

REVISTA DE DIREITO INTERNACIONAL
BRAZILIAN JOURNAL OF INTERNATIONAL LAW

Pitching without property: the idea submission doctrine and contractual protection of creative ideas in the global creative economy

Pitching sem Propriedade: A Doutrina da Submissão de Ideias e a Proteção Contratual de Ideias Criativas na Economia Criativa Global

Felipe Augusto Carvalho

VOLUME 23 • N. 1 • 2026
DIREITO INTERNACIONAL
EM TRANSFORMAÇÃO

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Pitching sem Propriedade: A Doutrina da Submissão de Ideias e a Proteção Contratual de Ideias Criativas na Economia Criativa Global

Nho Le**

Le Thi Tuyet Ha***

Abstract

Creative ideas in media and entertainment industries are frequently disclosed during the pitching stage before they are fixed in a form eligible for copyright protection. This structural feature of creative production creates a recurring legal vulnerability: copyright protects expression rather than ideas, while trade secret protection requires secrecy that is often incompatible with commercial pitching practices. This article examines how United States courts have addressed this gap through the idea submission doctrine, a contract-based mechanism that recognises liability when ideas are disclosed under circumstances giving rise to a reasonable expectation of compensation. The study adopts a doctrinal and comparative analysis of leading US cases, including *Desny v Wilder*, *Grosso v Miramax*, *Montz v Pilgrim Films*, and *Forest Park Pictures v Universal*, in order to identify the core contractual elements required to establish liability and to clarify the relationship between idea submission claims and copyright pre-emption. The article further distinguishes the doctrine from trade secret protection and situates it within contract law rather than intellectual property law. By placing the US experience within a broader comparative perspective, the study highlights the implications of pitching disputes for jurisdictions where similar creative exchanges occur but doctrinal guidance remains limited. It argues that contractual governance, rather than the expansion of proprietary rights in ideas, offers a principled mechanism for regulating creative exchanges at the pre-production stage in an increasingly global creative economy.

Keywords: comparative perspective; contract law; copyright pre-emption; creative industries; idea submission doctrine; US case law.

Resumo

Ideias criativas nas indústrias de mídia e entretenimento são frequentemente divulgadas durante a etapa de pitching, antes de serem fixadas em um suporte formal que as torne elegíveis à proteção pelo direito autoral.

* Recebido em: 14/03/2026.
Aprovado em: 30/06/2026.

** Le Nho, LL.M., is a doctoral researcher in law at Ho Chi Minh City Open University, Vietnam. His research focuses on intellectual property law, contract law and digital commerce.
E-mail : nhol.25al@ou.edu.vn

*** Le Thi Tuyet Ha, PhD, is Associate Professor of Law and Head of the Division of Commercial Law at Ho Chi Minh City Open University, Vietnam. Her research interests include intellectual property law, commercial law and the regulation of the digital economy, with particular attention to digital markets and emerging technologies.
E-mail : ha.ltht@ou.edu.vn

Essa característica estrutural da produção criativa gera uma vulnerabilidade jurídica recorrente: o direito autoral protege a expressão, e não as ideias, ao passo que a proteção pelo segredo comercial exige um sigilo que muitas vezes é incompatível com as práticas comerciais de pitching. Este artigo examina como os tribunais dos Estados Unidos têm lidado com essa lacuna por meio da doutrina da submissão de ideias (idea submission doctrine), um mecanismo de base contratual que reconhece a responsabilidade jurídica quando ideias são reveladas em circunstâncias que geram uma expectativa razoável de remuneração. O estudo adota uma análise doutrinária e comparada de casos emblemáticos dos EUA, incluindo *Desny v. Wilder*, *Grosso v. Miramax*, *Montz v. Pilgrim Films* e *Forest Park Pictures v. Universal*, a fim de identificar os elementos contratuais centrais exigidos para caracterizar a responsabilidade e de esclarecer a relação entre as ações baseadas na submissão de ideias e a preempção do direito autoral (copyright pre-emption). O artigo distingue, ainda, essa doutrina da proteção pelo segredo comercial e a situa no âmbito do direito contratual, em vez do direito da propriedade intelectual. Ao inserir a experiência estadunidense em uma perspectiva comparada mais ampla, o estudo evidencia as implicações dos litígios sobre pitching para jurisdições onde ocorrem trocas criativas semelhantes, mas nas quais a orientação doutrinária permanece limitada. Defende-se que a governança contratual — e não a expansão dos direitos patrimoniais sobre ideias — oferece um mecanismo fundamentado para regular as trocas criativas na fase de pré-produção em uma economia criativa crescentemente globalizada.

Palavras-chave: perspectiva comparada; direito contratual; preempção do direito autoral; indústrias criativas; doutrina da submissão de ideias; jurisprudência dos Estados Unidos.

1 Introduction

In contemporary media and creative industries, the pitching of ideas constitutes a routine and structural feature of content production. Screenwriters, producers, designers and digital creators frequently present concepts for films, television programmes, advertising campaigns or online content in order to secure collaboration, funding or distribution. Such disclosures may occur in formal studio meetings, through agents, via

email submissions, on specialised digital platforms, or at industry pitching forums. Regardless of the format, the defining characteristic of the pitching stage is that ideas are communicated before they are fixed in a form capable of receiving copyright protection.¹

This structural feature generates a recurring legal vulnerability. Copyright law protects original expressions rather than abstract ideas.² Yet at the early stage of creative production, the economic value of a creative contribution often lies precisely in its conceptual core rather than in a fully developed script or finished work.³ Trade secret protection does not necessarily solve this problem. While it may protect confidential information, it requires secrecy and reasonable measures to maintain confidentiality - conditions that are frequently incompatible with pitching practices, where disclosure to potential collaborators is unavoidable.⁴ As a result, creators may find themselves in a legal gap: their ideas may possess commercial value but remain insufficiently protected at the moment of disclosure.

United States courts have addressed this tension through what has become known as the idea submission doctrine. Instead of recognising proprietary rights in ideas, courts have framed certain disputes as contractual in nature. Where an idea is voluntarily disclosed in circumstances giving rise to a reasonable expectation of payment if the idea is used, and where the recipient knows or should reasonably understand that expectation, an implied contractual obligation may arise. The doctrine, most famously articulated in *Desny v. Wilder*,⁵ shifts the analytical focus from ownership of ideas to the expectations generated within a commercial transaction.

¹ DEVINE, Brian. Free as the air: rethinking the law of story ideas. *Hastings Communications and Entertainment Law Journal*, San Francisco, v. 24, n. 3, p. 355-402, 2002. p. 355-358.

² UNITED STATES. Copyright Act of 1976, 17 U.S.C. § 102(b). See also: DENICOLA, Robert C. The new law of ideas. *Harvard Journal of Law & Technology*, Cambridge, v. 28, n. 1, p. 195-236, 2014. p. 195-196.

³ KETTLE III, John R. Conceptual expression in a copyright world: protecting ideas from the shadow of preemption. *John Marshall Review of Intellectual Property Law*, Chicago, v. 17, p. 1-31, 2017. p. 3-5.

⁴ GRAVES, Christopher T. Should California's film script cases be merged into trade secret law? *Columbia Journal of Law & the Arts*, New York, v. 44, n. 1, p. 21-68, 2020. p. 23-25.

⁵ UNITED STATES. *Desny v. Wilder*. 46 Cal.2d 715. California Supreme Court, 1956.

