



Rural (Rural Telephone Service Company, Inc.; 'Rural ' )  
, Rural (white pages)<sup>4)</sup> (yellow pages)<sup>5)</sup>

가

Feist (Feist Publications, Inc.; 'Feist ' ) Rural

. Feist 가 11

Rural 가 , Feist Rural

. Feist Rural

, Rural 가

(copyright infringement suit)

, Rural

Rural

, Feist

(a) 1 , 8 , 8 (originality) 가

(independent creation)

(a modicum of creativity) . (facts)

가

, 가

(compilation of facts)

, (copyright protection) (facts) 가

(components of the works) .

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4) .

5) .

(b) 1976 1909  
 (originality) (touchstone)  
 . 1976 “ (original works of  
 authorship)” ,<sup>6)</sup> (facts) 7)  
 . (compilation) (per se)  
 , (resulting work)  
 “ (selected), (coordinated), (arranged) ” ,  
 .<sup>8)</sup> , 가  
 .  
 ,  
 .<sup>9)</sup> “ (sweat of the brow)”  
 “ (industrious collection)” <sup>10)</sup> (Lower courts)  
 1909 ,  
 (the fundamental axiom) .

(c) Rural  
 . (forward text)  
 (original material) Rural 가  
 가 , Rural  
 . (raw data) ,  
 Rural 가 , Rural  
 11)

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6) 17 U. S. C. 102(a) .  
 7) 17 U. S. C. 102(b) .  
 8) 17 U. S. C. 101 .  
 9) 17 U. S. C. 103(b) .  
 10)

(the modicum of  
creativity) . , (state law) , Rural  
가 (names) (telephone numbers)  
가,

(a matter of course)

[ ]

white page

가 .

I

Rural Telephone Service Company, Inc. Kansas

Rural

가 , Rural 가  
. Rural

Feist Publications, Inc.

(calling area)<sup>12)</sup>

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11) 가 (names), (towns), (telephone numbers)

12) Feist ,

(subject) Feist 15 11  
, Rural 7,700  
46,878 . Rural ,  
Feist , .  
Feist Rural .  
Rural , 가  
Rural  
; Rural .  
Feist , 가  
, Feist 11  
(the right to use) 가 .  
11 , Rural Feist .  
Rural Feist ,  
, 가  
, Rural 가  
“ ”  
Rural , Feist  
Rural . Feist  
, 4,935  
Rural  
, Feist  
, Rural

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, Feist 1983  
 46,878 1,309 Rural 1982-83  
 4 Rural 가  
 가  
 Rural Feist 가 Rural  
 Kansas  
 Rural Feist (travel door-to-door)  
 . Feist  
 Rural .<sup>13)</sup> , 10  
 (reasons)  
<sup>14)</sup> Rural Feist 가  
 (names), (towns), (telephone numbers)  
 498 U.S. 808 (1990) (certiorari)  
 II  
 A  
 (facts)  
 (compilations of facts)  
 (facts)  
 가 公理(axiom) “  
 (author) 가 .”<sup>15)</sup>

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13) 663 F. Supp. 214, 218 (1987)  
 14) 916 F. 2d 718 (1990)

Rural “ (facts and discoveries)”

(compilations of facts) (the subject matter of copyright)

1909

, 1976

가

(raw data)<sup>16)</sup> 가

가? 100

가

(sine qua non) (originality)

(original) .<sup>17)</sup>

(Original) (term)

(independently) <sup>18)</sup> , ‘ (at

least some minimal degree of creativity)’

(creativity) (the requisite level) ;

(no matter how crude, humble or obvious), (creative

spark) (Originality)

15) “no author may copyright his ideas or the facts he narrates.” Harper & Row, Publishers, Inc. v. Nation Enterprises, 471 U.S. 539, 556 (1985)

16) (factual information)

17) See Harper & Row, supra, at 547-549.

