

Why Gardens, Perfumes, Recipes, DNA, and Mathematical Formulae Are Not Copyright Subject Matter

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U.S. copyright law vests exclusive rights in authors of “original works of authorship fixed in any tangible medium of expression.” The statute identifies eight specific types of works that are encompassed within this general category as copyright subject matter. The legislative history, as well as the structure, of this provision contemplate that the eight are listed not exclusive. One reason for the inclusive and general nature of the copyright subject matter provision was to make it possible to add new subject matters to copyright if advances in technology brought new types of authorship into being. But how expansive is copyright subject matter under U.S. law? If there are some types of intellectual creations that would meet copyright’s originality and fixation criteria, should they be deemed copyright subject matter? What kinds of limits are there to categories of things that should be deemed “works of authorship”? This article will consider some policy reasons why gardens, perfumes, recipes, genetically modified DNA, and mathematical formulae should not be considered copyright subject matter.