

News Alert

Da Vinci Code copyright claim fails

Mr Justice Peter Smith has today handed down his judgment dismissing the copyright infringement claim brought in the High Court against Dan Brown's best-selling book "The Da Vinci Code". In doing so, he has confirmed the longstanding principle of English copyright law that protection is not available for concepts or ideas in themselves, but only for the specific tangible expression of those ideas.

The Facts

The facts in the case are well known (and have been widely reported). Random House, the UK publishers of The Da Vinci Code, were sued by Michael Baigent and Richard Leigh, two of the three authors of "The Holy Blood and The Holy Grail". This book, originally published in 1982, is a historical work based around the concept that Jesus married Mary Magdalene and that their descendants became the Merovingian dynasty in France, surviving to this day. The same concept forms the basis of The Da Vinci Code, and the authors of The Holy Blood and The Holy Grail sued Mr Brown for copyright infringement for copying this central theme or the "architecture" of their work.

During the course of the trial in the High Court, Mr Brown admitted to having made use of The Holy Blood and The Holy Grail, amongst other source materials, while writing The Da Vinci Code. However, he denied that either he or his wife (who carried out a substantial amount of the background research work for him) had been aware of the book when he submitted his original

synopsis for The Da Vinci Code to his publishers. In any case, he said, there was no copyright infringement. The claim has of course attracted huge media attention, not least because The Da Vinci Code has proven to be such a commercial success, with more than 40 million copies being reported to have been sold worldwide and with a \$100 million Hollywood film due to be released in the UK on 19 May.

The Issues

Central to the case were two longstanding principles of English copyright law. First, copyright protects the expression of ideas, rather than the ideas themselves. Second, even where copyright does exist, it will only be infringed where a substantial part of a work has been taken. In the case of The Da Vinci Code, the relevant questions were therefore whether the central themes of The Holy Blood and The Holy Grail could be protected under copyright law at all and, even if they could, whether they represented a sufficiently substantial part of an original work so that the copying of those themes was actionable.

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The Judgment

In his judgment Mr Justice Peter Smith comprehensively dismissed the claim that had been brought. The Claimants produced their own distillation of the central concepts of their book which they relied on as having been copied by Mr Brown. It seems that the precise components of this distillation (referred to in the judgment as the “Central Theme”) were subject to considerable change during the course of the litigation. In the event, the judge found that the Central Theme itself was an “artificial contrivance”, created by working backwards from The Da Vinci Code in order to substantiate the infringement claim. He rejected the Claimants’ suggestion that the Central Theme (as relied on) existed at all, finding that no such single cohesive statement was discernible from the text. He also rejected their contention that The Holy Blood and The Holy Grail had “very little apart from” the Central Theme. At the same time, he did not accept that there was a greater “architecture” or “design” which protected the various elements of the Central Theme – listing those elements in their natural chronological order was not enough. Rather, those elements consisted only of generalised ideas, assertions or facts.

The claim therefore failed on its facts but also because, even if the Central Theme did exist (and even if it had been copied), it was an expression of a number of ideas at a very general level, and therefore not protectable by copyright. Furthermore, the Claimants’ book consisted of much more than simply the Central Theme, and indeed that Central Theme did not amount to a substantial part of their work. In coming to his conclusion, after a detailed examination of the case law, the judge summarised the position as follows:

“When a book is put forward as being a non-fictional book and contains a large number of facts and ideas it is always going to be a difficult exercise in trying to protect against copying of those facts and ideas because as such they cannot be protected. It is the effort and time which has gone into the way in which those ideas and facts are presented that is capable of protection.”

On this basis, the judge was able to reject the claim even though he cast doubt on the evidence presented to him about when Mr Brown (and in particular his wife) had first read a copy of The Holy Blood and The Holy Grail and even though an analysis of the language used in The Da Vinci Code showed that there had been some limited textual copying.

Implications

A judgment in favour of the Claimants was always considered to be an unlikely outcome. To have found in their favour would have meant expanding the boundaries of existing copyright law towards protection for ideas (as opposed to the expression of ideas). This could have had far-reaching consequences for other authors of fictional writings based on existing historical (or pretend historical) books, as the judge himself acknowledged. For now, this avenue seems to have been closed, although it is worth noting that the judge was careful not to say that arguments based on the “architecture” of works – in other words, the way in which their central concepts are connected together – are not sustainable. Given a different set of facts, this type of argument might still prevail.

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