



**Abend v Spielberg - More on the Idea/Expression Dichotomy**

October 15, 2010 by Bob Tarantino

The recent decision of the Southern District of New York Court in *The Sheldon Abend Revocable Trust, v. Steven Spielberg et al.*, No. 08 Civ. 7810 United States District Court, S.D. New York, September 21, 2010 ([full text of the decision is available here](#)) offers another opportunity to see how courts handle assessing the "idea/expression dichotomy" in cases of alleged copyright infringement. Mark Litwack offers his thoughts on a case which pitted the owners of copyright in the short story "Rear Window" against owners of copyright in the movie "Disturbia". The case is particularly interesting as the court describes just how similar two works can be at high levels of abstraction and yet not be instances of infringement, and is useful for assessing the viability of infringement claims when dealing with plot elements and premises in entertainment-related projects. As Litwack notes:

The court found that "It cannot be disputed that both works tell the story of a male protagonist, confined to his home, who spies on neighbors to stave off boredom and, in so doing, discovers that one of his neighbors is a murderer. The voyeur is himself discovered by the suspected murderer, is attacked by the murderer, and is ultimately vindicated. Although it is possible to characterize the plots of both works so they appear indistinguishable, such similarity is not, standing alone, indicative of substantial similarity. The law of copyright only protects an author's particular expression of an idea, not the idea itself."

The court concluded that the expression of the voyeur-suspicion-peril-vindication plot idea is quite different in the two works. This broad plot idea, or premise, is not a protectable element. Similarity at this level of generality is not probative of the question of infringement.

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