18) (as opposed to copied from other works)

(novelty) ;  
(similarity) 가 (fortuitous) ,  
(original) . ,  
(novel) , (original)  
.19)  
(Originality) (constitutional requirement) .  
(Congress' power) 1 8 8  
.20) 19 27가 21) (the  
crucial terms) “ (authors)” “ (writings)” .  
, .  
Trade-Mark , “ (writings)” .  
(originality) (independent) (creation)  
(creativity) : “ (engraving), (prints)  
(designs) (contributions)  
, .  
(books), (prints), (engravings)  
(intellectual labor) (fruits) .  
Burrow - Giles , “ (author)”  
(Constitution's use) . “ ”  
“ ; (originator); (maker)”<sup>22)</sup>

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19) Sheldon v. Metro-Goldwyn Pictures Corp., 81 F. 2d 49, 54 (CA2 1936) .

20) (Authors) (for limited Times) ...  
(respective Writings) (the exclusive Right) ... (secure)

21) The Trade-Mark Cases, 100 U.S. 82 (1879); and Burrow-Giles Lithographic Co. v. Sarony, 111 U.S. 53 (1884)

22) 111 U.S., at 58

. Trade-Mark , (originality)  
(the creative component) . “  
(original intellectual conceptions of the author) 23) ,  
가 (originality), (intellectual production), (thought),  
(conception) (existence)” (infringement)  
.”  
Trade-Mark Burrow - Giles  
(originality requirement) (touchstone) .24)  
“ (copyright law) (premise)”가 .25) (leading )  
. (commentators)  
: “ .26)  
(facts) (factual compilations)  
(bedrock principle) . “  
(facts) (originality) .” (facts)  
(origin) . (distinction)  
(creation) (discovery) : (particular fact)  
: ( )  
(existence) . Burrow - Giles ,  
“ (maker)” “ (originator)”가 .27) “ (discoverer)  
(finds) (records).” (Census  
takers) (the population figures)  
; (figures)

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23) 111 U.S., at 58

24) Goldstein v. California, 412 U.S. 546, 561-562 (1973) .

25) Miller v. Universal City Studios, Inc., 650 F. 2d 1365, 1368(CA5 1981).

26) Patterson & Joyce, Monopolizing the Law: The Scope of Copyright Protection for Law Reports and Statutory Compilations, 36 UCLA L. Rev. 719, 763, n. 155 (1989)

27) 111 U.S., at 58.

.28) (Census data) 가 (facts)-

“ (the public domain) .29)

, (Factual compilations) (the requisite originality) .

가, 가

(independently) ‘ (at least some minimal degree of creativity)’ , (selection) (arrangement) (choices) 가

. (selection) (arrangement) , (written expression) (constitutional minimum)

.30) (mere fact) (every element of the work)가 (Originality)

(sine qua non) ; (components of a work) .31) (compilation author)가 (contributions) (an original collocation of

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28) Denicola, Copyright in Collections of Facts: A Theory for the Protection of Nonfiction Literary Works, 81 Colum. L. Rev. 516, 525 (1981) (hereinafter Denicola).

29) Miller, supra, at 1369.

30) Harper & Row, 471 U.S., at 547 .

31) Patterson & Joyce 800-802; Ginsburg, Creation and Commercial Value: Copyright Protection of Works of Information, 90 Colum. L. Rev. 1865, 1868, and n. 12 (1990) (hereinafter Ginsburg).

words) , ( ) (written expression)  
 (copyright) . (publication)  
 (precise words)가 가 (the underlying facts) .  
 Harper & Row ,  
 (autobiography) (bare historical facts)  
 ,<sup>32)</sup> “ (subjective description) (public figures)  
 (portraits)” <sup>33)</sup> . 가  
 , (facts)  
 , (the expressive element) .  
 (expression) (compiler)가 (facts)  
 . , (elements  
 of the works) <sup>34)</sup> ,  
 (association) <sup>35)</sup>  
 (factual compilation) 가  
 . (valid) , (competing work)  
 (subsequent compiler)  
 (publication)  
 . 가 :  
 “ , (facts)  
 (ideas) . ... 가  
 , (the very  
 same facts and ideas) 가 , (second comer)  
 (context) .”<sup>36)</sup>

32) 471 U.S., at 556-557 .