The emergence of this doctrine has generated significant academic debate. Some scholars argue that idea submission claims risk encroaching upon the copyright pre-emption framework or indirectly extending protection to ideas.⁶ Others contend that such claims merely enforce commercial expectations formed through voluntary exchange and therefore do not undermine the idea-expression dichotomy.⁷ More broadly, the debate reflects a deeper structural question within intellectual property law: how should legal systems regulate creative exchanges that occur before intellectual property protection formally attaches.⁸

Although the idea submission doctrine developed within US jurisprudence, the problem it addresses is not uniquely American. Creative industries worldwide increasingly rely on pitching practices, including digital submissions and platform-based content development. Recent scholarship published in *Revista de Direito Internacional* has highlighted the growing importance of digital creative industries and cross-border circulation of creative assets in the contemporary global economy.⁹ While these studies focus primarily on broader questions of digital creativity and intellectual property governance, they leave largely unexplored the contractual protection of creative ideas exchanged during the pitching stage. In jurisdictions where case law on pre-production idea disputes remains limited, the vulnerability of creators may be even more pronounced.¹⁰ This comparative dimension raises broader questions about how legal systems should govern voluntary disclosures of creative ideas within commercial negotiations.

The international relevance of this issue has increased significantly with the globalization of creative in-

dustries. Contemporary content production frequently involves cross-border collaborations among writers, producers, streaming platforms, and media enterprises operating across multiple jurisdictions. Pitching practices are no longer confined to domestic entertainment markets but increasingly occur through transnational digital platforms and international co-production arrangements. Consequently, disputes concerning the use of submitted ideas raise questions that extend beyond a single legal system and invite comparative analysis regarding the interaction between intellectual property law, contract law, and international creative commerce.

Against this background, this article examines the idea submission doctrine as a contractual mechanism for regulating creative disclosure at the pitch stage. It first explains why copyright and trade secret law often fail to provide adequate protection in pitching contexts. It then analyses the doctrinal structure of idea submission claims through leading US case law. Finally, adopting a comparative perspective, it considers the implications of this contractual approach for jurisdictions in which pitching practices are expanding but doctrinal guidance remains underdeveloped.

This article advances the thesis that the idea submission doctrine should be understood not as an indirect extension of intellectual property protection, but as a distinct contractual mechanism for governing creative exchanges before intellectual property rights attach. It argues that contractual governance provides a more coherent and internationally adaptable response to pitching-stage disputes than attempts to expand proprietary protection for ideas.

The comparative perspective adopted in this article is consistent with broader scholarship emphasizing the growing importance of comparative approaches within contemporary international legal research, particularly where legal solutions developed in one jurisdiction may provide useful insights for addressing common regulatory challenges elsewhere.¹¹ Recent scholarship published in *Revista de Direito Internacional* has also examined the legal challenges generated by digital creative industries, intellectual property governance and transnational

⁶ DELISLE, Stephen. *An uncertain future for the hunting of ghosts: the conflict between idea submission claims and preemption in the Ninth Circuit*. 2010. p. 1–2. Available at: <https://ssrn.com/abstract=1967957>. Accessed on: 15 jan. 2026.

⁷ MICHAUD, Celine; TULQUOIS, Gregory. Idea men should be able to enforce their contractual rights: considerations rejecting preemption of idea-submission contract claims. *Vanderbilt Journal of Entertainment and Technology Law*, Nashville, v. 6, n. 1, p. 75–93, 2003. p. 75–77.

⁸ KATZ, Larissa M. A powers-based approach to the protection of ideas. *Cardozo Arts & Entertainment Law Journal*, New York, v. 23, p. 688–737, 2006. p. 715–723.

⁹ WEI, Dan; RAFAEL, Ângelo. Digital art and the Belt and Road Initiative: opportunities, challenges and perspectives. *Revista de Direito Internacional*, Brasília, v. 17, n. 3, p. 256–273, 2020. p. 256–268.

¹⁰ SANDLER, Jonathan R. Idea theft and independent creation: a recipe for evading contractual obligations. *Loyola of Los Angeles Law Review*, Los Angeles, v. 45, n. 4, p. 1421–1458, 2012. p. 1425–1427.

¹¹ CAMPOS, Deo; VASCONCELOS, Raphael Carvalho de. Podemos pensar num Direito Internacional Comparado? Viabilidades e obstáculos na fronteira entre Direito Internacional e Direito Comparado. *Revista de Direito Internacional*, Brasília, v. 21, n. 1, p. 376–379, 2024. p. 376–379.

cultural production.¹² While these studies have explored broader issues relating to digital art, innovation and the circulation of creative assets in global markets, limited attention has been devoted to the contractual protection of creative ideas disclosed during the pitching stage. This article contributes to that emerging discussion by focusing specifically on the governance of pre-production creative exchanges and the role of contract law in addressing vulnerabilities that arise before formal intellectual property rights attach.

2 Why copyright fails at the pitch stage

2.1 The idea-expression dichotomy and the limits of copyright

The central obstacle facing creators at the pitch stage lies in one of the most fundamental principles of copyright law: the idea-expression dichotomy. Under US copyright law, protection extends only to original works of authorship fixed in a tangible medium of expression, not to ideas, procedures, systems or concepts as such.¹³ Section 102(b) of the Copyright Act explicitly confirms that copyright protection does not extend to ‘any idea, procedure, process, system, method of operation, concept, principle, or discovery’.¹⁴

This doctrinal boundary plays an essential role in preserving freedom of competition and preventing the monopolisation of abstract themes or narrative premises.¹⁵ However, at the pitch stage, this boundary creates a structural asymmetry. What is disclosed in a pitching meeting is often precisely the core concept - the narrative premise, format structure, character dynamic or commercial hook - rather than a fully elaborated script or finished audiovisual work.¹⁶ While fragments of ex-

pression may accompany the disclosure (such as a treatment, outline or short sample), the commercially valuable element frequently lies in the underlying conceptual architecture rather than in the specific wording used.¹⁷

Courts have consistently resisted attempts to use copyright to protect such abstract elements. The refusal is doctrinally coherent but practically consequential. As Denicola observes, copyright’s architecture is intentionally calibrated to avoid granting exclusive control over ideas, even where those ideas are novel or commercially valuable.¹⁸ The resulting gap is not accidental; it reflects a deliberate structural limitation of the intellectual property system. Yet that limitation leaves creators vulnerable at precisely the moment when disclosure is necessary to commercialise their work.

The problem is further compounded by the requirement of fixation. Copyright protection attaches only once a work is fixed in a tangible medium.¹⁹ In pitching environments, particularly oral presentations, informal meetings or spontaneous industry discussions, ideas may be communicated before any legally protectable fixation occurs. Even where written materials exist, the core concept may remain too abstract to meet the threshold of protectable expression.²⁰ As Kettle notes, attempts to stretch copyright doctrine to cover conceptual elements risk destabilising the balance between protection and public domain.²¹

Accordingly, copyright law offers limited assistance to creators whose grievance concerns the unauthorised use of an idea rather than the copying of a specific expressive form. The law’s refusal to protect ideas is prin-

world: protecting ideas from the shadow of preemption. *John Marshall Review of Intellectual Property Law*, Chicago, v. 17, p. 1-31, 2017. p. 4-8.

¹⁷ NIEBERGALL, Catherine. Product of the mind: idea submission cases and copyright preemption post-Grosso. *SMU Science and Technology Law Review*, Dallas, v. 17, n. 1, p. 31-58, 2014. p. 33-38.

¹⁸ DENICOLA, Robert C. The new law of ideas. *Harvard Journal of Law & Technology*, Cambridge, v. 28, n. 1, p. 195-236, 2014. p. 196-197. See also DEVINE, Brian. Free as the air: rethinking the law of story ideas. *Hastings Communications and Entertainment Law Journal*, San Francisco, v. 24, n. 3, p. 355-402, 2002. p. 365-367.

¹⁹ UNITED STATES. *Copyright Act of 1976*. 17 U.S.C. § 102(a).

²⁰ SANDLER, Jonathan R. Idea theft and independent creation: a recipe for evading contractual obligations. *Loyola of Los Angeles Law Review*, Los Angeles, v. 45, n. 4, p. 1421-1458, 2012. p. 1425-1427.

²¹ KETTLE III, John R. Conceptual expression in a copyright world: protecting ideas from the shadow of preemption. *John Marshall Review of Intellectual Property Law*, Chicago, v. 17, p. 1-31, 2017. p. 8-10.

