruled by the evil lord Sauron. See, e.g., J.R.R. TOLKIEN, *THE FELLOWSHIP OF THE RING* (1954).

135. Davis, *supra* note 66. For further discussion of when fan fiction crosses the line into copyright infringement, see Rebecca Tushnet, *User-Generated Discontent: Transformation in Practice*, 31 COLUM. J.L. & ARTS 497 (2008).

*C. Developing and Using a Constructed Language Is an Exercise in Semiotic Democracy*

Semiotic democracy is the term used to describe popular participation in the creation of meaning by turning forms of mass culture to their own uses.<sup>136</sup> The meaning that students derive from studying a constructed language varies from person to person. Some people approach constructed languages as a game, where learning one is like solving a particularly complex puzzle.<sup>137</sup> Others see learning a constructed language as a special form of literary immersion, the most in-depth method for understanding fictional characters and their worlds.<sup>138</sup> For a large proportion of students, learning a constructed language is a political statement, announcing a particular internationalist worldview.<sup>139</sup> The wonderful thing about constructed languages is that each student brings her own meaning to the study of the language, and imparts that meaning upon other members of the constructed language community.

In that way, a constructed language community is an example of participatory semiotic democracy at its finest — each new speaker stretches the boundary of what can be expressed in that language. At its inception, who would have thought that the sparse Klingon language would have poetic potential? But over two decades later, the language is developed enough that members of the Klingon-speaking community have a contest for the best Klingon palindrome.<sup>140</sup>

Constructed languages also create rich opportunities for human interaction and community. Robert LeChevalier and Nora Tansky first met when working on Loglan, and when they were married in 1987, they delivered their vows in that language.<sup>141</sup> Okrent describes the diverse makeup of an Esperanto conference, where “a nudist, a gay ornithologist, a railroad enthusiast, and a punk cannabis smoker” form a community drawn together by their commitment to an International Auxiliary Language.<sup>142</sup>

136. Jack Balkin, *Digital Speech and Democratic Culture: A Theory of Freedom of Expression for the Information Society*, 19 N.Y.U. L. Rev. 1, 35 n.56 (2004) (providing examples of legal scholarship surrounding semiotic democracy).

137. See James Portnow, *Gaming Languages and Language Games*, in FROM ELVISH TO KLINGON, *supra* note 16, at 135, 135–40.

138. See Helge Fauskanger, *Tolkien's Not-So-Secret Vice*, ARDALAMBION, <http://www.uib.no/People/hnohf/vice.htm> (last visited May 7, 2014).

139. See Jordan, *supra* note 9, at 44–48.

140. OKRENT, *supra* note 4, at 281 (“The winner of the *HolQeD* palindrome contest: ‘*tlhab 'oS 'Iw HoHwI' So' bathlh*’ — ‘Blood represents freedom; honor hides the killer.’”).

141. *Id.* at 215–16; Robert LeChevalier, *Autobiography of Robert LeChevalier*, LOJBAN.ORG, <http://www.lojban.org/tiki/Biography+of+Robert+LeChevalier> (last modified June 12, 2012, 7:57 AM EDT).

142. OKRENT, *supra* note 4, at 116.

The uninhibited semiotic democracy prompted by constructed languages does have certain drawbacks. The most notable disadvantage of students feeling free to experiment with constructed languages is that the students often decide to create their own rival language. These schisms (e.g., Esperanto-Ido and Loglan-Lojban) factionalize already small communities and sow confusion among newcomers. Although initially jarring, history has shown that these splits resolve themselves naturally, as people coalesce around one language.<sup>143</sup> The constructed language that people choose to devote their time to learning is not necessarily the most intellectually consistent or logically sound, but rather the constructed language that offers the most robust community.<sup>144</sup>

Therefore, it is difficult to see how granting a copyright to the creator of a constructed language would serve to foster the active culture of semiotic democracy that already surrounds constructed languages. While it is understandable that the authors of constructed languages fear the “inconveniences due to too many successive cooks,”<sup>145</sup> copyright litigation is an expensive and complicated method of resolving that problem. If the creators of constructed languages want to stabilize their syntax and lexicon, they are better off making a clear argument as to why stability is a desirable quality.<sup>146</sup>

## V. CONCLUSION

“In natural language systems, speakers own their language, and their free exercise of it is a primary instrument of culture.”<sup>147</sup> Constructed languages engender their own cultures, which become richer and more robust as more people learn them. While the impulse of constructed language creators to exert continuing control over their work is understandable, the legal mechanism of copyright is ill-suited to resolving disputes over constructed languages.

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143. The divergent fates of Lojban and Loglan illustrate this point well. *See supra* Part III.D.

144. *See, e.g.*, Arnt Richard Johansen, *Why I Like Lojban*, ARNT RICHARD JOHANSEN'S HOME PAGE, <http://arj.nvg.org/lojban/why-i-like.html> (last visited May 7, 2014) (“We, the speakers of Lojban, get to construct new words and idioms, and decide where the language is heading. We can actually be the Shakespeares and Dickens of a complete, new language.”).

145. Tolkien, *supra* note 129, at 198.

146. JOHN COWAN, *THE COMPLETE LOJBAN LANGUAGE 4* (Nick Nicholas ed., 1997) (explaining that Lojban was stabilized against any official change for five years to grow the number of speakers).

147. Michael Adams, *Appendix 1: Owning Language*, in *FROM ELVISH TO KLINGON*, *supra* note 16, at 227, 233.