33) Id., at 563.

34) Patry, Copyright in Compilations of Facts (or Why the “ ” Are Not Copyrightable), 12 Com. & Law 37, 64 (Dec. 1990) (hereinafter Patry) .

35) Patterson & Joyce 776 .

(the fruit of the compiler's labor)

. Brennan ,

“ (statutory scheme) (unforeseen by product)”

.37) “ (the essence of copyright)” ,

(constitutional requirement) .

, “ (to

promote the Progress of Science and useful Arts)” .38) ,

(original expression) , 3

(idea) (information)

.39) .

(works of authorship) . (written

expression) , (factual compilation)

(selection) (arrangement) ; (raw

facts) .

. (the fact/expression dichotomy)

(fact-based works)

: 1 , : “

, .’40) Harper & Row

:

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36) Ginsburg 1868.

37) Harper & Row, 471 U.S., at 589 (dissenting opinion).

38) 1 8 8 . Twentieth Century Music Corp. v. Aiken, 422 U.S. 151, 156(1975).

39) Harper & Row, supra, at 556-557.

40) Baker v. Selden, 101 U.S. 99, 103 (1880).

“ (expression) ”

“ (contributions) ”

( , 가 41) ”42)

:(in a wholly consistent manner) (facts) (factual compilations) (facts) (compilation)

(factual compilation) (facts) (original) (selection) (arrangement) , (facts)

B

, (originality) (prerequisite) . 1909 , 1909 (ambiguous language) (temporarily) (requirement) . 1909 (originality requirement) , (subject matter) 3 4 . 4 “ ”43) .44) “ (writings)”

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41) facts, or materials in the public domain.  
 42) 471 U.S., at 547-548  
 43) all the writings of an author.  
 44) 35 Stat. 1076.

“ (author)” (contributions) ,<sup>45)</sup>  
 (the originality requirement) .  
 (implicitly), (room for error) .  
 3 가 (similarly) . (copyright)  
 “ ”<sup>46)</sup> .  
 ,  
 가  
 (originality) .  
 1909  
 (originality) (copyright)  
 .  
 .<sup>47)</sup> Nimmer , “1909  
 (originality) ,  
 ,  
 ... ‘ 가  
 가 ‘... , , ,  
 .  
 .<sup>48)</sup> 3  
 4 , 5 . 5  
 : (on application)  
 (the type of work) , 14  
 . “ , , ,

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45) (contributions) 1 8 , The Trade-Mark Cases and Burrow-Giles 가 .  
 46) the copyrightable component parts of the work.  
 47) Patterson & Joyce 760-761 .  
 48) Leon v. Pacific Telephone & Telegraph Co., 91 F. 2d 484 (CA9 1937); Jeweler's Circular Publishing Co. v. Keystone Publishing Co., 281 F. 83 (CA2 1922)

” ( 5(a) ). 5  
 (automatically) . “  
 4 ” , .  
 , (factual compilations) 5  
 (per se) - - ,  
 .  
 가 , (factual compilations)  
 . “ (sweat of the brow)” “  
 (industrious collection)” ,  
 (notion) 가<sup>49)</sup> .<sup>50)</sup>  
 “ (labor) (book) (right)  
 가 (publici juris)<sup>51)</sup> 가  
 (thought) (language)  
 (literary skill) (originality) (collection)  
 . ,  
 .”  
 “ (sweat of the brow)” ,  
 (contributions) (selection)  
 (arrangement) 가 가  
 , (the only defense)  
 (independent creation) . “ (one  
 word of information) 가 , (the same

49) a reward for the hard work that into compiling facts.

