

**Ohm's Law: Recipes**  
**By Hun Ohm\***

Say you're a lifelong food lover and more recently a full-time chef with a knack for balancing ingredients from Korea and South America. Your wizardry has led to a growing base of loyal customers who pack your hole-in-the-wall counter each day, and suffice to say, it is literally standing room only. Your easy going personality and sublime dishes have led to local stardom, and you have been approached to write a cookbook to memorialize your thoughts on asado and pickled cabbage and to provide some of your most beloved recipes to an eager fan base. While the prospect of enhancing your reputation through the cookbook (and possibly making some extra income) is appealing, you are wondering whether the cookbook will lead to copycats and how you can protect against that. For example, will copyright law help?

Maybe not as much as you would like. Remember, copyright protects an original expression of an idea that has been fixed in tangible form. Literary works such as books are protected under copyright law. However, copyright protection does not extend to a mere listing of ingredients; in other words, the basic recipe itself, without more, is not protected under copyright law.

Certain aspects of a cookbook, such as your flowery explanations of the whimsical flourishes that elevate cooking one of your dishes into a performance, or your humorous anecdotes describing your first experience of the street food that led to a particular dish in your repertoire -- each of these original literary expressions will likely qualify for copyright protection, and others would not be free to copy or exploit those particular original elements. Likewise, your compilation of recipes could serve as a basis for copyright protection, though such protection would likely extend only to the actual selection and ordering of the recipes, and not the recipes themselves.

There are some areas of intellectual property that could provide protection for recipes. For example, patent law, in theory, can provide protection if a recipe satisfies the strict standards of patentability, including considerations as to whether the recipe is useful, novel and non-obvious; in practice, this might be more difficult to achieve, especially for recipes that are merely listings of ingredients for dishes prepared in a kitchen. Trade secret protection is sometimes invoked to protect a recipe. For example, the recipe for *Coca-Cola* is one of the more highly publicized examples of a recipe for which businesses have gone to great lengths to protect (imagine vaults, deposit boxes and other limitations on access). If the owner of a valuable recipe used in a business has taken reasonable steps to preserve the secrecy of the recipe (*e.g.*, having employees sign non-disclosure agreements, providing notice that certain information is a trade secret, and strictly limiting access to the recipe, among other things), and the recipe otherwise falls within the definition of a trade secret, then trade secret protection could apply. However, that would essentially short circuit any cookbook project you might have, where the very nature of the work involves the disclosure of your recipes to the general public.

So what does this mean? If you are going to move forward with a cookbook, you need to embrace the fact that others will be freely utilizing the recipes. That might not necessarily be a bad thing; obviously, one of the primary purposes of a cookbook is to enable others to prepare and enjoy the foods that have brought you pleasure. Also, the marketing benefits of a cookbook

## FIERST, KANE & BLOOMBERG LLP

could raise your stature in the culinary world and potentially increase your business, whether through your restaurant or by opening new doors to other ventures. Just bear in mind that if someone else decides to capitalize on the mere listing of ingredients for a recipe in your cookbook, you may need to take solace in the old adage that imitation is the sincerest form of flattery, as copyright law alone may not provide you with much more relief.

\*Hun Ohm is a partner in the Entertainment/Intellectual Property Group at Fierst, Kane & Bloomberg LLP in Northampton, Massachusetts. He can be reached at: [ohm@fierstkane.com](mailto:ohm@fierstkane.com).

*This material is provided for general information purposes only. It is not intended, and should not be regarded, to be legal advice. Transmission of this information is not intended to create and does not establish an attorney-client relationship. If you have a specific issue or question, you should seek legal advice from legal counsel.*

© 2013 Hun Ohm. All rights reserved.