

COPYRIGHT FOR A CULINARY PRODUCT

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Abstract

This article examines the legal foundations for the protection of culinary creations as objects of intellectual property rights, against the backdrop of the increasing creative nature of culinary activities and the development of the restaurant industry. It is argued that the modern process of food preparation is becoming an activity with creative elements, and a culinary creation can be regarded as an intellectual product of an individual's activity. Particular attention is paid to defining the legal nature of a recipe and a production chart, as well as clarifying their relationship with the finished dish as the final product-creation.

The analysis is centred on the Ukrainian legal framework governing copyright protection in the culinary sphere. At the same time, examples from United States case law are used to highlight different approaches to the legal assessment of recipes and culinary creations as potential objects of intellectual property rights.

The article analyses the provisions of national legislation and international legal doctrine regarding the possibility of legal protection for recipes and culinary products. It is recognised that a recipe will be protected by copyright if it constitutes an original expression, but legal protection does not extend to the idea or method of preparing a dish. The article examines the issue of protecting the appearance of a dish, the question of whether dishes can be considered derivative works of visual art in the legal sphere, as well as the specific features of the legal regulation of signature dishes.

The conclusion is drawn that there is a need to improve legislative regulation of the protection of intellectual property interests in the culinary sphere and to establish criteria for determining the protectability of culinary works.

Keywords: recipe, intellectual property, copyright, dish, protection, legal regulation, law.

Introduction

The process of cooking is becoming increasingly creative these days, taking on certain characteristics typical of art.

Culinary arts are evolving not only within the restaurant industry, thanks to the unique creative contributions of chefs, but also in the kitchens of ordinary people who are striving to add variety to their dishes. Nowadays, food must not only be tasty but also look aesthetically pleasing.

The demand for interesting names, unusual ingredients and visually appealing dishes is driving chefs to develop their skills, invent new ways of preparing food and pay attention to the dish's appearance and presentation, whilst keeping up with the latest trends in this field.

All this makes the simple and familiar process of cooking more creative, and culinary creations or dishes become the result of creative and intellectual input. That is why, in recent times, issues regarding the protection of culinary creations by copyright have become more relevant and deserve separate study.

Unfortunately, there is a lack of in-depth research in Ukraine on culinary creations as objects of copyright; however, some authors, such as K. M. Nikulina (Dub V. V., Horielkov D. V., & Nikulina K. M., 2011) and Y. V. Kravtsiv (Kravtsiv Y. V., 2015; Kravtsiv Y. V., 2016; Kravtsiv Y. V., 2019), have nevertheless addressed this issue in their works.

Among foreign scholars, the question of the possibility and advisability of protecting culinary creations under copyright is a more popular and widespread topic. Of particular interest are the works of intellectual property specialists such as M. V. Rocha (Rocha M. V., 2019), S. Segal (Segal S., 2016), E. Cunningham (Cunningham E., 2009), C. Smith (Smith C. Y. N., 2014; Smith C. Y. N., 2019), C. Reeb (Reeb C. M., 2011) and others.

The *aim* of the article is to identify the legal nature of a recipe and technological map as potential objects of the right of intellectual property, to determine the characteristics of their correlation with the finished dish, considering this as the result of creative activity, and to develop proposals for improving the legal regulation for protection of such objects.

To achieve the aim, the following *objectives* are set:

- to explore scientific interpretation of recipe and technological card as the intellectual property objects;
- to examine the legal issues of creation and use of recipes and technological cards in foodservice;
- to establish the relationship of the recipe (technical pack) to the plate as a work of art (creative work);
- to find out the criteria of originality of the recipe as a condition for affording legal protection;
- to propose improvements to the legal frameworks applied to protection of intellectual property in culinary arts.

The *subject* of the research is legal regulation of relations arising from the creation, use, and protection of the recipe and the technological card as objects of intellectual property, and also legal questions of conceptualizing the finished meal as an outcome of creative work.

In the study, a set of general science and specially-juridical methods were applied, in particular:

- formal-legal method is used for examining the protection of intellectual property right objects within the normative legal acts;
- comparative law method is also used for analysing the treatment of recipes and culinary works under national and international law;
- system-structural method is applied to identify the position of recipe and process sheet within the system of intellectual property objects;
- method of legal interpretation: on the one hand, in order to elucidate the contents of the legal rules on the criteria for the protectability of the results of creative work;
- logical-legal method – for the development of conclusions and generalizations by research results.

Main part

The use of intellectual property protection mechanisms is not widespread in the culinary sector in Ukraine. However, the most common method of protecting intellectual property rights in this sector is obtaining a utility model patent. It should be noted that the specific nature of objects in this field makes it impossible to limit protection to this legal regime alone.

In order to examine culinary products as objects of copyright specifically, it is necessary to provide the most important definitions.

