

[IP Law Daily, COPYRIGHT—9th Cir.: ‘What is protected is not similar, and what is similar is not protected’: Lawsuit over Top Gun sequel goes down in flames, \(Jan. 5, 2026\)](#)

IP Law Daily

By Matthew Hersh, J.D.

The movie studio behind the box office hit also did not violate a contract with the author whose work helped inspire the original movie.

A California district court properly rejected a lawsuit claiming that the sequel to a Tom Cruise blockbuster infringed upon the rights held by an author of a magazine article that inspired the original movie, the U.S. Court of Appeals for the Ninth Circuit has held. The court, in affirming the district court’s grant of summary judgment in favor of the movie studio that produced the original as well as the sequel, also found that the studio did not breach a contract it made with the magazine author back in the 1980s ([Yonay v. Paramount Pictures Corp.](#), No. 24-2897 (9th Cir. Jan. 2, 2026)).

The lawsuit has its roots in a magazine article published in California Magazine in 1983. The article, written by Ehud Yonay, is an account of the experiences of F-14 pilots and radio intercept officers as they undergo training at the Navy’s Fighter Weapons School—otherwise known as “Top Gun.” Paramount Pictures, eager to make a movie portrayal of the high-flying academy, bought the motion picture rights to the article and also agreed to give the author film credit for any movie made under the assignment. The movie that Paramount released in 1986, whose credits state that it was “[s]uggested by” Yonay, was of course the box-office smash Top Gun.

But while Yonay was compensated (and credited) for the 1986 film, things later went awry. The widow and son of the now-late author, taking advantage of the 35-year termination right provided in the Copyright Act, terminated the assignment of the movie rights in 2018. Four years later, Paramount released Top Gun: Maverick, a sequel to the original. The release of the sequel did not sit well with the author’s heirs, who sued for copyright infringement and breach of contract. Because the original movie was based on the 1983 magazine story, their [complaint](#) alleged, “it naturally follow[ed]” that the 2022 sequel, as well, was derived from the original story.

Paramount moved for summary judgment on both the infringement as well as the contract breach claim, which the district court [granted](#). The Yonays appealed, leading to this opinion.

Substantial similarity—individual elements. The court of appeals easily affirmed the district court’s grant of summary judgment. The court began by noting a problem, it said, that “pervade[d]” the Yonays’ arguments” Although Yonay’s original article contained original, protected expression, the court noted, “none of that expression appears in Maverick.” Rather, the court noted, the Yonays identified similarities between the article and the film “only by describing both works at such a high level of abstraction that the similarities do not involve protected expression.” Thus, the court reasoned, “[t]heir claim of substantial similarity fails because what is protected is not similar, and what is similar is not protected.”

The court then proceeded to flesh out this conclusion with extensive analysis. Under Ninth Circuit doctrine, the court noted, a plaintiff in a copyright infringement action cannot proceed past summary judgment without showing that the allegedly purloined work bears an objective similarity—or in the words of the court, an “extrinsic” similarity—with the original. To determine whether such a similarity exists, the court noted, the extrinsic test focuses on “articulable similarities between the plot, themes, dialogue, mood, setting, pace, characters, and sequence of events in two works.” Under this standard, the court emphasized, the claim of infringement did not come close.

One of the most glaring differences, the court noted, was between the plots of the two works. The magazine article, the court noted, was a nonfiction work, and “the portions of the article that describe specific events do so in a nonlinear way that is repeatedly interrupted by historical and descriptive digressions.” As such, the court noted, “[w]e are not sure it is accurate to characterize ‘Top Guns’ as having a ‘plot’ in the conventional sense” at all. Indeed, to the extent there was a plot at all, the court noted, it was simply “the traditional journey” of pilots who complete flight school, go through fighter-pilot training, get deployed on an aircraft carrier, get sent to Top Gun, and graduate and get deployed again. By contrast, the court emphasized, the Maverick sequel had “a traditional plot with exposition, climax, and denouement”—beginning with Maverick’s deployment to Top Gun as an instructor and ending with his escape from enemy territory and a “flight into the sunset” with his romantic partner.

Moreover, the court noted, Maverick included many significant plot elements that were absent from Top Guns. For example, the court noted, the movie has “a main character who returns to Top Gun to train younger pilots to complete a specific mission, rather than the general training that normally characterizes the program; it includes a romantic subplot; and around a quarter of the movie shows the actual mission being carried out.” Conversely, the court noted, Top Guns contained “historical and technical discussions of numerous subjects not addressed in Maverick,” such as the flight simulators used to train pilots and the origins of the Top Gun program. To be sure, the court noted, the mere fact that plot elements did not overlap was not in itself dispositive. But “[t]he more that events are added to or subtracted” from the original plot, the court noted, “the less that the plots can reasonably be described as similar, even if there is some overlap.”

