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Opinion

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I've Got a Great Idea: I'll Sue!

Lawsuit abuse on artistic ideas is out of control.

By Paul Goldstein, PAUL GOLDSTEIN, an intellectual property specialist, is a professor at Stanford Law School and a practicing attorney. His latest book is a novel, "Errors and Omissions." August 26, 2006

IN LAW AS IN LIFE, ideas are free as air, and attempts to claim them as exclusive property usually end in heartache. Nonetheless, writers and would-be writers — convinced that the latest blockbuster film or hit television show owes its success to an idea they put forward — keep on suing, hoping for a pot of gold.

These lawsuits clog the courts, as they have for decades. Jim Jarmusch's 2005 film "Broken Flowers" is under attack now; just last month, a Los Angeles Superior Court judge threw out a claim that Miramax had stolen ideas for the 1998 poker movie "Rounders."

In 1954, when courts were modestly more receptive to "idea-submission" lawsuits than they are today, a new NBC television program, "Home," was hit with six claims based on no more than advance publicity for the show. Three more claims arrived after the first broadcast of the show, which was a service program described by one source as a "magazine of the air."

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same basic idea, for radio, as early as 1929 — was no deterrent to the claims.

Copyright law has historically rejected protection for ideas. One reason is that, like the notion behind "Home," a lot of ideas (as opposed to their specific realizations) aren't all that original; they've been around in one form or another for a long time. Another reason is the constitutional belief that, of all forms of speech, it is ideas that most deserve to be "free," beyond ownership. There is an economic reason too. Ideas are plentiful and cheap to produce, and society is better off if it limits the reward of property rights to those who do the hard work of elaborating ideas into creative expression.

Think about it — there is probably no belief stronger than that the ideas that occur to each of us are uniquely our own. But the fact is that hundreds, if not thousands, of others have at one time had the same idea — and believed it to be their own. Must a film studio pay everyone who makes a claim, even if in fact (and it usually is the fact) the idea came from one of the studio's own employees or contractors?

Well over a century ago, Oliver Wendell Holmes Sr. observed that "literature is full of such coincidences, which some love to believe plagiarisms. There are always thoughts abroad in the air, which it takes more wit to avoid than to hit upon."

Rebuffed by copyright law, most idea submitters recast their claims as implied contracts: In submitting my idea to you, I am making an offer for a contract; by producing a film or reality TV show embodying my idea, you signify that you have accepted my offer; by failing to pay for my idea, you have breached our contract. (Formal contracts are different. If a studio or network wants to pay someone to pitch ideas, it will enter into an express agreement or confidential relationship to that end.)

Courts set high hurdles for implied contract claims, for many of the same reasons they do in copyright cases. Yet, aided by perhaps overzealous lawyers, idea submitters

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persist. In the clash between legal rules and the narcissistic notion that my idea is unique, vanity all too often wins.

No cause has a stronger claim on legal institutions than creativity in literature, art, music and film, for it is creative expression that contributes texture, wit and depth to daily life. A central purpose of copyright law is to offer the prospect of reward to artists willing to invest the long, solitary hours required to turn ideas into creative expression.

But, as the great American copyright scholar Benjamin Kaplan observed, "to make the copyright turnstile revolve, the author should have to deposit more than a penny in the box."

When idea submitters and their lawyers recast copyright claims as contracts, courts should continue to apply the same exacting standard.

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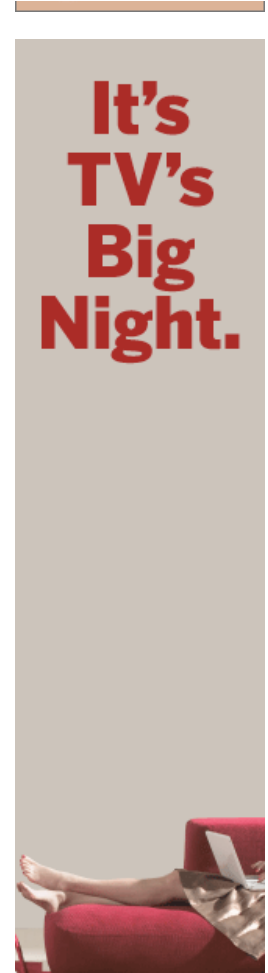
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