

“Towards Three Distinct Categories of Copyright Infringement: Literal Copying, Substantial Similarity, and Unauthorized Derivative Works”

By Ann Bartow¹

This paper asserts that pleadings and holdings related to copyright infringement ought to resemble Neopolitan ice cream: One carton contains three distinct, easily identifiable flavors. It provides an overview of the muddled and inconsistent approaches to categorizing acts of infringement currently taken by the courts, and explains why this is problematic. The article lays out workable bright line definitions of literal copying, substantial similarity, and unauthorized derivative works, articulates the advantages to this approach and urges their adoption by both Congress and the courts. This is a straight up doctrinal work that aims to make a clear and straightforward pitch for reforming one important aspect of copyright law.

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