
COPYRIGHT TO COOKBOOKS AND NOT TO RECIPES

Divya Chellam. P, Jindal Global Law School

1.1 INTRODUCTION

Firstly, this chapter deals with the major aspect of why copyright cannot be claimed for recipes and just for cookbooks, with shreds of evidence and case laws. It notes the developments in cookbooks ranging from an ancient period till now. Secondly, in this contemporary era, chefs move into media as a way of fulfilling their commercial benefits. The celebrity chefs have moved from the primary motive of protecting their dishes to monetary popularity, which are addressed in this chapter.

The secret in the food trade relies on the recipes and their formulas. In the food industry, copyrights are difficult to obtain for recipes.¹ The reason is due to competition, as it is difficult to prove the first and original creator. Therefore, the Copyright law² encourages the artistic creativity and pertains originality for public good.

1.2 ANCIENT TO MODERN DEVELOPMENT OF COOK BOOKS

The evolution of an innovative recipe in various ways turns out to be a cookbook. The publication of cookbooks not only relies on copyright but mainly on its developments through centuries. Some remarkable cookbooks of history are quoted here.

The first written recipes were the baked clay tablets discovered by the Ancient Egyptians.³ The first English cookery book - The Forme of Curye (published during the 1390's). This structure of the culinary recipes started spreading at the end of the thirteenth century. Flandring, Flavouring, Cooking and Nutrition of food recipes are all covered in this book.

¹ Bailey King, 'Intellectual Property Protection for Recipes' (2019) <<https://www.lexology.com/library/detail.aspx?g=3741a5c0-f146-40ab-8f74-21427cd3b673>> <accessed 21 March 2021>

² J Christopher, 'Copyright in the Kitchen: Exploring Protection for Recipes and Dishes' (2016) 9 (1) *Landslide* 46 <https://www.americanbar.org/groups/intellectual_property_law/publications/landslide/2016-17> <accessed 21 March 2021>

³ Abigail Dennis, 'From Apicius to Gastroporn: Form, Function, and Ideology in the History of Cookery Books' (2008) 31 (1) *Studies in Popular Culture* 39 <<https://www.jstor.org/stable/44982180>> <accessed 25 March 2021>

The cookbooks around the 15th century were specialized with thin volumes and practically zero embellishments, no outline, no graphics nor decorations filled.

In the 16th century, it became more elaborate with detailed illustrations. Example - Hugh Plat's *Delightes For Ladies* (1600).⁴ The book is designed mainly for woman cooks.

During the 17th and 18th centuries cooking evolved into an art and recognized both male and female chefs and authors of cookbooks. Since 1742, the thoughts of cookbooks have improved as a genuine ancient output of social creation.⁵ This oversight can be considered fundamental to the survival than food towards its preparation process.

In the 19th century, the gender division in cookbooks and publications decreased to an extent, which paved way for social and technological innovations. Also, the cookbooks represented the dual agendas, both black and white, graphical colours. Example – David's *Mediterranean Food Book* of the 1950's.⁶ It gave its readers fantasies of food items.

In the traditional and modern era, the expanding curiosity towards food has described plenty of expounding on writing about food recipes. Example – Laura's book of *Water for chocolate* 1989.⁷

1.3 COOKBOOKS AS SOCIAL ORDER IN MODERN ARENA

Essentially, the cookbooks not only contain recipes, however, but they are also covered up by signs and social suppositions relating to gender, race, class, identity of particular cultures of food recipes.⁸ Example: One of the eminent dishes from India, in the Hindu culture, named *Kozhukattai*, known as *modak* in other places, is available only during the festival of *Vinayaka Chaturthi*.

Also, it reflects several changes that characterize the limitations of the modern arena. Therefore, cookbooks function as a repository of food-related cultures and reflect the exceptionalities of their social order that deliver them.

⁴ Dennis (n 5) 31.

⁵ Steven M. Tobias, 'Early American Cookbooks as Cultural Artifacts' (1998) 34 (1) <<https://search.proquest.com/scholarly-journals/early-american-cookbooks-as-cultural-artifacts/docview/1300141774/se-2?accountid=201395>> <accessed 22 March 2021>

⁶ Dennis (n 5) 31.

⁷ Dennis (n 5) 31.

⁸ Eileen Solomon, 'More Than Recipes: Kosher Cookbooks as Historical Texts' (2014) *The Jewish Quarterly Review* 104 (1) 29 <<https://www.jstor.org/stable/43298772>> <accessed 23 March 2021>

The disregard of cookbooks as an aspect of the study was unexpected all through the late history because the Western social-political thinkers tried to limit the significance of food in and to society. Therefore, we can also screen cookbooks as websites of aestheticized utilization.

Indeed, the idea of modern culinary diversion places recipes in configurations adequate to the definition of the literary, artistic and social innovative works.

