

## **Author's Right to Compensation for Intellectual Production**

Authors' incomes generally come from royalties and licensing revenues for works protected by copyright. He or she has a right to compensation for intellectual production. Section 102(a) of the U.S. Copyright Act states that "original works of authorship fixed in any tangible medium of expression" are protected by copyright. By definition in Section 102(b) ideas and concepts do not have copyright protection. A writing known in the entertainment industry as a "series treatment" which embodies an idea developed for a television series is protected in part and unprotected in part. If there is no statutory copyright protection for "thought creations" the creator's right to compensation must come from contract. Binding a party to whom an idea or concept has been disclosed does not necessarily require a written contract. An implied or quasi-contract may be sufficient.

*Forest Park Pictures and others v. Universal Television Network, Inc.* reached the Second Circuit Court of Appeals (which sits in New York) after a judgment dismissing the complaint. The case concerned the obligation of USA Network to pay for using a concept it received from the plaintiffs/creators for its television series. There was no written contract but plaintiffs alleged an implied promise to pay reasonable compensation if the concept was used (a quasi-contract). According to Forest Park Pictures, USA Network misappropriated its idea by producing its own television series based on the same concept.

After submitting the series treatment Forest Park met with USA Network's representative. The complaint alleges defendant scheduled the meeting "for the express purpose of hearing Plaintiffs pitch their show." Defendant knew "that writer-creat[o]rs pitch creative ideas to prospective purchasers with the object of selling those ideas for compensation" and "that it was standard in the entertainment industry for ideas to be pitched with the expectation of compensation in the event of use".... And, at the meeting, "[i]t was understood that Plaintiffs were pitching those ideas with the object of persuading [defendant] to purchase those ideas for commercial development." The parties exchanged further communications in the week following their meeting but then discussions ended and they had no further contact.

The threshold issue was whether dismissal of the complaint on the ground of preemption by the Copyright Act was premature. The District Court held in dismissing the complaint that the subject matter of plaintiffs' breach of contract claim – the character biographies, plots, and story lines it pitched to defendant "fall within the subject matter of the copyright laws" and concluded

Plaintiffs' breach-of-implied-contract claim based on his alleged right to be compensated for the use of his idea for a television series is equivalent to the

exclusive rights protected by the copyright law and is therefore preempted by the Copyright Act.

The Court of Appeals viewed the preemption issue differently. It held in a decision in June 2012 that the complaint “adequately alleged the breach of a contract that included an implied promise to pay” and plaintiffs’ rights to compensation “are not equivalent to those protected by the Copyright Act.”

An enforceable implied-in-fact-contract is an alternative theory for compensation that does not rest on the Copyright Act. Misappropriation is not equivalent to copyright infringement. The question is “whether the Complaint actually pleads an enforceable implied-in-fact contract.” Defendant argued that the “Complaint falls short because there was no meeting of the minds over the price term.” But under California law where the contract was to be performed the absence of a specific price term is not fatal. “[A]n implied-in-fact contract can have an open price term to be filled in by industry standards.”

A disclosure expressly conditioned on a promise of payment is actionable against a party who knew or should have known that such a condition was implied. The Circuit Court pointed out that California has long recognized that an implied-in-fact contract may be created where the plaintiff submits an idea (the offer) that the defendant subsequently uses (the acceptance) without compensating the plaintiff (the breach). Of course, Forest Park will still have to prove at trial that such an industry standard price exists and that both parties implicitly agreed to it. That Forest Park may fail to prove its claim, however, does not render the contract unenforceable as a matter of law.