

An Intellectual Property Food Fight: Why Copyright Law Should Embrace Culinary Innovation

ABSTRACT

In the United States, dining has become an increasingly popular form of leisure and entertainment, generating an estimated \$537 billion in 2007. However, dining represents only one aspect of the modern food economy; cooking and dining are regularly featured in newspapers and magazines, while celebrity chefs tout their own brands on television. Eating has been transformed from a mere perfunctory activity into big business.

Increasing competition for the attention and money of restaurant patrons has prompted chefs of grande cuisine to differentiate their menus by creating unique dishes. The time and labor that chefs sink into this form of innovation represents a substantial investment, and some have turned to the law to protect their original dishes from competing chefs. Yet, copyright law fails to protect chefs' recipes from copyists. Historically, the law has viewed recipes as uncopyrightable subject matter because of their "functional" and "utilitarian" nature.

This note illustrates why, in today's food culture, copyright law should embrace chefs' innovative dishes as original works of authorship, amenable to copyright protection. First, the author describes the transformation of eating from a perfunctory activity into one done for entertainment and explains how this phenomenon created competition among chefs. Second, the author traces the current law on the copyrightability of culinary dishes and recipes. Next, the author discusses the legal, doctrinal, and sociological reasons why the law has not protected recipes as works of authorship in the past. Finally, the author argues that chefs' original menu items, as expressed in recipes, should be considered copyrightable subject matter as works of applied art.