

Practice What You Preach - Yoga Remains Uncopyrightable, for Now



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Bikram Choudhury is famous for being the world's most successful – and eccentric – yoga guru, and the pioneer of his self-branded, mass marketed Bikram Yoga. Bikram Yoga consists of a sequence of 26 yoga poses, or asanas, and two breathing exercises, performed in a very hot room (100 degrees!) for 90 minutes. The term Bikram Yoga is protected by trademark, but you will see similar yoga practices referred to generically as “hot yoga.” Mr. Choudhury has also been the subject of certain lawsuits filed by women who attended his wildly successful nine-week hot yoga teacher training course (which can cost up to \$10,000). But whatever you think about Mr. Choudhury, one thing is clear – he doesn't want anybody else teaching his specific hot yoga sequence.

Mr. Choudhury has probably come under more fire for his attempt to lock up his hot yoga sequence than he has for his other legal issues. That's because yoga and intellectual property rights are not ideal bedmates. Yoga is an ancient practice that teaches liberation and growth, while intellectual property tends to be about what's mine and not yours. To many, trying to “own” yoga in any way is antithetical to the very spirit and purpose of the yoga practice.

But going against the grain does not bother Mr. Choudhury. Mr. Choudhury owns a copyright registration for his Bikram Yoga sequence, attained as a supplemental registration to a 1979 copyright he owns in his book *Bikram's Beginning Yoga Class*, which describes the sequence. He has sued several prior students who took his course, went out on their own, and began teaching a 26-pose “hot yoga” course

which, Mr. Choudhury alleges, is too similar to his own. In response to Mr. Choudhury's efforts to lock up this particular sequence of poses, Open Source Yoga Unity, an organization for the "continued natural unfettered development of yoga for all to enjoy," sought a court's ruling that Mr. Choudhury does not have valid copyright in the Bikram Yoga sequence.

The details of the various legal battles (many of which resolved by settlement before a decision on the merits) are very well explained on Open Source Yoga Unity's Facebook page (<https://www.facebook.com/yogaunity>). The key take-aways, so far, are that each yoga asana, itself, is firmly in the public domain. The dispute is only with respect to the specific sequence of 26 yoga asanas that Mr. Choudhury claims to have been the first to select and arrange, as well as all derivatives that are "substantially similar" to the original sequence. See *Open Source Yoga Unity v. Choudhury*, 2005 WL 756558 (N.D. Cal. April 1, 2005). Resolution of Mr. Choudhury's copyright claims revolves around whether his hot yoga sequence is a creative expression, copyrightable as choreography, or merely uncopyrightable functional physical movements. *Id.* Most team sports activities, for example, aren't copyrightable because they are unscripted and don't involve a fixed routine of motions. See, e.g., *National Basketball Association and NBA Prop., Inc. v. Motorola, Inc.*, 105 F.3d 841, 846 (2d Cir. 1997) (no copyright in basketball games). Hot yoga would appear to fall somewhere between basketball and ballet. Exactly where yoga falls on this continuum of creativity remains to be determined.

In 2012, the United States Copyright Office issued a policy statement, stating that yoga sequences are "not the equivalent to a pantomime or a choreographic work" and "could not be protected as compilations[.]" The Copyright Office recognized that it had been an error allowing Mr. Choudhury to file his supplemental registration, and that no other registrations of that type would be allowed. You have to wonder if Mr. Choudhury smiled at that - not only does he own a registration for his yoga sequence, but nobody else ever will!

But, the Copyright Office's Policy Statement is merely that; it is not law. In *Open Source Yoga*, seven years prior, the court held that while "application of the law of compilations to yoga asanas appears to violate the spirit of yoga," it was "unable to locate any authority that precludes such application." Therefore, if the trier of fact determined that a sufficient number of individual yoga asanas are arranged in a sufficiently creative manner, copyright protection would be available. The case settled outside of court. In a case filed after the Copyright Office's Policy Statement, the court agreed with the Statement, holding that where the poses are said to result in improvements in one's health or physical or mental condition, as Mr. Choudhury claims they do, they are not copyrightable. *Bikram's Yoga College of India, L.P. v. Evolation Yoga, LLC*, 2012 WL 6548505 (C.D. Cal. Dec. 14, 2012). Mr. Choudhury promptly appealed this ruling and, as of this article, we await a decision from the Ninth Circuit Court of Appeals.

For now, the ancient yoga teachings of liberation, spirituality, and healing carry the day. But, given Mr. Choudhury's litigiousness and the uncertainty of the pending appeal, yogis still have to look over their shoulders when teaching Mr. Choudhury's particular brand of hot yoga.

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