50) The classic formulation of the doctrine appeared in *Jeweler's Circular Publishing Co.*, 281 F., at 88

51) of public right.

common sources of information)

(independently) ” “ ”  
가 (fundamental axiom)<sup>52)</sup> .<sup>53)</sup>  
1909 (decisions) “ (sweat of the  
brow)” .<sup>54)</sup> , 1909  
(elements of a work)  
(International News Service)  
(Associated Press) 가 가  
5 “ (periodicals)” ( 5(b)  
) , (news articles)  
(article)  
: “ (the literary production) (current  
events) (information) (The news element) 가  
(the creation of the writer) , (publici juris)  
; (the history of the day) .”<sup>55)</sup>  
 , “ (sweat of the brow)”  
“ (fiction) (fantasy)  
(works) (factual works)  
.”<sup>56)</sup> “ ” ;

52)

53) Miller v. Universal City Studios, Inc., 650 F. 2d, at 1372 (criticizing “sweat of the brow” courts because “ensuring that later writers obtain the facts independently ... is precisely the scope of protection given ... copyrighted matter, and the law is clear that facts are not entitled to such protection”).

54) 가 The best example is International News Service v. Associated Press, 248 U.S. 215 (1918) .

55)

. 248 U.S., at 235, 241-242 .

56) Harper & Row, 471 U.S., at 563. Accord, Gorman, Fact or Fancy: The Implications for Copyright, 29 J. Copyright Soc. 560, 563 (1982).

(facts) (proprietary interest) ,  
 (prior works) (facts)  
 (authors) . , “  
 (proscription) ...  
 .”<sup>57)</sup> “ (fruits) ...  
 (theory of unfair competition) .”  
 ‘ (author)’  
 ‘ (writing)’ .  
 (necessary justification) , (public domain materials)  
 (monopoly) .<sup>58)</sup>

C  
 “ (Sweat of the brow)” (the Copyright Office)  
 . 가  
 ,<sup>59)</sup> 가

“ ” 1990  
 “ (basic requisite)” , “ (originality)  
 (copyrightable matter)  
 .” (Register of Copyright)  
 (the originality requirement) .  
 . 1976 ,  
 “ (all the writings of an author)” ,

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57) *Rosemont Enterprises, Inc. v. Random House, Inc.*, 366 F. 2d 303, 310 (CA2 1966), cert. denied, 385 U.S. 1009 (1967).

58) *Nimmer* @ 3.04, p. 3-23.

59) *Mills Music, Inc. v. Snyder*, 469 U.S. 153, 159 (1985) .

“ (original works of authorship)” .60)  
 (the originality requirement)  
 (existing law) (clarifying) : “  
 (criteria of copyright protection) (originality)  
 (fixation) . ... (original  
 works of authorship) (1909)  
 .”61) (the Copyright  
 Office) (sentiment) : “  
 . ... ”62)  
 “ ” , 가 .  
 , 1909 3 가  
 , “  
 (copyrightable component parts)” (basis)  
 (originality) . 1976 , 102(b)  
 , (elements of a work)  
 : “  
 (described), (explained), (illustrated), (embodied)  
 (form) (idea), (procedure), (process), (system),  
 (method of operation), (concept), (principle), (discovery)  
 .”63) 102(a) , 102  
 : “ 102(b)

60) 17 U. S. C. 102(a) .

61) H. R. Rep. No. 94-1476, p. 51 (1976) (emphasis added) (hereinafter H. R. Rep.); S. Rep. No. 94-473, p. 50 (1975) (emphasis added) (hereinafter S. Rep.).

62) Supplementary Report of the Register of Copyrights on the General Revision of U.S. Copyright Law, 89th Cong., 1st Sess., pt. 6, p. 3 (H. Judiciary Comm. Print 1965)

63) Harper & Row, supra, at 547, 556. Accord, Nimmer @ 2.03[E] (equating facts with “discoveries”).

