

Film Plagiarism Claims May Foreshadow AI Copyright Issues

By **Craig Smith** (April 4, 2024)

The Academy Awards are often fraught with drama, and this year was no exception.

Alexander Payne's Oscar-nominated movie "The Holdovers" has become embroiled in a contentious plagiarism dispute. Screenwriter Simon Stephenson, known for his work on films like "Luca" and "Paddington 2," alleges that the screenplay for "The Holdovers" plagiarized his unproduced screenplay for "Frisco."



Craig Smith

Stephenson's claims, which were publicly aired in a recent article in *Variety*, are based on similarities in the characters, structure and themes in both screenplays.[1]

These types of plagiarism allegations are difficult to prove and may foreshadow the challenges screenwriters will face when confronted with similar scripts generated by artificial intelligence technology.

"The Holdovers" is a critically acclaimed movie about a curmudgeonly prep-school teacher, played by Paul Giamatti, who has to babysit a student during a holiday break. The seemingly incompatible characters initially despise each other and then gradually become friends through shared experiences and secrets.

The movie was nominated for multiple awards, including best original screenplay, and was written by David Hemingson.

Stephenson's plagiarism allegations were detailed in communications between Stephenson and the Writers Guild of America. According to Stephenson, his script for "Frisco" included similar themes and characters to "The Holdovers":

The screenplay Frisco tells the story of a cynical and world-weary fifty-something children's doctor and the precocious teenage patient he finds himself stuck looking after in a one-on-one situation for a period of days.

Although Stephenson asserted that "The Holdovers" plagiarized line-by-line from "Frisco," the allegations are grounded in similarities in the broader structure, themes and characters.

To succeed on a claim of copyright infringement, Stephenson would have to prove ownership of a valid copyright in his screenplay and copying of original elements of the work, as shown in *Corbello v. Valli* in the U.S. Court of Appeals for the Ninth Circuit in 2020.

Evidence of copying may include access to the copyrighted work and substantial similarity between the works. Stephenson has alleged that Alexander Payne had access to the script for "Frisco" and that the copying was brazen.

A key issue is whether similarities in characters, themes and scene sequencing are substantial enough to prove infringement. Copyright law protects the expression of ideas or concepts, not the ideas and concepts themselves.

According to the U.S. Supreme Court's 1991 ruling in *Feist Publications Inc. v. Rural Telephone Service Co.*, the most fundamental axiom of copyright law is that "[n]o author may copyright his ideas or the facts he narrates." Thus, common themes and ideas that are used throughout a film genre are not protectable.

Many popular movies have faced copyright infringement claims, but these claims are difficult to prove. For example, the makers of "Avatar," "Zootopia," "The Expendables" and "Alien vs. Predator" have all been accused of copying other people's works. In each case, the claims failed because the authors were unable to prove that the two works were substantially similar.[2]

Concerns about plagiarism in the entertainment industry have been amplified by the extraordinary advances in AI technology. Indeed, according to a recent public comment, the Writers Guild of America considers AI an existential threat to its members: "The current and potential implementations of AI technology threaten the craft and livelihood of our members."[3]

Generative AI tools, such as ChatGPT by OpenAI, make it easy to produce screenplays that contain similar characters, scenes and structures as human-written scripts. In fact, AI models can be trained on every available screenplay ever written and then prompted to generate scripts that may contain similar characters, ideas and themes.

Future copyright infringement claims against AI-generated scripts will face thorny issues concerning what it means to copy. Writers complain that both the input and output of AI systems violate copyright laws. On the input side, authors argue that the use of their works, such as screenplays, to train AI models constitutes copyright infringement.

Not surprisingly, AI companies disagree. OpenAI argues that using copyrighted material to train AI models is fair use. According to a recent letter from OpenAI to the Copyright Office, "OpenAI believes that the training of AI models qualifies as a fair use, falling squarely in line with established precedents recognizing that the use of copyrighted materials by technology innovators in transformative ways is entirely consistent with copyright law."