¹² WEI, Dan; RAFAEL, Ângelo. Digital art and the Belt and Road Initiative: opportunities, challenges and perspectives. *Revista de Direito Internacional*, Brasília, v. 17, n. 3, p. 256-273, 2020. p. 256-268.

¹³ NIEBERGALL, Catherine. Product of the mind: idea submission cases and copyright preemption post-Grosso. *SMU Science and Technology Law Review*, Dallas, v. 17, n. 1, p. 31-58, 2014. p. 32-33.

¹⁴ UNITED STATES. *Copyright Act of 1976*. 17 U.S.C. § 102(b).

¹⁵ DEVINE, Brian. Free as the air: rethinking the law of story ideas. *Hastings Communications and Entertainment Law Journal*, San Francisco, v. 24, n. 3, p. 355-402, 2002. p. 365-367.

¹⁶ KETTLE III, John R. Conceptual expression in a copyright

cipled, but it leaves unresolved the commercial expectations that arise during pitching practices.

2.2 Copyright pre-emption and the fragility of alternative claims

Faced with the limits of copyright, plaintiffs have often turned to alternative legal theories, including contract and quasi-contract claims. However, such claims encounter another doctrinal barrier: federal copyright pre-emption. Under section 301 of the Copyright Act, state law claims are pre-empted where they are equivalent to rights within the general scope of copyright and concern works falling within the subject matter of copyright.²²

The interaction between idea submission claims and copyright pre-emption has generated significant judicial debate. Some courts have been wary that contractual theories may operate as de facto extensions of copyright protection for ideas.²³ If a plaintiff merely re-characterises an infringement claim as a contract dispute without identifying an additional element beyond copying, pre-emption may bar the claim.²⁴

However, courts have also recognised that genuine contractual obligations involve elements qualitatively different from copyright. Where a plaintiff can demonstrate an expectation of payment arising from a consensual transaction - rather than simply unauthorised copying - courts have been more inclined to treat the claim as independent of copyright's exclusive rights.²⁵ The distinction is subtle but critical: copyright protects against unauthorised reproduction, whereas contract enforces agreed or implied obligations arising from disclosure in a commercial context.

Scholars have divided sharply on whether idea submission claims should survive pre-emption. Delisle highlights the doctrinal uncertainty in the Ninth Circuit and warns of inconsistent application.²⁶ Michaud and

Tulquois argue that pre-emption should not defeat contract-based claims grounded in mutual understanding and voluntary exchange. Others caution that expansive contractual protection risks eroding the public domain and undermining the idea-expression boundary.²⁷

The persistence of this debate illustrates the fragility of relying on copyright-adjacent theories at the pitch stage. Creators who cannot establish protectable expression may attempt to frame disputes as contractual, yet those claims must carefully avoid equivalence with copyright infringement. The line between enforcing a bargain and protecting an idea as property remains doctrinally delicate.

2.3 The structural gap between intellectual property and commercial practice

The cumulative effect of the idea-expression dichotomy, fixation requirements and pre-emption doctrine is the emergence of a structural gap at the pre-production stage.²⁸ Copyright law is designed to regulate exploitation of finished works; it is less well suited to govern preliminary disclosures made in the course of seeking commercial collaboration.²⁹

Trade secret law does not fully resolve this gap. While it may protect confidential business information, it requires secrecy and reasonable efforts to maintain confidentiality.³⁰ In pitching contexts, particularly in entertainment markets where multiple potential partners must evaluate a concept, strict secrecy may be impractical or commercially counterproductive.³¹

the conflict between idea submission claims and preemption in the Ninth Circuit, 2010. Available at: <https://ssrn.com/abstract=1967957>. Accessed on: 15 jan. 2026. p. 12-13

²⁷ DENICOLA, Robert C. The new law of ideas. *Harvard Journal of Law & Technology*, Cambridge, v. 28, n. 1, p. 195-236, 2014. p. 206-209.

²⁸ DEVINE, Brian. Free as the air: rethinking the law of story ideas. *Hastings Communications and Entertainment Law Journal*, San Francisco, v. 24, n. 3, p. 355-402, 2002. p. 355-360.

²⁹ DENICOLA, Robert C. The new law of ideas. *Harvard Journal of Law & Technology*, Cambridge, v. 28, n. 1, p. 195-236, 2014. p. 199-201.

³⁰ GRAVES, Christopher T. Should California's film script cases be merged into trade secret law? *Columbia Journal of Law & the Arts*, New York, v. 44, n. 1, p. 21-68, 2020. p. 23-25.

³¹ GRAVES, Christopher T. Should California's film script cases be merged into trade secret law? *Columbia Journal of Law & the Arts*, New York, v. 44, n. 1, p. 21-68, 2020. p. 23-24.

²² UNITED STATES. *Copyright Act of 1976*. 17 U.S.C. § 301(a).

²³ DELISLE, Stephen. *An uncertain future for the hunting of ghosts: the conflict between idea submission claims and preemption in the Ninth Circuit*. 2010. Available at: <https://ssrn.com/abstract=1967957>. Accessed on: 15 jan. 2026. p. 4-6.

²⁴ NIEBERGALL, Catherine. Product of the mind: idea submission cases and copyright preemption post-Grosso. *SMU Science and Technology Law Review*, Dallas, v. 17, n. 1, p. 31-58, 2014. p. 37-40.

²⁵ GROSSO v. MIRAMAX FILM CORP. 383 F.3d 965. United States Court of Appeals for the Ninth Circuit, 2004.

²⁶ DELISLE, Stephen. *An uncertain future for the hunting of ghosts:*

The result is a recurring pattern in which creators disclose ideas to potential producers or platforms under informal commercial expectations, yet without the benefit of clear proprietary protection. This structural mismatch between intellectual property doctrine and industry practice provides the context in which the idea submission doctrine emerged. Rather than expanding copyright to cover ideas, courts developed a contractual framework designed to enforce expectations arising from voluntary disclosure in a commercial setting.

The following section examines the contours of that doctrine and the elements required to establish liability under US law.

3 The idea submission doctrine in US media law

3.1 *Desny v Wilder* and the emergence of contractual protection

The modern idea submission doctrine traces its doctrinal foundation to the California Supreme Court's decision in *Desny v Wilder*.³² The case concerned a writer who telephoned Billy Wilder's office and pitched a story idea relating to the real-life cave rescue of Floyd Collins. The plaintiff alleged that the idea was used without compensation in the film *Ace in the Hole*. The central question before the court was whether, notwithstanding the absence of copyright protection in ideas, a contractual obligation could arise from the circumstances of disclosure.

The court rejected the notion that ideas themselves are property subject to exclusive ownership.³³ However, it held that where an idea is submitted under circumstances showing that the submitter expects to be paid if the idea is used, and the recipient voluntarily accepts the disclosure knowing that expectation, an implied-in-fact contract may arise.³⁴ Liability does not rest on ow-

nership of the idea, but on the breach of a contractual promise inferred from conduct.

Desny thus articulated a critical distinction: copyright protects expression as property, whereas idea submission claims enforce consensual obligations arising from a commercial exchange.³⁵ The court emphasised that the enforceability of such claims depends on proof of mutual understanding and voluntary acceptance - not on the novelty of the idea as such.³⁶ This contractual framing allowed courts to avoid expanding proprietary rights in ideas while still addressing perceived unfairness in commercial dealings.

The decision did not eliminate doctrinal ambiguity. Questions remained regarding the degree of specificity required in the idea, the evidentiary burden for establishing expectation of payment, and the interaction with federal copyright pre-emption. These issues resurfaced in subsequent litigation.

3.2 Development and refinement in subsequent case law

3.2.1 *Grosso v Miramax*: pre-emption and implied contract

In *Grosso v Miramax Film Corp*, the Ninth Circuit addressed whether an implied-in-fact contract claim based on idea submission was pre-empted by federal copyright law.³⁷ The plaintiff alleged that Miramax used his screenplay concept for a gambling-themed television series without compensation.

