

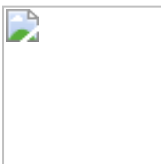


FIELD LAW

Intellectual Property and Technology

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Supreme Court on Copyright Infringement and Protection of Ideas



By **Richard Stobbe**

Let's say you pitch a story idea to a TV production company - and not just an idea, but a complete set of storyboards, characters and scripts. You would be surprised if one day you saw that story idea come to life in a TV production that gave no credit to you as the original creator of the materials. That's what happened to Claude Robinson and his idea for a children's TV program inspired by *Robinson Crusoe*.

One of the most important copyright decisions in 2013 was issued by the Supreme Court of Canada (SCC) in late December: In *Cinar Corporation v. Robinson*, 2013 SCC 73, the court reviewed Mr. Robinson's claim that Cinar Corp. infringed copyright in his original story materials by copying a substantial part of those materials in the new TV production called "Robinson Sucroë".

I am often asked when or why someone can copy the ideas of someone else. Ideas themselves are not protected by copyright law. Many features of a TV show or a movie are simply non-protectable, including ideas, elements drawn from the public domain or generic components of a story, like heroes, villains, conflict and resolution. However, in this case, the idea was articulated and expressed in a set of original written materials which resulted from the skill and judgement of the author.

The court framed this fascinating issue in this way: "The need to strike an appropriate balance between giving protection to the skill and judgement exercised by authors in the expression of their ideas, on the one hand, and leaving ideas and elements from the public domain free for all to draw upon, on the other, forms the background against which the arguments of the parties must be considered."

In the end, the court rejected the notion that the two works must be compared piecemeal to determine if protectable elements of the original work were similar to the copy. Instead, the court reviewed the "cumulative effect" of the features copied from the original, to determine if those features amount to a substantial part of the original work as a whole. Thus the court approved a "qualitative and holistic assessment of the similarities between the works", rather than dissecting both works to compare individual features in isolation.

This decision will be applied in other copyright infringement situations in Canada, including art, media, music and software.

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