

17.14 Copyright Infringement—Originality

You may find that [*state name of work*] [*state specific components of the work*] [is] [are] original if [it was] [they were] created:

First, independently by the [work’s] [components’] author, that is, the author did not copy [it] [them] from another work; and

Second, by the contribution of at least some minimal creativity.

[The “original” part of a work need not be new or novel.]

Comment

“Original, as the term is used in copyright, means only that the work was independently created by the author . . . , and that it possesses at least some minimal degree of creativity.” *Feist Pubs, Inc. v. Rural Tel. Serv. Co., Inc.*, 499 U.S. 340, 345 (1991). A work is original if “the author contributed something more than a merely trivial variation, something recognizably his own.” *N. Coast Indus. v. Jason Maxwell, Inc.*, 972 F.2d 1031, 1033 (9th Cir. 1992) (citation omitted). The effort involved to create the work is “wholly irrelevant.” *CDN, Inc. v. Kapes*, 197 F.3d 1256, 1260 (9th Cir. 1999). However, when a work embodies only the minimum level of creativity necessary for copyright, it is said to have “thin” copyright protection, which “protects against only virtually identical copying.” *Satava v. Lowry*, 323 F.3d 805, 812 (9th Cir. 2003).

Whether a work involves sufficient creativity is a question of fact, *see Dezendorf v. Twentieth Century-Fox Film Corp.*, 99 F.2d 850, 851 (9th Cir. 1938) (holding that “question of originality” is “one of fact, not of law”); Paul Goldstein, *Goldstein on Copyright*, § 2.2.1 (3d ed. 2023) (“Courts have historically characterized originality as a question of fact.”).

Because “[o]riginality in this context means little more than a prohibition of actual copying,” *N. Coast Indus.*, 972 F.2d at 1033 (citation omitted), “a work may be original even though it closely resembles other works so long as the similarity is fortuitous, not the result of copying,” *Feist*, 499 U.S. at 345. The defendant can establish that the plaintiff copied the work (as opposed to independently creating it) in the same manner that the plaintiff proves infringement. *See N. Coast Indus.*, 972 F.2d at 1034; Instruction 17.5 (Copyright Infringement—Elements—Ownership and Copying).

Facts are not original and, therefore, are non-copyrightable. *See Feist*, 499 U.S. at 344 (“[T]here can be no valid copyright in facts.”). But a compilation of facts may be entitled to copyright protection if the author’s arrangement or selection of those facts is original. *See id.* at 348-49; *CDN, Inc.*, 197 F.3d at 1259; *see also* Instructions 17.10 (Copyright Interests—Authors of Collective Works), 17.16 (Compilation). Put differently, a selection and arrangement copyright protects “the *particular way* in which the artistic elements form a

coherent pattern, synthesis, or design.” *Yonay v. Paramount Pictures Corp.*, 163 F.4th 685, 692 (9th Cir. 2026) (quoting *Skidmore ex rel. as Tr. for Randy Craig Wolfe Tr. v. Led Zeppelin*, 952 F.3d 1051, 1074 (9th Cir. 2020)).

Revised March 2026