This fair use defense is codified in the Copyright Act: "the fair use of a copyrighted work ... for purposes such as criticism, comment, news reporting, teaching ... scholarship, or research, is not an infringement of copyright."

A fair use defense by AI companies may be persuasive because it has been successfully used by others to defeat copyright infringement claims. For example, in *Authors Guild v. Google Inc.* in the U.S. Court of Appeals for the Second Circuit in 2015, Google succeeded on a fair use defense when sued by authors for copying their books for use in the Google Books project.

AI companies have an even better fair use defense than Google. Google copied books without the authors' permission and displayed small portions or snippets of the copyrighted works in response to searches.

Unlike Google's use, OpenAI and other AI companies only use the copyrighted works to train their AI models. Once trained, the AI models do not retain a copy of the original work. Thus, AI models are not searching through or displaying verbatim copies of the copyrighted work when responding to user prompts.

Screenwriters are not only concerned about how AI models are trained, but also AI-generated outputs that could plagiarize their own works. The Writers Guild of America emphasized that its copying concerns are not theoretical because early studies show some AI systems provide responses that plagiarize the original works used to train the AI models.

For instance, researchers found that AI tools, such as ChatGPT, generate texts that plagiarize from training data in three ways: verbatim plagiarism, paraphrasing and idea plagiarism.[4]

OpenAI has countered that duplicating any copyrighted material is unlikely and considered a design flaw to be fixed. According to the letter,

Because our models do not have access to training information after they have learned from it, they are unlikely to duplicate training data in their outputs. In fact, verbatim repetition or 'memorization' of training data is generally considered by AI developers to be a bug to be corrected, rather than a feature to be pursued.

The more difficult cases will involve a form of idea plagiarism, as opposed to verbatim copying. AI-generated screenplays that contain similar characters, scenes and themes to human-created scripts will need to be scrutinized to determine whether they are substantially similar.

These fact-specific inquiries will focus on protecting only original elements of the copyrighted works, not general themes, scenes and ideas that are not subject to copyright protection.

As AI technology continues to advance, the art of storytelling may be forever changed. The drama concerning "The Holdovers" may quickly subside but claims of copyright infringement in Hollywood will persist.

Screenwriters, such as Stephenson, may not welcome a future where it is difficult to receive any attribution or credit for AI-generated scripts that benefited from their prior work.

Craig R. Smith is a partner at Lando & Anastasi LLP.

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[1] <https://variety.com/2024/film/news/the-holdovers-accused-plagiarism-luca-writer-1235935605/>.

[2] "Avatar": Moore v. Lightstorm Ent., 992 F. Supp. 2d 543, 555 (D. Md. 2014) ("there are no substantial similarities to be found in any of the relevant elements. Any similarities are limited to general stock themes, scenes a faire and ideas not subject to copyright protection."); "Zootopia": Esplanade Prods., Inc. v. Walt Disney Co., 768 F. App'x 732, 733 (9th Cir. 2019) ("the two works are not substantially similar"); "The Expendables": Webb v. Stallone, 910 F. Supp. 2d 681, 689 (S.D.N.Y. 2012) (not "so 'strikingly similar' ... as to preclude any reasonable possibility of independent creation"); "Alien vs. Predator": Muller v. Twentieth Century Fox Film Corp., 794 F. Supp. 2d 429, 443 (S.D.N.Y. 2011) (no "striking similarity").

[3] Writers Guild of America West and Writers Guild of America East Comment On USCO Notice of Inquiry on Copyright & Artificial Intelligence ("Writers Guild of America letter"), dated October 30, 2023, page 1. <https://www.regulations.gov/comment/COLC-2023-0006-8649>.

[4] Jooyoung Lee, Thai Le, Jinghui Chen, and Dongwon Lee. Do Language Models Plagiarize?, In Proceedings of the ACM Web Conference 2023 (WWW'23), May 1–5, 2023, Austin, TX, USA. ACM, New York, NY, USA, 12 pages. <https://arxiv.org/pdf/2203.07618.pdf>.