The court held that an implied-in-fact contract claim is not pre-empted where it requires proof of an additional element beyond mere copying - namely, a promise to pay for the use of the idea.³⁸ This "extra element"

³² *DESNY v. WILDER*. 46 Cal.2d 715. California Supreme Court, 1956.

³³ *DESNY v. WILDER*. 46 Cal.2d 715. California Supreme Court, 1956. See also DEVINE, Brian. Free as the air: rethinking the law of story ideas. *Hastings Communications and Entertainment Law Journal*, San Francisco, v. 24, n. 3, p. 355-402, 2002. p. 367-372.

³⁴ *DESNY v. WILDER*. 46 Cal.2d 715. California Supreme Court, 1956. See also DEVINE, Brian. Free as the air: rethinking the law of

story ideas. *Hastings Communications and Entertainment Law Journal*, San Francisco, v. 24, n. 3, p. 355-402, 2002. p. 367-372.

³⁵ NIEBERGALL, Catherine. Product of the mind: idea submission cases and copyright preemption post-Grosso. *SMU Science and Technology Law Review*, Dallas, v. 17, n. 1, p. 31-58, 2014. p. 34-36.

³⁶ *DESNY v. WILDER*. 46 Cal.2d 715. California Supreme Court, 1956. See also DEVINE, Brian. Free as the air: rethinking the law of story ideas. *Hastings Communications and Entertainment Law Journal*, San Francisco, v. 24, n. 3, p. 355-402, 2002. p. 367-372.

³⁷ *GROSSO v. MIRAMAX FILM CORP*. 383 F.3d 965. United States Court of Appeals for the Ninth Circuit, 2004.

³⁸ *GROSSO v. MIRAMAX FILM CORP*. 383 F.3d 965. United States Court of Appeals for the Ninth Circuit, 2004.

doctrine became central to distinguishing contract-based idea submission claims from copyright infringement actions. The court clarified that the gravamen of the claim was not unauthorised reproduction, but breach of a consensual obligation arising from disclosure.

Grosso reinforced the viability of idea submission claims within a narrow contractual framework. At the same time, it underscored that plaintiffs must carefully articulate their claims to avoid collapsing into copyright equivalence.³⁹

3.2.2 *Montz v Pilgrim Films: survival of contract claims*

The Ninth Circuit further refined the doctrine in *Montz v Pilgrim Films & Television, Inc.*⁴⁰ The plaintiffs alleged that they had pitched a concept for a paranormal investigation television series to NBC and Pilgrim Films, which later produced the programme *Ghost Hunters*. The district court initially dismissed the claim on pre-emption grounds.

On appeal, the en banc Ninth Circuit reinstated the implied-in-fact contract claim, holding that it was not pre-empted because it was based on a bilateral expectation of compensation rather than on exclusive rights in the idea itself.⁴¹ The court reiterated that the contractual element - mutual assent inferred from conduct - distinguished the claim from copyright infringement.

Montz is significant for two reasons. First, it confirmed that idea submission claims remain viable in the Ninth Circuit despite pre-emption concerns. Second, it emphasised that industry custom and practice may inform whether an expectation of payment is reasonable.⁴² In media industries where pitching is common, the surrounding commercial context becomes central to assessing implied assent.

Scholarly commentary has observed that *Montz* reflects judicial sensitivity to the realities of creative markets while preserving the formal boundaries of copyright law.⁴³

3.2.3 *Forest Park Pictures v Universal: clarifying the "extra element"*

In *Forest Park Pictures v Universal Television Network, Inc.*, the Second Circuit addressed an implied contract claim concerning a pitched television concept allegedly used in the production of the series *Royal Pains*.⁴⁴ The court held that the claim was not pre-empted because it required proof of a promise to pay for the use of the idea - an element qualitatively different from copyright's exclusive rights.

The Second Circuit emphasised that the "extra element" analysis turns on the nature of the legal right asserted. Where the plaintiff seeks to enforce a contractual expectation rather than an exclusive right to control copying, the claim may proceed.⁴⁵

Forest Park broadened the doctrinal acceptance of idea submission claims beyond California jurisprudence and reinforced the contractual foundation of the doctrine. It also demonstrated that courts outside the Ninth Circuit were prepared to recognise implied contractual obligations in pitching contexts.

3.2.4 *Benay v Warner Bros: limits of protection*

Not all idea submission claims succeed. In *Benay v Warner Bros Entertainment, Inc.*, the Ninth Circuit affirmed summary judgment against plaintiffs who alleged that their screenplay concept was used in the film *The Last Samurai*.⁴⁶ Although the plaintiffs had pitched their

³⁹ DELISLE, Stephen. *An uncertain future for the hunting of ghosts: the conflict between idea submission claims and preemption in the Ninth Circuit*. 2010. Available at: <https://ssrn.com/abstract=1967957>. Accessed on: 15 jan. 2026. p. 5-6.

⁴⁰ MONTZ v. PILGRIM FILMS & TELEVISION, INC. 649 F.3d 975. United States Court of Appeals for the Ninth Circuit, 2011.

⁴¹ MONTZ v. PILGRIM FILMS & TELEVISION, INC. 649 F.3d 975. United States Court of Appeals for the Ninth Circuit, 2011.

⁴² MONTZ v. PILGRIM FILMS & TELEVISION, INC. 649 F.3d 975. United States Court of Appeals for the Ninth Circuit, 2011.

⁴³ MICHAUD, Celine; TULQUOIS, Gregory. Idea men should be able to enforce their contractual rights: considerations rejecting preemption of idea-submission contract claims. *Vanderbilt Journal of Entertainment and Technology Law*, Nashville, v. 6, n. 1, p. 75-93, 2003. p. 84-89.

⁴⁴ FOREST PARK PICTURES v. UNIVERSAL TELEVISION NETWORK, INC. 683 F.3d 424. United States Court of Appeals for the Second Circuit, 2012.

⁴⁵ FOREST PARK PICTURES v. UNIVERSAL TELEVISION NETWORK, INC. 683 F.3d 424. United States Court of Appeals for the Second Circuit, 2012.

⁴⁶ BENAY v. WARNER BROS ENTERTAINMENT, INC. 607 F.3d 620. United States Court of Appeals for the Ninth Circuit, 2010.

idea, the court found insufficient evidence of substantial similarity between the protected expression and the alleged infringing work.

While *Benay* was primarily analysed as a copyright case, it highlights an important practical limitation: plaintiffs must demonstrate not only disclosure and expectation of payment, but also actual use of the idea.⁴⁷ The existence of independent development can defeat claims, and courts remain cautious about equating thematic similarity with contractual breach.

Taken together, these cases illustrate both the resilience and the limits of the idea submission doctrine. Courts have consistently refused to recognise proprietary rights in ideas. Yet they have also recognised that, in commercial pitching contexts, implied contractual obligations may arise where mutual expectations are clear. The doctrine thus occupies a carefully circumscribed space between intellectual property and contract law.

The next section distils the core legal elements emerging from this jurisprudence and considers their practical significance.

4 Core legal elements and doctrinal structure of idea submission claims

The jurisprudence discussed above reveals that the idea submission doctrine does not operate as a vague equitable principle. Rather, it rests upon a structured contractual analysis. Although formulations vary across jurisdictions, courts have consistently required proof of several core elements. Understanding these elements is essential both doctrinally and practically.

4.1 Voluntary disclosure in a commercial context

First, the idea must be voluntarily disclosed in a commercial or transactional setting. The doctrine does not apply to ideas that are publicly disseminated, casually mentioned, or wrongfully appropriated through independent misconduct.⁴⁸ Instead, liability arises only

where the submitter intentionally communicates the idea to a specific recipient in pursuit of commercial collaboration.