Finally, the court noted, many of the similarities between the two plots involved elements that could not be protected under the law. For example, the court noted, the Yonays complained that Maverick “lifted” the fact that the F-14 “swings back its wings so that it can... do a short takeoff”—a feature that became relevant to the plot when Maverick and another character take off in a stolen F-14 to escape enemy territory. “But the F-14 is a real plane with variable-sweep wings,” the court observed. Other plot similarities alleged by the Yonays, the court noted, such as “focusing on a small, elite group of pilots who are bound together by their shared experiences and sacrifices in a high-stakes environment,” “emphasizing the importance of rigorous training,” and “capitalizing on the fighter jocks’ ‘frat-house’ culture,” also did not move the needle. “Even if those similarities exist,” the court underscored, “they involve only unprotected ideas, not protected expression.”

Other elements of the objective test, outside of plot, did not alter the outcome. As to characters, the court noted, no character described in Top Guns appeared at all in Maverick. As to dialogue, the court noted, the fact that the characters in each work allegedly spoke in a way that was “at once droll, idiomatic, techy, and charmingly unguarded,” was a description “too general to be protectable.” The theme, mood, setting, mood, and pace of the two works was also dissimilar, the court noted—nor would it likely matter at this point because similarity in these elements, outside of similarity in plot, character, and dialogue, was not likely to give rise to substantial similarity on its own.

Substantial similarity—selection and arrangement. Nor could the Yonays rely on a “selection-and-arrangement” argument to support their claim, the court held. This doctrine exists, the court noted, to address “the possibility that the original expression a defendant has copied from a plaintiff cannot be categorized as one, or even a combination, of plot, themes, dialogue, mood, setting, pace, characters, or sequence of events.” Critically, when performing this analysis, the court emphasized, similarities in the selection and arrangement alone—no matter their quantity or importance to the work—“cannot demonstrate unlawful appropriation.” Instead, to be substantially similar, the court noted, “the works must share a pattern, synthesis, or design that is both particular and coherent.”

Under this test, the court found, the claim failed. The Yonays identified multiple factual similarities between the works when discussing selection and arrangement, the court noted—for example, that “only the best of the best get invited back to Top Gun as instructors,” that “pilots live in a communal world,” that the program involves “grueling training,”

and that lieutenants “carouse at the bar, which has a big brass bell and where those who break ‘house rules’ must buy a round for everyone.” But those were “unprotectable facts about the Top Gun program,” the court noted. “A copyright plaintiff cannot establish substantial similarity by reconstituting the copyrighted work as a combination of unprotectable elements and then claiming that those same elements also appear in the defendant’s work.”

Nor was Yonay’s ostensible “focus on personal backgrounds and idiosyncrasies of fighter pilots” a protectable combination of elements, the court found. The two heirs asserted that Yonay “patterned contradictory character elements to engage his audience and enhance his [s]tory: e.g., pilots are fierce, but playful; regimented, but irreverent; macho, but sensitive.” Moreover, the Yonays claimed, in both works, “passages of idyllic flying over the beach in Southern California are juxtaposed suddenly and violently with gut-wrenching climbs, dives, and dogfights,” causing “beauty and terror” to “spring from each other.” But these “abstract ideas,” the court emphasized, were not original. “Showing characters’ backgrounds and personalities, giving them contradictory traits, and displaying action in aesthetically pleasing places have all been done before.” The copyright infringement claim was therefore rightfully rejected.

Expert testimony. Nor did the district court err by excluding the Yonays’ expert under the *Daubert* test, the court of appeals found. The Yonays sought to introduce a report from Henry Bean, a screenwriter and film professor who opined that *Maverick* was substantially similar to *Top Guns*. Bean “disclaimed any effort,” the court noted, “to filter unprotectable elements, taking the position that there was ‘maybe nothing in’ the article ‘that was... an unprotectable element.’” Indeed, the court noted, he devoted much of his report to “highlighting similar facts, such as the presence of a brass bell hung in a bar near the real-life location of *Top Gun*, the fact that *Top Gun* training is difficult, the fact that the best *Top Gun* students are invited back as instructors, the appearance of a plane’s radar screen, and the effect on pilots of g-forces.” This heavy focus on “similarities in unprotectable elements,” the court observed, warranted disqualification.

The expert also was properly excluded, the court found, because he “highlighted similarities in abstract ideas.” For example, the court noted, he argued that *Top Guns* and *Maverick* were similar in that “both follow the recurring theme of the ‘redemption’ of a hero who is thwarted by his limitations (internal and external) but finally overcomes them and triumphs.” But “[i]f an author could lay claim to the concept of a protagonist’s overcoming obstacles to achieve his goal,” the court noted, “someone should have told Homer.” The expert was properly excluded.

Contract claim. Finally, the court of appeals concluded, the district court did not breach any contractual obligation. Yonay’s contract with Paramount required the studio to credit him, the court noted, if two separate conditions were satisfied: (1) the film must be “produced by [Paramount] hereunder,” and (2) it must be “substantially based upon or adapted from” the article. The claim failed on the first prong, the court found. The most natural meaning of the phrase “produced... hereunder,” the court emphasized, is “produced using the rights conferred by this agreement.” Because *Maverick* did not infringe the copyright in *Top Guns*, the court reasoned, “it follows that Paramount did not use that same copyright, which it received through the agreement, to produce *Maverick*.” *Maverick* therefore was not produced under the agreement, the court concluded—so the contract breach claim failed.

The Case is [No. 24-2897](#).

Judge: Miller, E.

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Companies: Paramount Pictures Corp.

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