

Chapter 3 *Fundamental Exceptions to Copyright Protection*

C. Utility and Functionality

p. 158 – insert the following after note 4:

Copyright in the Real World: When Garurasana Follows Utkatasana

Some of you are likely practitioners of yoga. Yoga originated in ancient India as a school of Hindu philosophy, but has become popular in the United States and other countries as a system of physical exercise, involving breathing, meditation, and sequences of poses called “asanas” – bodily positions that increase strength, flexibility, and balance. Imagine that you are in a yoga studio in a group working through such a sequence of poses. In walks a process server to serve you a complaint claiming that the plaintiff owns copyright in the sequence of poses as a choreographic work, and alleging that you have infringed that copyright by publicly performing that sequence. Could you be held liable for infringement?

In the early 2000s, a yoga teacher and author named Bikram Choudhury began asserting that yoga instructors needed a license from him to teach “Bikram Yoga” (a term in which he asserted trademark rights), which he defined to include a specific sequence of 26 yoga asanas, as well as any other sequence that was “substantially similar” to his 26-asana sequence. Choudhury acknowledged that each individual asana was in the public domain, having existed for centuries, but claimed copyright in the sequence. He registered a claim of copyright in a book teaching that sequence in 1979.

The issue whether the 26-asana sequence was copyrightable first came to a head in a suit filed against Choudhury by a group called Open Source Yoga Unity, seeking among other things a declaration that Choudhury did not possess a valid copyright in the sequence. In 2005, Judge Phyllis Hamilton of the U.S. District Court for the Northern District of California wrote an opinion denying Open Source Yoga Unity’s motion for summary judgment in that suit. Judge Hamilton found that there was “a dispute of fact on the issue of whether sufficient creativity exists in the Bikram yoga routine so that copyright protection attaches.” *Open Source Yoga Unity v. Choudhury*, 2005 WL 756558, *4 (N.D.Cal.). Although she did not directly consider whether copyright in the sequence was barred due to its functionality, she did note that “Choudhury claim[ed] that he arranged the asanas in a manner that was both aesthetically pleasing and in a way that he believes is best designed to improve the practitioner’s health.” The parties then settled.

More recently, Choudhury’s copyright claims have been less favorably assessed. First, in June 2012, the Copyright Office issued a Policy Statement that challenged claims of copyright to a sequence of exercises both on copyrightable subject matter and functionality grounds. As for the latter, the Copyright Office took the position that “a selection, coordination, or arrangement of exercise movements, such as a compilation of

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To view the 26-asana sequence as presented on the Bikram Yoga website, [click here](#).

yoga poses, may be precluded from registration as a functional system or process in cases where the particular movements and the order in which they are to be performed are said to result in improvements in one's health or physical or mental condition" – even in cases in which such a system was aesthetically appealing. [Registration of Claims to Copyright](#), 77 Fed.Reg. 37605, 37607 (June 22, 2012).

Second, in a lawsuit filed by Choudhury and his company against another company and its employees that were teaching the 26-asana sequence without Choudhury's authorization, Judge Otis D. Wright of the Central District of California granted the defendants' motion for partial summary judgment on the issue of copyright infringement. Judge Wright held that the sequence was not protected by copyright both because a sequence of exercises was not copyrightable subject matter and because the sequence was functional. As for the latter, Judge Wright wrote: "Choudhury admits that the Sequence helps to prevent, cure, and alleviate disease. . . . The Court can only conclude that the Sequence is a system or process that is not copyrightable subject matter under § 102(b)." [Bikram's College of Yoga L.P. v. Evolution Yoga LLC](#), 2012 WL 6548505, *3 (C.D.Cal.).

What do you think? Should designers of asana sequences like Choudhury be able to claim copyright protection, or are the sequences, as practiced in yoga classes, functional under § 102(b)? (One might also ask, does a yoga class, which has no conventional audience, constitute a "public performance", particularly since the other participants are probably trying to keep their balance rather than looking at you?). What other contexts might pose the same issue? Aerobics classes? The calisthenics routines used by college or professional football coaches?