**9.10 Copyright – Validity – Ideas and Expression**

Copyright protection doesn’t extend to all the elements of a copyrighted work. Elements covered by the copyright protection are called “protected matter,” and non-covered elements are “unprotected matter.” Because unprotected matter isn’t entitled to copyright protection, another author may copy it.

There are various types of unprotected matter. They include:

• a portion of the work that isn’t original to the author;

• a portion of the work that’s in the public domain; and

• an idea, concept, principle, discovery, fact, actual event, process, or method contained in a work.

A work that’s “in the public domain” is one that does not have copyright protection, so anyone may use all or part of it in another work without charge.

In copyright law, it’s important to distinguish between the ideas in a work and the author’s expression of the ideas. The ideas in a work are unprotected matter. But an idea must be expressed in some way, and the expression or means of expression of an idea is protected matter.

For example, copyright law doesn’t protect the idea of a determined captain hunting a giant whale. But copyright law does protect the particular expression of this idea in the book *Moby-Dick*.

Put another way, the author of a work has no exclusive right to the underlying ideas, concepts, principles, discoveries, facts, actual events, processes, or methods contained in a work. But the author’s copyright does extend to the means by which those are expressed, described, depicted, implemented, or otherwise communicated in the work.

If you find that [name of plaintiff] is seeking copyright protection in:

• a portion of a work that isn’t original to the author;

• a portion of the work that’s in the public domain; or

• an idea, concept, principle, discovery, fact, actual event, process, or method expressed or described in a work, you should exclude that material from the protected matter [name of plaintiff]’s copyright-infringement claim can be based on.

**Special Interrogatories to the Jury**

**Do you find that Plaintiff is seeking copyright protection in:**

 A portion of a work that is not original to the author;

 A portion of the work that is in the public domain; or

 An idea, concept, principle, discovery, fact, actual event, process, or method expressed or described in a work?

Answer Yes or No \_\_\_\_\_\_\_\_\_\_\_\_\_

If your answer to the above question is “Yes,” as to any material in which [name of plaintiff] is claiming copyright protection, you should exclude that material from the material [name of plaintiff]’s copyright-infringement claim can be based on.