According to the Rules for the Operation of Catering Establishments (Enterprises), approved by Order No. 219 of the Ministry of Economy and European Integration dated 24 July 2002, ‘a culinary product is a food product (a combination of food products) that has been prepared to readiness, but may require minor additional processing (cooling, reheating, portioning and presentation)’ (Ministry of Economy and European Integration of Ukraine, 2002).

In other words, a culinary product is the result of specific activities involved in the preparation of the ingredients that make up a particular product. It can be said that a culinary product as a category consists of certain parts:

- 1) an idea (recipe/production process);
- 2) a name;

3) the process of preparing the ingredients that make up the dish;

4) appearance (presentation of the dish).

The concept of a 'culinary recipe' does not exist at the legislative level; however, as a general rule, recipes in this field are not protected by law. Thus, a culinary recipe is, by its very nature, to a certain extent a description of a method, process or manner of preparing food and does not have a form of expression that can be protected in accordance with the provisions of the Law of Ukraine 'On Copyright and Related Rights' (Verkhovna Rada of Ukraine, 2022).

Although a recipe is not mentioned in the Law of Ukraine 'On Copyright and Related Rights', it is most similar to the objects that are not protected by copyright and are listed in paragraph (e) of Part 1 of Article 10 of this law. These objects include 'transport timetables, television and radio schedules, telephone directories and other similar databases that do not meet the criteria of originality and to which the right *suigeneris* (a specific right, a right of a special kind) applies' (Verkhovna Rada of Ukraine, 2022).

In US case law, there have been instances where the court was compelled to define what exactly constitutes a recipe in order to rule on whether a specific recipe could be protected by copyright.

Thus, in the case of *Publications International, Ltd. v. Meredith Corporation*, the US Court of Appeals for the Seventh Circuit held that 'a recipe is a set of instructions for producing something ... a formula for cooking or preparing something that can be eaten or drunk: a list of ingredients and a description of the procedure to be followed when making a culinary product or beverage ... a method of carrying out a process to create or obtain something' (*Publications International, Ltd. v. Meredith Corp.*).

Ukrainian legislation nevertheless leaves room for granting legal protection to a recipe as a literary work.

Firstly, this is possible provided that the form of expression of the recipe is original, unusual and creative.

A similar approach can be observed in contemporary international academic research. Thus, 'if there is creativity in the formulation of the recipe, one can speak of the possibility of protection. For example, if the recipe appears in a historical context; or in verse form; or if there are comments accompanying the recipe, such as a description of the romantic setting in which the dish should be enjoyed, or which wine would pair best; or if jokes are included with the recipe; if there are unusual suggestions regarding what can be added to the dish; or the recipe also contains advice on how best to present the dish on a plate or decorate the table; if the recipe is illustrated with photographs; or if the recipe is presented in an unusual manner, using specific colours' (Rocha M. V., 2019).

Secondly, a recipe may be protected as part of a collection of works, as provided for in paragraph 14 of Article 6 of the Law of Ukraine 'On Copyright and Related Rights'. However, as stated in this article, such a collection shall be protected by copyright 'provided that it is the result of creative work in the selection, coordination or arrangement of the content without infringing the copyright of the works included therein as constituent parts' (Verkhovna Rada of Ukraine, 2022).

US courts have also 'recognised that cookbooks may be considered original compilations and, therefore, may constitute works protected by copyright' (Segal S., 2016).

However, in the first and second cases, only the form in which the recipe is expressed and its presentation may be protected, not the idea itself, which is the main element of a culinary recipe. Thus, although a recipe may be protected by copyright, the protection offered by the legislation in this case cannot be used to protect the rights to a culinary product created according to the recipe.

The legislation contains the term 'technological documentation for dishes and products' (technological chart), which is similar in essence to the concept of a 'recipe'. 'Technological documentation for dishes and products – documentation specifying a description of the technological process of production, a list of products, food raw materials, substances and ancillary materials used in the preparation process, data on their content standards in the final food product, shelf life, storage conditions, method of sale (presentation) to the consumer, and quality

requirements for dishes and products' (Ministry of Economy and European Integration of Ukraine, 2002).

In other words, the technical documentation for dishes and products is a more precise and detailed recipe, which must include a clear list of characteristics that the finished product must meet.

It is important to understand the relationship between a recipe or technical specification and the finished dish. There are several different approaches to this. A reasonable position is that the finished dish should be regarded as the final result of implementing the recipe. This is analogous to the relationship between an architectural design and the completed building.

Some authors argue that 'the finished dish should be regarded as a way of using the recipe, or more precisely as a public demonstration and public display' (Rocha M. V., 2019). Others believe that the finished dish is an expression of the recipe in material form (Smith C. Y. N., 2014). However, this view is rather controversial when it comes to US legislation, since 'a work is considered to be fixed on a tangible medium when its embodiment ... is sufficiently permanent or stable to permit it to be perceived, reproduced or otherwise interacted with for a period of time exceeding the duration of the interaction with the work' (Copyright Law of the United States and Related Laws Contained in Title 17 of the United States Code, 2025).