1.4 RECIPES ARE NOT COPYRIGHTABLE

Firstly, recipes are just the statement of facts. Copyright can be given to cookbooks, but not to recipes which can extend only to descriptions. So, the formulas, compounds and facts of the ingredients of the recipes cannot contribute to the product of originality. Indeed, there should be literally expression in the facts and ideas of recipes and proper direction in combination of recipes, as in cookbook.

As per the Copyright Act of 1976, the protection of food recipes is not inclusive under copyright.

To justify, section 102(a) does not abandon the copyright in the recipe but instead mulls over different sorts of works that meet the edge prerequisites. Notwithstanding, section 102(b)⁹ ostensibly presents the huge obstacle for recipes being viewed as copyrightable subject matter.

In the case **Publications Int Ltd v. Meredith Corp.**,¹⁰ the individual recipes can't be secured in light of the fact that recipes are not inside the domain of copyright protection. Therefore, the court held that a recipe is a bunch of directions for making something, an equation for cooking or produce something to eat or drink.

In the case **Feist Publications Inc. v. Rural Tel Service Co Inc.**, the court referred to the Code of Federal Regulations, which expresses that copyright protection can't be accessible for simple listings of ingredients or substances. Also, the ingredients' list and combining methods do not contribute as the expressive endless supply of these useful parts, as gone against recipes that may zest up utilitarian orders by weaving in the inventive narrative.

⁹ Aspiras, Karla Ng, 'Copyrightability of Recipes Under The Idea Expression Dichotomy' (2012) 57 (1) Ateneo Law Journal <<https://www.scribd.com/doc/255266117/Recipe-and-Copyright>> accessed 24 March 2021>

¹⁰ Karla (n 11) 57.

Therefore, these cases prove that even in modern times, recipes cannot be copyrighted irrespective of the factor of competition.

With regards to recipes, the privilege of propagation might be significant, but not exclusively to chefs who make recipes, yet in addition to distributors of cookbooks and sites which contain food recipes and telecom companies that telecast programs of cooking, who might apparently claim such copyrights in entire or to a limited extent through turns out to be made available.

Also, the chefs create imaginative dishes by using new procedures and appliances. Example – Lamb loin.¹¹ In this modern era, the chefs are known for their signature dishes by implementing creativity.

Initially, the subject matter of recipes was seen in the eyes of law as un-copyrightable because of their utilitarian and functional nature. Also, the flavours and smell of the food items cannot be copyrighted because it purely displays an objective description varying from person to person and country.

1.5 ROLE OF CHEF'S/CELEBRITY CHEFS FROM CULINARY INDUSTRY TO MEDIA

The celebrity chefs on television shows, magazines promote their own or restaurant's brands. The chefs give in their substantial investment, time, labour, efforts, creativity, to promote and safeguard their innovative recipes. So, they turn towards the side of copyright for protecting it from other competing chefs. Adding an ingredient or a step to a recipe can improve or drastically alter the overall outcome of the food product. Chefs wanting to improve the copyrighted recipes will need to devote time and resources to investigating the presence of copyright and the risk of infringement. Then they will have to apply for a license, which the copyright owner can keep and the chefs may not want to pay, hindering the creation of a new kitchen. Yet, the copyright law¹² mostly fails to safeguard the chefs' recipes from the copyist.

The celebrity culinary specialist is a wonder of the contemporary mainstream society that gives no indication of diminishing in interest, as reflected as a blast in TV cookery programs and various best-selling cookery books and chef's personal histories of success.¹³ This has led to

¹¹ Cunningham (n 2) 7.

¹² JA Broussard, 'An Intellectual Property food fight: Why Copyright Law Should Embrace Culinary Innovation' (2007) 691 <<https://heinonline.org/>> < accessed 24 March 2021>

¹³ Lorraine Brown, John Cooper, 'The Role of the Celebrity Chef' (2020) (85) 278 ISSN <<https://doi.org/10.1016/j.ijhm.2019.102358>> accessed 26 March 2021

copyright confusion and competition among recipes, chefs, and cookbooks. The primary motive of copyright has moved to commercial and monetary gain amongst the celebrity chefs moving to media attention.

The ascent in prevalence of scripted/unscripted TV shows in the past few years has impelled various chefs and restaurateurs into the vocabulary of media outlets, and led to a huge fan base and recognition amongst the public. Example – TV show - Bravo’s Top Chef,¹⁴ develops the price of media outlets. Therefore, a celebrity chef reveals his/her secret recipes by publishing a cookbook.

In contrast to numerous fields, the celebrity chefs are makers, and when they are on TV, there is something other than characters written as content. They make plans for monetary benefits, make recipes and food dishes, plan whole menus and start eatery realms.