This requirement reflects the contractual foundation of the doctrine. As *Desny* emphasised, the submission must occur under circumstances from which a promise to pay may reasonably be inferred.⁴⁹ Courts have therefore examined whether the disclosure took place during a pitch meeting, through an agent, or via a formal submission process.⁵⁰

The commercial setting functions as the contextual anchor for mutual assent. Without it, the disclosure remains unilateral and legally insufficient to generate contractual obligation. Industry custom may play a role in assessing whether a pitching context qualifies as transactional rather than purely informal.⁵¹

4.2 Clear expectation of compensation

Second, the plaintiff must demonstrate that the idea was disclosed with an expectation of payment if used. This element distinguishes idea submission claims from mere sharing of creative inspiration.⁵²

In *Desny*, the California Supreme Court underscored that the submitter must convey - either expressly or implicitly - that compensation is expected in exchange for use.⁵³ Courts have required evidence that the recipient knew or reasonably should have understood this expectation.⁵⁴

The expectation need not be formalised in writing. It may arise from industry practice, prior dealings, or the circumstances of the pitch itself.⁵⁵ However, vague

⁴⁷ SANDLER, Jonathan R. Idea theft and independent creation: a recipe for evading contractual obligations. *Loyola of Los Angeles Law Review*, Los Angeles, v. 45, n. 4, p. 1421-1458, 2012. p. 1426-1427.

⁴⁸ *DESNY v. WILDER*. 46 Cal.2d 715. California Supreme Court, 1956.

⁴⁹ *DESNY v. WILDER*. 46 Cal.2d 715. California Supreme Court, 1956.

⁵⁰ *FOREST PARK PICTURES v. UNIVERSAL TELEVISION NETWORK, INC.* 683 F.3d 424. United States Court of Appeals for the Second Circuit, 2012.

⁵¹ *MONTZ v. PILGRIM FILMS & TELEVISION, INC.* 649 F.3d 975. United States Court of Appeals for the Ninth Circuit, 2011.

⁵² NIEBERGALL, Catherine. Product of the mind: idea submission cases and copyright preemption post-Grosso. *SMU Science and Technology Law Review*, Dallas, v. 17, n. 1, p. 31-58, 2014. p. 36.

⁵³ *DESNY v. WILDER*. 46 Cal.2d 715. California Supreme Court, 1956.

⁵⁴ *GROSSO v. MIRAMAX FILM CORP.* 383 F.3d 965. United States Court of Appeals for the Ninth Circuit, 2004.

⁵⁵ MICHAUD, Celine; TULQUOIS, Gregory. Idea men should be able to enforce their contractual rights: considerations rejecting preemption of idea-submission contract claims. *Vanderbilt Journal of*

aspirations for collaboration are insufficient. The plaintiff must show that compensation was contemplated as a condition of use.

This requirement serves an important doctrinal function: it ensures that the claim is grounded in consensual obligation rather than in a proprietary claim to the idea.⁵⁶ The focus remains on agreement, not ownership.

4.3 Knowledge and acceptance by the recipient

Third, the recipient must knowingly accept the disclosure under circumstances giving rise to contractual implication.⁵⁷ Courts have emphasised that mere receipt of unsolicited material does not automatically create liability.⁵⁸

Studios and production companies frequently rely on submission policies or disclaimers to negate implied obligations.⁵⁹ Where recipients clearly reject any expectation of compensation prior to disclosure, courts are less likely to infer mutual assent.⁶⁰ Conversely, where a recipient voluntarily engages with a pitch, requests additional materials, or continues discussions without objection, courts may find implied acceptance.

The analysis mirrors general principles of contract law: mutual assent may be inferred from conduct, but only where both parties' actions reasonably manifest agreement.⁶¹

4.4 Actual use of the idea

Fourth, the plaintiff must demonstrate that the defendant actually used the submitted idea. Disclosure alone is insufficient.⁶²

Proving use can be particularly challenging where ideas are abstract or thematic. Courts have required more than superficial similarity; they examine whether the allegedly infringing work reflects substantial reliance on the submitted concept rather than independent development.⁶³

The possibility of independent creation remains a powerful defence.⁶⁴ As commentators have observed, creative industries often generate similar concepts simultaneously, particularly where trends or genres converge.⁶⁵ The evidentiary burden thus falls on the plaintiff to establish a causal link between submission and exploitation.

This element further underscores the doctrine's contractual nature: liability arises only if the defendant benefits from the disclosed idea in violation of the implied bargain.

4.5 The "extra element" and the boundary with copyright

Finally, idea submission claims must survive copyright pre-emption. As discussed above, courts have consistently required that the contractual obligation constitute an "extra element" qualitatively different from copyright's exclusive rights.⁶⁶

Where the claim seeks to enforce a promise to pay for use, rather than to prevent copying per se, courts have

Entertainment and Technology Law, Nashville, v. 6, n. 1, p. 75-93, 2003. p. 76-80.

⁵⁶ KATZ, Larissa M. A powers-based approach to the protection of ideas. *Cardozo Arts & Entertainment Law Journal*, New York, v. 23, p. 688-737, 2006. p. 715-723.

⁵⁷ MONTZ v. PILGRIM FILMS & TELEVISION, INC. 649 F.3d 975. United States Court of Appeals for the Ninth Circuit, 2011.

⁵⁸ SANDLER, Jonathan R. Idea theft and independent creation: a recipe for evading contractual obligations. *Loyola of Los Angeles Law Review*, Los Angeles, v. 45, n. 4, p. 1421-1458, 2012. p. 1426-1427.

⁵⁹ GRAVES, Christopher T. Should California's film script cases be merged into trade secret law? *Columbia Journal of Law & the Arts*, New York, v. 44, n. 1, p. 21-68, 2020. p. 24-26.

⁶⁰ FOREST PARK PICTURES v. UNIVERSAL TELEVISION NETWORK, INC. 683 F.3d 424. United States Court of Appeals for the Second Circuit, 2012.

⁶¹ RESTATEMENT (SECOND) OF CONTRACTS. § 19. American Law Institute, 1981.

⁶² BENAY v. WARNER BROS ENTERTAINMENT, INC. 607 F.3d 620. United States Court of Appeals for the Ninth Circuit, 2010.

⁶³ BENAY v. WARNER BROS ENTERTAINMENT, INC. 607 F.3d 620. United States Court of Appeals for the Ninth Circuit, 2010.

⁶⁴ SANDLER, Jonathan R. Idea theft and independent creation: a recipe for evading contractual obligations. *Loyola of Los Angeles Law Review*, Los Angeles, v. 45, n. 4, p. 1421-1458, 2012. p. 1426-1427.

⁶⁵ SANDLER, Jonathan R. Idea theft and independent creation: a recipe for evading contractual obligations. *Loyola of Los Angeles Law Review*, Los Angeles, v. 45, n. 4, p. 1421-1458, 2012. p. 1426-1427.

⁶⁶ UNITED STATES. Copyright Act of 1976. 17 U.S.C. § 301(a). See also: GROSSO v. MIRAMAX FILM CORP. 383 F.3d 965. United States Court of Appeals for the Ninth Circuit, 2004.

generally found the extra element satisfied.⁶⁷ However, where plaintiffs attempt to recast infringement allegations as contractual breach without demonstrating mutual assent or compensation expectations, pre-emption may bar the claim.⁶⁸

This boundary is doctrinally significant. It preserves the integrity of the idea-expression dichotomy while allowing contract law to regulate commercial expectations. The doctrine thus operates within a carefully delimited space: it neither transforms ideas into property nor undermines federal copyright policy.

4.6 Doctrinal structure: contractual governance without proprietary expansion

Taken together, these elements reveal a coherent doctrinal structure. The idea submission doctrine does not confer exclusive rights in ideas. Instead, it enforces transactional expectations arising from voluntary commercial disclosure.⁶⁹

This contractual architecture explains both the doctrine's resilience and its limits. It survives pre-emption because it enforces agreement rather than ownership. Yet it remains narrow because plaintiffs must satisfy traditional contractual requirements -offer, acceptance, consideration (or its implied equivalent), and breach.⁷⁰

In this sense, the doctrine represents a form of contractual governance at the pre-production stage. It addresses the structural gap identified in Section II without expanding intellectual property protection beyond its doctrinal boundaries. The following section

contrasts this contractual mechanism with trade secret protection and explores the strategic implications of choosing between them.

