

## Abstract

## A Study on Copyright Law Issues over the protection of recipes

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Are Food Recipes Eligible for Copyright Protection? This issue is challenging. On January 29, 2015, the Northern District of Ohio addressed whether food recipes are eligible for copyright protection. In this *Tomaydo-Tomahhdo* case, the court rejected the copyright owner's arguments and ultimately granted summary judgment in favor of the competitor. In doing so, the court explained that "[t]he identification of ingredients necessary for the preparation of food is a statement of facts. There is no expressive element deserving copyright protection in each listing." The court further concluded that "recipes are functional directions for achieving a result and are excluded from copyright protection under 17 U.S.C. § 102(b)" and confirmed that any available copyright protection would only extend to creative manner in which the recipes were presented.

U.S. Copyright Office has also weighed in, noting: "Copyright law does not protect recipes that are mere listings of ingredients... Copyright protection may, however, extend to substantial literary expression—a description, explanation, or illustration, for example—that accompanies a recipe or formula or to a combination of recipes, as in a cookbook." The Office also notes, however, that "[w]hen a recipe or formula is accompanied by an explanation or directions, the text directions may be copyrightable, but the recipe or formula itself remains uncopyrightable."

This article aims to establish the appropriate groundwork for analyzing the copyrightability of recipes. I want to show that, contrary to U.S. Court's main opinions, food recipes also may meet the statutory requirements for copyrightability under our Copyright Law, along that same thread such as *Barbour v. Head*, 178 F. Supp. 2d 758, 762-764 (S.D. Tex. 2001). There is no copyright protection in the recipes themselves. In order to meet copyright

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law's requirement of originality, though, the work must be deemed expressive. To determine whether and how recipes are expressive, some of Korea's best chefs may be claimed to use recipes to express various ideas and emotions.

In short, if any recipes are infused with light-hearted or helpful commentary that could conceivably qualify as protectable expression, as such which also appears verbatim in some recipe book, that recipes may be also arguably deserved copyright protection under our Copyright Law. Even though the *Tomaydo-Tomahhdo* case<sup>7</sup> decision carefully avoided saying recipes could never be protected by copyright, if you are determined to protect them, basic copyright law doesn't prevent protection of literary expression of a list of ingredients and cooking steps. Furthermore, in contrast, while recipe books and cookbooks are afforded copyright protection, it extends only to the "order and manner of the presentation of the compilation's elements." Thus, copying the selection and arrangement of particular recipe books or cookbooks would constitute compilation copyright infringement.

### Keywords

Recipes, Cooking, Chef, Recipes Book, Cookbook, The Idea-Expression Dichotomy, Recipes' Copyrightability, Compilation

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