Regarding the reproduction right, the culinary business, faces exceptional issues, especially as it identifies with the capacity of chefs and distributors to successfully misuse their profit and name for monetary benefit. As well as for utilizing recipes, the culinary specialists who need to advertise and benefit from their recipes regularly look to distribute the recipes in cookbooks and media counting on the web. For instance, soon after winning the top culinary specialist, all the stars of the (Top Chef Season 8), Chef Richard Blais signed a cookbook with the distributor Clarkson Potter.¹⁵

The distinction of copywriting of recipes/ingredients through books/websites can be understood by distinguishing¹⁶ the use and reproduction of the food item.

A marked recipe rewards the chef who made it. The chef is the one who recognizes the recipes which are effective amongst the public.

The commonly known recipes- Example: Apple pie.

¹⁴ Michael Goldman, ‘Cooking and Copyright: When chefs and restaurateurs should receive copyright protection for recipes and aspects of their professional repertoires’ (2013) 23 (1) SHJSE 168 <https://scholarship.shu.edu/cgi/viewcontent.cgi?article=1039&context=sports_entertainment> <accessed 25 March 2021>

¹⁵ Goldman (n 16) 23.

¹⁶ Kelman, Alistair, ‘A Cartesian approach to Copyright’ (1981) 2 (1) Journal of Media Law and Practice 89 <<https://heinonline.org/HOL>> < accessed 25 March 2021>

Also, new creative dishes with a known history of innovation are welcomed. Example- Auguste Escoffier's peaches Melba¹⁷.

1.6 COPYRIGHT TO COOKBOOKS

A cookbook is substantially excess than the assortment the recipes. As any content, the book conveys a hint, a setting, and an idle series which fulfils the expectations of its crowd. It serves as a societal plan. But, this cannot be fulfilled completely.

A cookbook should contain the given moderate idea of foods, in which novelty should fit inside the restrictions of what is viewed as palatable, and inside the plenty of rules concerning the design of food, a unique arrangement of recipes without points of reference would probably not succeed.

The elements of cookery writings are as follows: they can be pedantic, educational, bragging, instructional, propagandist, they can go about as a philosophical, commercial, monetary guide, or help to social mobility. Also, illustrations and configuration can disclose to us much about the capacities and changing parts of cookbooks.¹⁸

Regarding cookbooks, the Intellectual property right laws ought to ensure the creators and compilers in occasions where they have consumed scholarly exertion, ability, and work on picking, creating, testing plans, and who have put them along with unique and original critique into a new cookbook. So, the reward is in terms of copyright to cookbooks.

A cookbook demonstrates the background of that specific cookery by the understanding of the origin, authorship, and printed proprietorship. i.e – The celebrity chef reveals his/her secret recipes by publishing in a cookbook. Example – There are 100 free recipes available online, but still the U.S cookbook publishing industry sold nearly 17.8 million¹⁹ cookbooks in 2019.

¹⁷ Helen M. Leach, 'The Pavlova Wars: How a Creationist Model of Recipe Origins Led to an International Dispute' (2010) 10 (2) *Gastronomica* 28 <accessed 25 March 2021> 2021<https://www.researchgate.net/publication/250977615_The_Pavlova_Wars_How_a_Creationist_Model_of_Recipe_Origins_Led_to_an_International_Dispute> accessed 26 March 2021

¹⁸ Dennis (n 5) 31.

¹⁹ Martha C. White, 'Recipe For Success: Cookbook Sales Survive Shift To Digital Media' (2018) NBC News <<https://www.nbcnews.com/business/consumer/recipe-success-coook-sales-survive-shift-digital-media-n900621>> <accessed 26 March 2021>

Conversely, the independent recipes²⁰ which are communicated as practical records contain the basic food ingredients and fundamental directions. So, they are mostly viewed to be uncopyrightable, as they are just the formula names (recipe lists) and the individual thoughts or on the other hand, the dish for which the formula of the recipe functions as a guide. Though the dish may be progressive, just the expression of it tends to be evaluated for copyright purposes.

Examples²¹ - Tempting Kosher Dishes Prepared from World famous Manischewitz's Matzo Products- The Cisco book was published in 2 languages.

Claudia Roden's Book²² of Middle Eastern Food (1974),

Simple French Food²³ from Olney's recipes (1974).

This book provided an exemplary style of writing the recipes. The method of expression was highly recognized in this book. Also, the author was appreciated being the originator.

CONCLUSION

Traditionally, the copyright laws do not safeguard the individual recipes. Therefore, this chapter helps us to obtain the clarity towards the dilemma of copyright with recipes and cookbooks.

²⁰ Leach (n 19) 29.

²¹ Dennis (n 5) 31.

²² Dennis (n 5) 31.

²³ Leach (n 19) 28.