5 Idea submission and trade secret protection

The idea submission doctrine is often discussed alongside trade secret law, as both appear to address vulnerabilities arising from pre-production disclosures. Yet the two mechanisms differ fundamentally in structure, rationale and strategic implications. Understanding their distinction is essential for assessing the proper scope of contractual protection at the pitch stage.

5.1 Conceptual foundations: secrecy versus transactional expectation

Trade secret protection is grounded in the preservation of secrecy. Under US law, a trade secret consists of information that derives independent economic value from not being generally known and is subject to reasonable efforts to maintain its secrecy.⁷¹ The Uniform Trade Secrets Act and the Defend Trade Secrets Act both require proof of these elements.⁷²

In contrast, the idea submission doctrine does not depend on secrecy. Indeed, it presupposes disclosure. The core question is not whether the idea was confidential, but whether it was communicated in circumstances giving rise to a reasonable expectation of compensation if used.⁷³

This distinction is doctrinally decisive. Trade secret law protects information as a species of intangible property, conditioned upon confidentiality.⁷⁴ Idea submission claims, by contrast, enforce a consensual obligation

⁶⁷ MONTZ v. PILGRIM FILMS & TELEVISION, INC. 649 F.3d 975. United States Court of Appeals for the Ninth Circuit, 2011.

⁶⁸ DELISLE, Stephen. *An uncertain future for the hunting of ghosts: the conflict between idea submission claims and preemption in the Ninth Circuit*. 2010. p. 10–11. Available at: <https://ssrn.com/abstract=1967957>. Accessed on: 15 jan. 2026. See also DEVINE, Brian. Free as the air: rethinking the law of story ideas. *Hastings Communications and Entertainment Law Journal*, San Francisco, v. 24, n. 3, p. 355-402, 2002. p. 375-380.

⁶⁹ NIEBERGALL, Catherine. Product of the mind: idea submission cases and copyright preemption post-Grosso. *SMU Science and Technology Law Review*, Dallas, v. 17, n. 1, p. 31-58, 2014. p. 40–41. GRAVES, Christopher T. Should California's film script cases be merged into trade secret law? *Columbia Journal of Law & the Arts*, New York, v. 44, n. 1, p. 21-68, 2020. p. 24-26.

⁷⁰ RESTATEMENT (SECOND) OF CONTRACTS. § 17. American Law Institute, 1981.

⁷¹ UNIFORM TRADE SECRETS ACT. § 1(4). National Conference of Commissioners on Uniform State Laws, 1979. See also: UNITED STATES. *Defend Trade Secrets Act*, 18 U.S.C. § 1839(3), 2016.

⁷² UNITED STATES. *Defend Trade Secrets Act*, 18 U.S.C. § 1836, 2016.

⁷³ DESNY v. WILDER. 46 Cal.2d 715. California Supreme Court, 1956.

⁷⁴ GRAVES, Christopher T. Should California's film script cases be merged into trade secret law? *Columbia Journal of Law & the Arts*, New York, v. 44, n. 1, p. 21-68, 2020. p. 22-24.

arising from voluntary commercial exchange.⁷⁵ The former is proprietary; the latter contractual.

The difference reflects divergent policy objectives. Trade secret law incentivises innovation by protecting competitive advantage derived from secrecy.⁷⁶ The idea submission doctrine, by contrast, aims to regulate fairness in market transactions without expanding property rights in ideas.⁷⁷

5.2 Why many pitches fail the trade secret threshold

In practice, many pitching scenarios struggle to satisfy trade secret requirements. First, pitching often requires disclosure to multiple potential collaborators, distributors or platforms. Such dissemination may undermine the secrecy element unless accompanied by robust non-disclosure agreements.⁷⁸

Secondly, creative concepts - such as narrative premises or genre formats - may lack the specificity required to constitute protectable trade secrets.⁷⁹ Courts have been reluctant to recognise broadly framed entertainment concepts as confidential business information unless clearly delineated and guarded.⁸⁰

Thirdly, industry custom may favour openness. In media markets, creators routinely circulate treatments, pitch decks and concept summaries. The commercial necessity of disclosure complicates claims that secrecy was strictly maintained.⁸¹

As Graves observes, attempts to subsume idea submission disputes within trade secret doctrine risk doc-

trinal distortion, particularly where confidentiality is not the central feature of the transaction.⁸² While trade secret law may apply in certain controlled pitching environments, it does not systematically address the broader category of voluntary commercial disclosures characteristic of entertainment industries.

5.3 Strategic choice: when to rely on contract, when to rely on secrecy

From a strategic perspective, the distinction between trade secret and idea submission claims has practical consequences.

Where the creator can maintain confidentiality - through non-disclosure agreements, limited circulation and clear contractual terms - trade secret protection may offer stronger remedies, including injunctive relief and statutory damages under federal law.⁸³ In such cases, the proprietary character of trade secret law provides robust leverage.

However, where disclosure is necessary to solicit interest from studios, broadcasters or platforms without prior confidentiality agreements, trade secret protection may be fragile. In these circumstances, the idea submission doctrine offers a more realistic avenue of protection, provided that expectations of compensation are clearly communicated.⁸⁴

The two mechanisms are not mutually exclusive. A creator may simultaneously rely on express confidentiality agreements and on implied contractual expectations. Yet conflating the doctrines risks analytical confusion. Trade secret claims hinge on secrecy; idea submission claims hinge on transactional assent.

This distinction also reinforces a broader theoretical point. Expanding trade secret law to cover all pitched ideas would effectively transform secrecy-based protection into a substitute for property rights in ideas.⁸⁵ By

⁷⁵ GROSSO v. MIRAMAX FILM CORP. 383 F.3d 965. United States Court of Appeals for the Ninth Circuit, 2004.

⁷⁶ RESTATEMENT (THIRD) OF UNFAIR COMPETITION. § 39. American Law Institute, 1995.

⁷⁷ NIEBERGALL, Catherine. Product of the mind: idea submission cases and copyright preemption post-Grosso. *SMU Science and Technology Law Review*, Dallas, v. 17, n. 1, p. 31-58, 2014. p. 33-41.

⁷⁸ SANDLER, Jonathan R. Idea theft and independent creation: a recipe for evading contractual obligations. *Loyola of Los Angeles Law Review*, Los Angeles, v. 45, n. 4, p. 1421-1458, 2012. p. 1429-1430.

⁷⁹ DEVINE, Brian. Free as the air: rethinking the law of story ideas. *Hastings Communications and Entertainment Law Journal*, San Francisco, v. 24, n. 3, p. 355-402, 2002. p. 361-365.

⁸⁰ FOREST PARK PICTURES v. UNIVERSAL TELEVISION NETWORK, INC. 683 F.3d 424. United States Court of Appeals for the Second Circuit, 2012.

⁸¹ FOREST PARK PICTURES v. UNIVERSAL TELEVISION NETWORK, INC. 683 F.3d 424. United States Court of Appeals for the Second Circuit, 2012.

⁸² GRAVES, Christopher T. Should California's film script cases be merged into trade secret law? *Columbia Journal of Law & the Arts*, New York, v. 44, n. 1, p. 21-68, 2020. p. 25-26.

⁸³ UNITED STATES. Defend Trade Secrets Act, 18 U.S.C. § 1836(b), 2016.

⁸⁴ MICHAUD, Celine; TULQUOIS, Gregory. Idea men should be able to enforce their contractual rights: considerations rejecting preemption of idea-submission contract claims. *Vanderbilt Journal of Entertainment and Technology Law*, Nashville, v. 6, n. 1, p. 75-93, 2003. p. 86-89.

⁸⁵ KATZ, Larissa M. A powers-based approach to the protection

contrast, the contractual logic of idea submission preserves the boundary between property and obligation. It enforces agreed expectations without conferring exclusive rights in abstract concepts.

5.4 Preserving the idea-expression Boundary

The comparison with trade secret law underscores the conceptual restraint embedded in the idea submission doctrine. Courts have consistently refused to recognise ideas as property per se.⁸⁶ At the same time, they have acknowledged that market actors may structure their exchanges through contract.