... ..”<sup>64)</sup>  
 ... ..  
 (confusion) , 1909  
 5 “ ... ”  
 . , 5 가  
 (per se)  
 , 2가  
 (provisions) . ,  
 , ,  
 , 103 .  
 “ (compilation) 1976 101 .  
 (preexisting materials) (data) (collection),  
 (assembling) (works) ,  
 (selected), (coordinated) (arranged) 가  
 (original work of authorship) .  
 (collections of facts) (per se)  
 . 3 (tripartite  
 structure)  
 가 ,  
 : (1)  
 (pre-existing material), (facts), (data) (collection)  
 (assembly); (2) (selection), (coordination),  
 (arrangement); (3) (particular) (selection), (coordination),  
 (arrangement) (the creation of an  
 “original” work of authorship). “ 3 ,

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64) H. R. Rep., at 57; S. Rep., at 54.

”<sup>65)</sup>

(At first glance),

(compilation)

<sup>66)</sup>

가

(facts)

(collects)

(assembles)

가 가

(collection of facts)

가

(the originality requirement)<sup>67)</sup>

102

(fact-based works)

“ (sweat of

the brow)”

가

“ 102

(copyrightable subject matter)

(with

full force)

”

(an original work of authorship)

(the collected facts)

(selected),

(coordinated),

(arranged)

(the originality requirement)

(compilation

author)

(facts)

(originality)

(selection),

(coordination)

(arrangement)

65) Patry 51, quoting Mills Music, 469 U.S., at 164.

66) (pre-existing material), (facts), (data) (collection).

67) (an original work of authorship).

, , (pass muster) .  
 . (to merit protection) (facts)  
 (as a whole) (selected), (coordinated),  
 (arranged) . 가  
 , . ,  
 “ (compilation)”  
 (preexisting materials) (data) (collection), (assembling)  
 (works) , (selected),  
 (coordinated) (arranged) (work) .  
 가 . “ 가  
 ” , (selection),  
 (coordination), (arrangement)  
 (fact-based works)  
 .  
 , (the originality requirement)  
 . (compiler) (selection)  
 (arrangement) ; (novelty) .  
 (Originality) 가 (independently)<sup>68)</sup> (selection)  
 (arrangement) , (minimal level of creativity)  
 . (compilations)  
 . (creative spark)  
 (narrow category) .<sup>69)</sup>

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68) , (without copying that selection or arrangement from another work)

69) 가 (referring to “the narrowest and most obvious limits”) *Bleistein v. Donaldson Lithographing Co.*, 188 U.S. 239, 251 (1903) .

(a copyrightable compilation) ,  
(limited protection) . 103 . 103 “  
(the subject matter) ... (compilations) ( 103(a) ),” (the facts or information conveyed)가  
, (original contributions) :  
“ (compilation) ... (the preexisting material) , (the material contributed) , (exclusive right) .( 103(b) )”  
103 가 , (compilation author)가 가 .  
“ 가 :  
... (one way or the other) (the preexisting material) (the public domain) (status) 가 .” 1909 “ ” , (scratch) , (70) (existing works) (the facts) (origin) (compiler) ( 71) , , (directory) , 1976 (fact-based works) “ (sweat of the brow)” “ (originality)” (touchstone) 가 . 1909 . 1976 (lower courts) (the Copyright Office)

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70) *Jeweler's Circular Publishing Co.*, 281 F., at 88-89 .  
71) the selection, coordination, and arrangement of facts.

가 (existing law)

(originality) ,<sup>72)</sup> (facts) ,<sup>73)</sup>  
(facts) (not extend),<sup>74)</sup>  
(compilation) (original) (selection), (coordination),  
(arrangement) <sup>75)</sup>

1976

가 Miller <sup>76)</sup> : “ (directory) ...  
(information) (industriousness) ,  
(the factual material) (selection) (arrangement)  
(originality) (facts)  
가  
(the mere use of information) .”  
, <sup>70)</sup> “ ” <sup>77)</sup> 2  
<sup>78)</sup> “ (industrious collection)”

72) 102(a) .

73) 102(b) .

74) 103(b) .

75) 101 .

76) Miller v. Universal City Studios, Inc., F. 2d, at 1369- 1370.

77) Jeweler's Circular Publishing Co.