Since a culinary creation disappears in the process of 'interaction' with the person who ordered it, it cannot be considered to be embodied in a tangible form. It is important to note that Ukrainian law does not contain such restrictions, so a culinary creation can be regarded as the embodiment of a recipe in a tangible form.

The appearance of a dish is one of the most interesting yet complex issues for copyright. Indeed, it is precisely due to the characteristics of their appearance that some dishes may be considered derivative works. One example is the Mondrian cake, whose appearance fully replicates the works of the renowned Dutch artist Piet Mondrian. 'Giving the cake a visual resemblance to Mondrian's paintings is not functional in nature, that is, it does not affect the taste of the cake' (Rocha M. V., 2019). As the artist died back in 1944, his works have entered the public domain, so such use of them is entirely legitimate.

Another interesting category in the culinary arts is the 'signature dish'. Thus, a 'signature dish' is a dish (a culinary or pastry product) prepared in a specific establishment (enterprise) in the restaurant industry according to an original author's recipe, with a signature name assigned to it, to which intellectual property protection rights apply" (Ministry of Economy and European Integration of Ukraine, 2002).

First and foremost, attention should be drawn to the mention in the regulatory document of an 'original author's recipe'; however, this concept is not defined in any other document, so it is not entirely clear what exactly the legislator intended by this definition. Perhaps the legislator intended, after all, to grant copyright protection to a certain category of culinary recipes, yet no mechanism for this is provided.

This provision indicates that intellectual property rights apply to the name of an establishment's signature dish.

If we apply copyright law in this context, it is worth noting that an original name, which can be used independently, is part of a work and, as such, may be eligible for legal protection as a separate object. Therefore, in accordance with Article 7 of the Law of Ukraine 'On Copyright and Related Rights' (Verkhovna Rada of Ukraine, 2022), it can be concluded that a signature dish is a work protected by copyright, and for this reason its name may also be protected. In the field of copyright, the title of a work and the work itself are closely linked; therefore, given that the list of copyrightable objects is non-exhaustive, and also in view of the provision in the Rules of Operation for Catering Establishments (Enterprises) which refers to the protection of intellectual property rights, it can be said that a signature dish is protected by copyright law.

Conclusions

1. A culinary creation, as a category, consists of four components: 1) the idea (recipe/production process); 2) the name; 3) the process of preparing the ingredients that make up the dish; 4) the appearance (presentation of the dish).
The concept of a 'culinary recipe' is absent at the legislative level.
2. A recipe may be protected by copyright as a literary work.
However, in this case, only the form in which the recipe is expressed will be protected; the idea itself and the essence of the recipe will not be protected. Consequently, the protection offered by the legislation in this case cannot be used to protect the rights to a culinary product created according to a recipe.
3. A finished culinary creation is the end product of a recipe, the result of its embodiment in a tangible form, analogous to architectural designs and the buildings in which they are embodied.
4. Culinary creations may be derivative works of original works of visual art, and a signature dish may be protected by copyright.

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AUTORINĖS TEISĖS Į KULINARIJOS PRODUKTĄ

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Santrauka

Šiame straipsnyje nagrinėjami kulinarinių kūrinių, kaip intelektualinės nuosavybės objektų, apsaugos teisiniai pagrindai, atsižvelgiant į vis didėjantį kulinarinės veiklos kūrybiškumą ir restoranų verslo plėtrą. Teigiama, kad šiuolaikinis maisto ruošimo procesas tampa veikla, kurioje vyrauja kūrybiniai elementai, o kulinarinis kūrinys gali būti laikomas asmens veiklos intelektiniu produktu. Ypatingas dėmesys skiriamas recepto ir gamybos schemos teisinio pobūdžio apibrėžimui, taip pat jų santykio su gatavu patiekalu kaip galutiniu kūriniu išsiaiškinimui.

Straipsnyje analizuojamos nacionalinės teisės aktų nuostatos ir tarptautinė teisinė doktrina dėl receptų ir kulinarinių produktų teisinės apsaugos galimybių. Pripažįstama, kad receptas bus saugomas autorių teisių, jei jis yra originalus išraiškos būdas, tačiau teisinė apsauga neapima patiekalo idėjos ar gamybos metodo. Straipsnyje nagrinėjamas patiekalo išvaizdos apsaugos klausimas, klausimas, ar patiekalai teisinėje srityje gali būti laikomi vaizduojamojo meno kūrinių išvestiniais kūriniais, taip pat firminių patiekalų teisinio reguliavimo ypatumai.

Daroma išvada, kad būtina tobulinti intelektualinės nuosavybės interesų apsaugos kulinarijos srityje teisinį reguliavimą ir nustatyti kriterijus, pagal kuriuos būtų nustatoma kulinarinių kūrinių apsaugotumas.

Raktažodžiai: receptas, intelektualinė nuosavybė, autorių teisės, patiekalas, apsauga, teisinis reguliavimas, teisė.