In this respect, the doctrine performs a mediating function. It protects the integrity of copyright's idea-expression dichotomy while allowing contract law to fill the transactional gap at the pitch stage.⁸⁷ The enforcement of consensual obligations does not threaten the public domain in the same way that proprietary protection might.

The following section adopts a comparative perspective and considers how jurisdictions lacking a developed implied contract doctrine might confront similar tensions between intellectual property limitations and commercial practice.

6 Comparative perspective and broader implications

6.1 The transplantability of idea submission logic beyond US law

Although the idea submission doctrine developed within US jurisprudence, the structural tension it addresses is not unique to American law. The gap between intellectual property protection and commercial pitching practices arises wherever copyright adheres to

the idea-expression dichotomy and trade secret law requires secrecy.⁸⁸ These structural features are common to most modern legal systems.

In common law jurisdictions, the doctrinal bridge between disclosure and obligation may be constructed through implied-in-fact contract or doctrines of unjust enrichment.⁸⁹ The conceptual emphasis remains on consensual exchange rather than proprietary entitlement. In civil law systems, however, the analytical pathway differs. Courts may rely on principles of good faith in negotiations, pre-contractual liability, or unjust enrichment rather than on implied contract in the common law sense.⁹⁰

The comparative question, therefore, is not whether other jurisdictions recognise "idea submission" as a named doctrine, but whether their legal systems contain functional equivalents capable of enforcing expectations arising from voluntary commercial disclosure.

The focus on US law is particularly justified because the modern entertainment and media industry has been profoundly shaped by American production practices and contractual models. Many pitching mechanisms employed today by film studios, television networks, streaming platforms, and digital content producers originated within the United States before spreading internationally. As a result, US jurisprudence provides one of the most developed bodies of case law addressing idea submission disputes and offers valuable comparative lessons for jurisdictions confronting similar challenges.

6.2 Civil law analogies and pre-contractual liability

6.2.1 Germany

Although German law does not recognize a dedicated idea submission doctrine comparable to that de-

of ideas. *Cardozo Arts & Entertainment Law Journal*, New York, v. 23, p. 688-737, 2006. p. 701-714.

⁸⁶ *DESNEY v. WILDER*. 46 Cal.2d 715. California Supreme Court, 1956. See also DEVINE, Brian. Free as the air: rethinking the law of story ideas. *Hastings Communications and Entertainment Law Journal*, San Francisco, v. 24, n. 3, p. 355-402, 2002. p. 365-367.

⁸⁷ DENICOLA, Robert C. The new law of ideas. *Harvard Journal of Law & Technology*, Cambridge, v. 28, n. 1, p. 195-236, 2014. p. 199-201.

⁸⁸ UNITED STATES. Copyright Act of 1976. 17 U.S.C. § 102(b). See also: DENICOLA, Robert C. The new law of ideas. *Harvard Journal of Law & Technology*, Cambridge, v. 28, n. 1, p. 195-236, 2014. p. 196-201.

⁸⁹ RESTATEMENT (SECOND) OF CONTRACTS. § 19. American Law Institute, 1981. See also: GROSSO v. MIRAMAX FILM CORP. 383 F.3d 965. United States Court of Appeals for the Ninth Circuit, 2004.

⁹⁰ ZIMMERMANN, Reinhard; WHITTAKER, Simon (ed.). *Good faith in European contract law*. Cambridge: Cambridge University Press, 2000. p. 7-62.

veloped in the United States, disputes arising from the disclosure and subsequent use of creative ideas may be addressed through the doctrine of *culpa in contrabendo*. German law imposes pre-contractual duties upon parties who enter into negotiations or establish business contacts giving rise to a relationship of trust. These pre-contractual obligations are reflected in §311(2) of the German Civil Code (*Bürgerliches Gesetzbuch – BGB*) and interpreted in conjunction with the general principle of good faith under §242 BGB.⁹¹

Where a creator discloses an idea during negotiations under circumstances indicating an expectation of confidentiality or compensation, the unauthorized appropriation of that idea may constitute a breach of pre-contractual duties of loyalty and good faith. German courts have traditionally relied on general principles of good faith under §242 BGB rather than creating a separate proprietary right in ideas. Consequently, protection is grounded not in the ownership of the idea itself but in the violation of obligations arising from the parties' interactions.⁹²

6.2.2 France

French law similarly lacks a distinct doctrine specifically designed to protect submitted ideas. Nevertheless, the French Civil Code imposes obligations of good faith during contractual negotiations and recognizes liability for abusive conduct occurring before contract formation. Articles 1112, 1112-1 and 1112-2 of the Civil Code require parties to negotiate in good faith, impose pre-contractual information duties, and protect confidential information obtained during negotiations.⁹³

In practice, these provisions may provide remedies where a creative idea is disclosed in anticipation of a commercial arrangement and subsequently exploited without authorization. Rather than recognizing a property right in the idea itself, French law focuses on the parties' conduct and the legitimacy of expectations created during negotiations. The emphasis therefore remains on fairness, loyalty, and the prevention of op-

portunistic behavior rather than on the creation of exclusive rights over abstract concepts.⁹⁴

6.2.3 Brazil

Brazilian law offers another illustrative example. Like other civil law jurisdictions, Brazil does not recognize a separate idea submission doctrine. Instead, disputes concerning pre-contractual disclosures are addressed through the principles of objective good faith (*boa-fé objetiva*) and the broader framework of civil liability. Articles 113, 187 and 422 of the Brazilian Civil Code establish a framework of objective good faith and civil liability that may extend to pre-contractual conduct.⁹⁵

Although doctrinal terminology differs from that employed in the United States, the underlying concern is similar: preventing the unfair appropriation of value generated through collaborative commercial interactions.

6.2.4 Comparative assessment

The comparison demonstrates that the United States is unusual in having developed a relatively sophisticated body of case law specifically addressing idea submission disputes. By contrast, civil law jurisdictions generally resolve analogous problems through broader doctrines governing pre-contractual liability, good faith, confidentiality, and unjust enrichment. Despite these doctrinal differences, the functional objective remains remarkably similar: protecting legitimate commercial expectations while avoiding the creation of proprietary rights in abstract ideas.

Comparative scholarship in international intellectual property law has likewise demonstrated that different legal systems may pursue similar objectives of recognizing and preserving the economic value generated by creative activity through distinct doctrinal mechanisms.⁹⁶ This comparison reinforces the central argument of this article. The significance of the idea submission

⁹¹ GERMANY. Bürgerliches Gesetzbuch (BGB) [German Civil Code], §311(2) and §242.

⁹² ZIMMERMANN, Reinhard; WHITTAKER, Simon (ed.). *Good faith in European contract law*. Cambridge: Cambridge University Press, 2000. p. 31-58.

⁹³ FRANCE. *Code civil*. Articles 1112, 1112-1 and 1112-2

⁹⁴ ZIMMERMANN, Reinhard; WHITTAKER, Simon (ed.). *Good faith in European contract law*. Cambridge: Cambridge University Press, 2000. p. 245-270.

⁹⁵ BRAZIL. *Lei n. 10.406, de 10 de janeiro de 2002*. Código Civil. Articles 113, 187 and 422.

⁹⁶ VIGLINO, Mickael R. The Reception of Droit de Suite in International Law: Diagnosis and Remedy. *Revista de Direito Internacional*, Brasília, v. 17, n. 3, p. 212-233, 2020. p. 180-183.

doctrine lies not in the recognition of ownership over ideas, but in the contractual and relational obligations arising from their disclosure. Viewed from a comparative perspective, the doctrine represents one institutional response to a challenge faced by legal systems worldwide: how to regulate creative exchanges occurring before formal intellectual property rights attach. Unlike the United States, however, these jurisdictions have not developed a distinct body of case law specifically addressing idea submission disputes. Similar controversies are instead resolved through broader doctrines of good faith, pre-contractual liability and unjust enrichment.

