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## [Life-Line to the Lifeblood](#)

Posted on September 16, 2010 by [Joy S. Newborg](#)

New ideas are the lifeblood of Hollywood and television, as executives are scrounging to find the next wildly popular *Avatar* or "Friends." However, there is a little evil known around the industry as idea theft, where a person believes that their idea has been used but they were not given credit or compensation for their idea. How do they fight back to get their due?

The problem resides in the fact that ideas, themes and historical events are not protected by copyright law, as Karen Brennan nicely explains in her post "[Out for Blood \(or Money\)](#)", but rather the expression of ideas. But what's to stop someone from stealing an idea and changing the wording of a script or characteristics of a character so that it's no longer protected under copyright? Say, changing a character from married man to a confirmed bachelor or from an uncle to a brother? And is that the end of the story? Not necessarily, there is a life-line called breach of an implied contract.

In the Benay brothers' [lawsuit](#) against Warner Bros for idea theft with the film *The Last Samurai*, which coincidentally happened to be the same title as the Benays' script, the Benays pointed out the similarities between the film and their script, including the historically unfounded character of an American war veteran who goes to Japan to train the Imperial Army during the time of the samurai uprising, regrets personal involvement in an American battle, suffers from flashbacks and is spiritually transformed by his experience. Very convincing argument, especially when you hear that the script the studio claims it was previously working on underwent a drastic change in direction after the Benays handed over their script. But the Court of Appeals explained that after they stripped away all the similar ideas and themes, which were not protected under copyright law, there were insufficient similarities left to prove copyright infringement. However, the court did not stop there. It stated that if the parties entered into an implied-in-fact agreement, generally where there was an understanding that disclosure of the idea was conditioned on being compensated for such idea when used, then the Benays may have a claim for breach of implied contract. Under this type of claim, the court stated that it can now look at all the similarities between the script and film - including ideas, themes and all other unprotected copyright items - to determine if the ideas were used. As the breach of contract claim was remanded back to the lower court, we must wait to see if the Benays are successful in their fight.



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One party that hopes to benefit from the Benays' case is [Hayden Christensen](#), who played Anakin Skywalker in the *Star Wars* prequels, along with his brother. They recently sued USA Network in connection with the recent television hit show "[Royal Pains](#)." According to the lawsuit, the Christensens wrote a treatment for a television series about a concierge doctor in Malibu, CA (hmmm... sounds familiar), the treatment was sent to USA Network, they scheduled a meeting to pitch the idea and met with an executive who is claimed to have said that he was unfamiliar with the concept of concierge doctors. In this lawsuit, the Christensens didn't bother with a copyright infringement claim, but will be relying on a breach of an implied contract, unfair competition and unjust enrichment claims instead. So time will only tell if the "force" is with him.



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