78) , Financial Information, Inc. v. Moody's Investors Service, Inc., 808 F. 2d 204, 207 (CA2 1986), cert. denied, 484 U.S. 820 (1987); Financial Information, Inc. v. Moody's Investors Service, Inc., 751 F. 2d 501, 510 (CA2 1984) (Newman, J., concurring); Hoehling v. Universal City Studios, Inc., 618 F. 2d 972, 979 (CA2 1980)

III

Feist 가 Rural

(factual information) 가 가 . , Feist  
Rural 가 1,309 (names), (towns),  
(telephone numbers) . 가 (copyright  
infringement) . 가

가 : (valid copyright) ,  
(constituent elements) .79)

; Feist ,

(original material) 가 (some forward text)

Rural 가

.

Rural 가 . , Feist

Rural 1,309 (names), (towns),  
(telephone numbers) , Rural

가? (raw data) (originality requirement)

. Rural 가 (names), (towns),

(telephone numbers) , Rural

(origin) . ,

(uncopyrightable facts) 80); (facts) Rural 가

, Rural 가

. (originality requirement) “ 가 ,

(author) (names), (addresses),

(telephone numbers) ... ”

Rural “ (preexisting material)” (names), (towns),

79) Harper & Row, 471 U.S., at 548 .

80) Burrow -Giles, 111 U.S., at 58.

(telephone numbers) , .

103(b) “ (preexisting material)”

Rural 가 (facts)

(in an original way) (selected), (coordinated), (arranged) . , (originality)

(stringent standard) ; (facts)

. , (selection)

(arrangement) (mechanical)

(routine) . (the standard of originality)

, .81) , ‘

(at least some minimal degree of creativity)’ ;82)

“ ... (intellectual production), (thought), (conception) (existence)”

Rural (selection), (coordination), (arrangement) (the minimum constitutional standards) . , Rural

. Rural

가 , Rural

, Rural 가 가

. (end product)

(the slightest trace of creativity)가

(garden-variety)

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81) Patterson & Joyce 760, n. 144 . (While this requirement is sometimes characterized as modest, or a low threshold, it is not without effect“) (internal quotation marks omitted; citations omitted).

82) The Trade-Mark Cases, 100 U.S., at 94 .

Rural :  
가 (information)<sup>83)</sup> .  
(selection of a sort) , (mere selection) 가  
(copyrightable expression)  
(modicum of creativity) . Rural 가  
, (original)  
(insufficient creativity) .  
Rural (selection)  
(originality requirement)  
(in passing) . Feist Rural 가 가  
(names) (telephone numbers) (selected)  
; (the Kansas Corporation  
Commission) (monopoly franchise)  
. (selection) Rural 가 (state law)  
. Rural (facts) (coordination) (arrangement)  
(creativity) . Rural 가  
(arrangement) (origin) Rural ; Rural 가 (names)  
(task)  
. (a matter of course)  
(unoriginal) , 가 (inevitable) .  
(the minimal

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83) (names), (towns), (telephone numbers) .

creative spark) .  
Feist 가 (names), (towns), (telephone numbers) Rural , Rural 가  
, (de minimis quantum of creativity) (constituent elements) .  
가 Rural  
(fall short of the mark).  
(selected), (coordinated), (arranged)  
(a collection of facts) 17 U.S.C. 101 가 ,  
, 가 Rural 가  
(pass muster) , (any collection of facts)  
Rural (requisite originality)  
, Feist  
Rural ,  
, “  
(industry) (enterprise)  
, ”84)  
Blackmun

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84) Baker v. Selden, 101 U.S., at 105.

Feist

85) .86)

(independently created) 가 ‘ (at least some minimal degree of creativity)’ .87)

“ ” “ (facts) , ” 가 , .88)

Feist

가

가

85) (labour)

86) , 「 」 , 1999. 9. 10, 24- 25 .

87) (creativity) ,

88) , “ ( )”, 「法學 37 3 · 4 (102 )」 , , 96. 12. <http://jus.snu.ac.kr/~sjjong/> /thesis/jungsj037.htm