6.3 Emerging creative economies and doctrinal gaps

In jurisdictions where creative industries are rapidly expanding, particularly in digital media, streaming services and platform-based content production, the frequency of pitching practices is increasing. Recent scholarship published in *Revista de Direito Internacional* has highlighted the growing importance of digital creative markets and cross-border cultural production, particularly in the context of emerging technological and cultural industries.⁹⁷ However, doctrinal development has not always kept pace with these transformations.

For example, in legal systems influenced by civil law traditions, courts may strictly adhere to the principle that ideas are not protected under intellectual property law, without developing a corresponding contractual framework to address voluntary disclosure disputes. In such contexts, plaintiffs may struggle to articulate claims unless an express written agreement exists.

This gap becomes particularly salient where industry practices are informal, documentation is limited, and evidentiary standards for implied agreements are stringent.⁹⁸ Without doctrinal clarity, the risk allocation at the pitch stage may fall disproportionately on creators.

The comparative analysis thus reveals that the US idea submission doctrine represents not an expansion of property rights, but a judicial response to a structural

market need. Its significance lies less in its doctrinal label than in its functional role: managing expectations in environments where intellectual property protection has not yet attached.

6.4 Broader implications for intellectual property theory

The comparative perspective also raises broader theoretical questions concerning the boundaries of intellectual property law. Attempts to address pitching-stage vulnerability through proprietary expansion - whether by stretching copyright or broadening trade secret doctrine - risk destabilising the idea-expression dichotomy.⁹⁹

The contractual model offers an alternative path. By enforcing consensual obligations without conferring exclusive control over abstract concepts, it preserves the public domain while accommodating commercial practice.¹⁰⁰

This approach reflects a broader trend in intellectual property governance: reliance on private ordering to structure creative exchange.¹⁰¹ Rather than reclassifying ideas as property, courts allow market actors to define the terms of disclosure through express or implied agreements. The state enforces those agreements, not the idea itself.

From a comparative standpoint, this contractual solution may prove more adaptable across jurisdictions than proprietary expansion. Legal systems with different intellectual property traditions may nonetheless share foundational contract principles capable of addressing similar transactional problems.

6.5 The limits of doctrinal transplantation

That said, doctrinal transplantation is not automatic. The success of the idea submission framework depends upon judicial willingness to infer obligations from com-

⁹⁷ WEI, Dan; RAFAEL, Ângelo. Digital art and the Belt and Road Initiative: opportunities and challenges. *Revista de Direito Internacional*, Brasília, v. 17, n. 3, p. 256-273, 2020. p. 256-268.

⁹⁸ SANDLER, Jonathan R. Idea theft and independent creation: a recipe for evading contractual obligations. *Loyola of Los Angeles Law Review*, Los Angeles, v. 45, n. 4, p. 1421-1458, 2012. p. 1432-1434.

⁹⁹ KATZ, Larissa M. A powers-based approach to the protection of ideas. *Cardozo Arts & Entertainment Law Journal*, New York, v. 23, p. 688-737, 2006. p. 715-736.

¹⁰⁰ NIEBERGALL, Catherine. Product of the mind: idea submission cases and copyright preemption post-Grosso. *SMU Science and Technology Law Review*, Dallas, v. 17, n. 1, p. 31-58, 2014. p. 40-41.

¹⁰¹ DENICOLA, Robert C. The new law of ideas. *Harvard Journal of Law & Technology*, Cambridge, v. 28, n. 1, p. 195-236, 2014. p. 225-233.

mercial context and industry practice.¹⁰² In jurisdictions where courts are reluctant to recognise implied agreements absent explicit documentation, the doctrine's functional equivalent may remain underdeveloped.

Moreover, evidentiary standards play a decisive role. Demonstrating expectation of compensation, knowledge by the recipient, and actual use requires fact-intensive inquiry. Systems with rigid evidentiary thresholds may produce narrower protection in practice, even if doctrinal pathways exist in theory.

The comparative lesson is therefore cautious rather than prescriptive. The idea submission doctrine illustrates one method of reconciling intellectual property limits with commercial realities. Whether and how similar mechanisms emerge elsewhere depends on local legal culture, contract doctrine and judicial attitude toward pre-contractual fairness.

7 Conclusion

The vulnerability of creative ideas at the pitching stage is not the result of doctrinal oversight but of deliberate structural design within intellectual property law. Copyright's refusal to protect ideas and its insistence on fixation serve fundamental policy objectives: preserving the public domain and preventing the monopolisation of abstract concepts.¹⁰³ Trade secret law, for its part, conditions protection on secrecy and reasonable safeguards.¹⁰⁴ These frameworks are coherent within their respective policy rationales, yet neither is designed to regulate voluntary commercial disclosures made in pursuit of collaboration before formal intellectual property rights attach.

The idea submission doctrine represents a judicial response to this structural mismatch. Rather than expanding proprietary rights in ideas, courts have relied on contract law to enforce expectations arising from voluntary disclosure in a commercial context. Beginning with *Desny v Wilder* and refined through subsequent

decisions such as *Grosso*, *Montz* and *Forest Park Pictures*, the doctrine has evolved into a narrowly circumscribed mechanism that preserves the idea-expression dichotomy while recognising implied obligations in pitching transactions.¹⁰⁵

Its doctrinal coherence lies precisely in this restraint. Liability arises not because an idea is owned, but because a promise – express or implied – has been breached. By focusing on expectation of compensation, knowledge by the recipient and actual use of the idea, courts have maintained the boundary between intellectual property and contract while addressing perceived unfairness in market practice.

From a comparative perspective, the tension between intellectual property limits and pitching practices extends well beyond the United States. Jurisdictions adhering to similar idea-expression principles may encounter comparable gaps at the pre-production stage. Whether addressed through implied contract, pre-contractual liability or doctrines of good faith, legal systems face the same functional question: how should voluntary commercial disclosures be governed when intellectual property protection has not yet attached?

The central insight of this article is that contractual governance offers a principled and adaptable response. By enforcing expectations generated through consensual exchange without converting ideas into proprietary assets, the idea submission doctrine demonstrates how contract law can complement intellectual property law in regulating creative markets. In doing so, it illustrates a broader lesson for intellectual property theory: not every vulnerability in creative industries requires the expansion of property rights; sometimes the law's role is simply to enforce the bargains that structure creative exchange.

The significance of the idea submission doctrine ultimately extends beyond the entertainment industry and beyond the United States. As creative production increasingly occurs through global digital markets and cross-border collaborations, legal systems face growing

¹⁰² MONTZ v. PILGRIM FILMS & TELEVISION, INC. 649 F.3d 975. United States Court of Appeals for the Ninth Circuit, 2011.

¹⁰³ UNITED STATES. Copyright Act of 1976. 17 U.S.C. § 102(b). See also: BAKER v. SELDEN. 101 U.S. 99. Supreme Court of the United States, 1879.

¹⁰⁴ UNITED STATES. Defend Trade Secrets Act. 18 U.S.C. § 1839(3), 2016.

¹⁰⁵ DESNY v. WILDER. 46 Cal.2d 715. California Supreme Court, 1956; GROSSO v. MIRAMAX FILM CORP. 383 F.3d 965. United States Court of Appeals for the Ninth Circuit, 2004; MONTZ v. PILGRIM FILMS & TELEVISION, INC. 649 F.3d 975. United States Court of Appeals for the Ninth Circuit, 2011; FOREST PARK PICTURES v. UNIVERSAL TELEVISION NETWORK, INC. 683 F.3d 424. United States Court of Appeals for the Second Circuit, 2012.

pressure to provide predictable mechanisms for regulating pre-production exchanges. The comparative analysis undertaken in this article suggests that contractual and pre-contractual doctrines may offer more balanced solutions than the expansion of proprietary rights in ideas. The broader lesson is therefore institutional rather than doctrinal: the protection of creative innovation need not depend exclusively on intellectual property rights, but may also be achieved through carefully designed frameworks governing commercial trust, disclosure and cooperation.

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