

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 25-2752

USMAN ROSHAN,
Appellant
v.

NEW JERSEY INSTITUTE OF TECHNOLOGY,
a Public University

On Appeal from the United States District Court
for the District of New Jersey
(D.N.J. Civil Action No. 2:24-cv-10933)
District Judge: Honorable Brian R. Martinotti

Submitted Pursuant to Third Circuit LAR 34.1(a)
September 3, 2026

Before: CHAGARES, *Chief Judge*, HARDIMAN and FREEMAN, *Circuit Judges*

(Opinion filed: September 18, 2026)

OPINION*

PER CURIAM

Pro se appellant Usman Roshan appeals from the District Court's dismissal of his

* This disposition is not an opinion of the full Court and pursuant to 3d Cir. I.O.P. 5.7 does not constitute binding precedent.

complaint in this copyright infringement matter with prejudice. For the reasons that follow, we will affirm the District Court’s judgment.

I.

Roshan is a Data Science professor at the New Jersey Institute of Technology (“NJIT”).¹ He alleges that, while employed at NJIT, he created an introductory machine learning graduate course, CS 675, without the use of NJIT resources, and that the course quickly achieved high levels of student enrollment.

Roshan went on family medical leave between September 2021 and May 2023, and during that time, Roshan discovered that another professor at NJIT had developed an online introductory machine learning graduate course, DS 675.² Roshan claims that the other professor copied CS 675 to create DS 675 without Roshan’s knowledge or consent. In February 2024, Roshan sought to teach a section of DS 675, but was told that the professor who developed DS 675 had the right of first refusal and was invoking that right. Roshan maintains that the other professor did so to prevent Roshan from teaching the course, so that a PhD student could teach the course instead. Soon after, Roshan registered the spring 2020 version of his CS 675 course “syllabus, lecture slides, notes, assignments, projects, and exams” with the United States Copyright Office. *See*

¹ We write primarily for the parties and will recite only the facts necessary for this discussion.

² Roshan also alleged in his complaint that an adjunct professor used his course materials to teach a section of CS 675 in 2020. The District Court concluded that this claim was time-barred. Because Roshan does not discuss that issue in his appellate brief, we consider it to be forfeited. *See In re Wettach*, 811 F.3d 99, 115 (3d Cir. 2016) (explaining that any issue that an appellant fails to develop in an opening brief is forfeited).

Corrected Compl., Ex. E.

In December 2024, Roshan initiated the underlying federal lawsuit against NJIT, bringing a claim of copyright infringement pursuant to 17 U.S.C. § 501.³ Roshan argued that the course materials for CS 675 and DS 675 were organized similarly, using the same conceptual approach, and that the teaching modules, assignments, and exam questions were also so similar that he could establish copyright infringement.

On NJIT's motion, the District Court dismissed Roshan's complaint with prejudice, concluding that the two courses were not substantially similar and that Roshan thus could not show material appropriation of his work as a matter of law. Roshan timely appealed.

II.

We have jurisdiction under 28 U.S.C. § 1291. We exercise plenary review over the dismissal of a complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). *See Tanksley v. Daniels*, 902 F.3d 165, 171 (3d Cir. 2018).

III.

We will affirm. To make out a claim of copyright infringement, a plaintiff must show: “(1) ownership of a valid copyright; and (2) unauthorized copying of original elements of the plaintiff's work.” *See Dun & Bradstreet Software Servs. v. Grace Consulting, Inc.*, 307 F.3d 197, 206 (3d Cir. 2002). The unauthorized copying element

³ Roshan raised two additional claims in his complaint, but he does not discuss them in his appellate brief and has thus forfeited review of the District Court's dismissal of those claims. *See Wettach*, 811 F.3d at 115.

can be proven by showing “actual copying and material appropriation of the copyrighted work,” as “not all instances of actual copying give rise to liability, and, conversely, without proof of actual copying the amount of similarity between two works is immaterial.” *Tanksley*, 902 F.3d at 173.

We focus here on the material appropriation element, as that was the dispositive issue in the District Court.⁴ *See id.* (declining to address actual copying where the plaintiff could not show material appropriation). “[B]ecause a copyright only protects the holder’s particular creative expression, not his ideas,” a defendant can be liable for copyright infringement only “if his work is substantially similar to the protected elements of the copyrighted work.” *Id.* at 174. Ordinarily, the substantial similarity analysis is conducted by analyzing “whether a ‘lay-observer’ would believe that the copying was of protectible aspects of the copyrighted work.”⁵ *Dam Things from Den. v. Russ Berrie &*

⁴ To the extent that Roshan raises new allegations or arguments for the first time on appeal, or for the first time in his reply brief, we do not consider them. *See Barna v. Bd. of Sch. Dirs. of Panther Valley Sch. Dist.*, 877 F.3d 136, 146 (3d Cir. 2017); *Jenkins v. Superintendent of Laurel Highlands*, 705 F.3d 80, 88 n.12 (3d Cir. 2013).

⁵ We have stated that “the ordinary observer test is not useful and is potentially misleading when the subjects of the copyright are particularly complex, such as computer programs.” *Whelan Assocs., Inc. v. Jaslow Dental Lab’y, Inc.*, 797 F.2d 1222, 1233 (3d Cir. 1986). However, Roshan has argued that the similarities in the courses at issue should be “identifiable to a layman with basic Math skills.” *See Corrected Compl.* at p. 13. Roshan insists on appeal that “discovery and expert analysis” or “expert review” is needed to prove his claim, *see Appellant’s Br.* at 29, 40, but beyond these conclusory statements, he does not explain what additional discovery, or what kind of expert evidence, could be helpful in resolving his claim. Accordingly, this case does not involve such “exceptionally difficult materials” that we must diverge from the “ordinary observer” test, *see Whelan*, 797 F.2d at 1233, as a complete understanding of the underlying technical subjects is not necessary to be able to compare the course materials

Co., Inc., 290 F.3d 548, 562 (3d Cir. 2002) (citation omitted).

When considering dismissal of a copyright infringement claim, courts evaluate the complaint as well as any documents “integral to or explicitly relied upon therein,” including “the copyrighted and allegedly infringing works.” *Tanksley*, 902 F.3d at 172 (citation modified). “[H]aving limited the focus to the works themselves, courts will dismiss an infringement action if they conclude that no trier of fact could rationally determine the two [works] to be substantially similar.” *Id.* (citation modified). Because Roshan attached the course syllabi and reproductions or screenshots of the relevant course materials, the District Court was provided with all the necessary materials to evaluate substantial similarity on a motion to dismiss.

We agree with the District Court’s conclusion that Roshan’s allegations are insufficient to plausibly show material appropriation. To assess substantial similarity, the relevant works are compared side-by-side, excluding any unprotectable elements. *Dam Things from Den.*, 290 F.3d at 566. “[A] fact-finder must determine whether the later work is similar because it appropriates the unique expressions of the original author, or merely because it contains elements that would be expected when two works express the same idea or explore the same theme.” *Kay Berry, Inc. v. Taylor Gifts, Inc.*, 421 F.3d 199, 208 (3d Cir. 2005).

Further, “[f]act intensive works are given . . . limited copyright coverage,” as “there are only a limited number of ways to express factual material,” and “[c]opyrights

side-by-side and determine whether the protectible elements are substantially similar, for the reasons explained further in this opinion.

do not protect ideas — only expressions of ideas.” *Whelan Assocs., Inc. v. Jaslow Dental Lab’y, Inc.*, 797 F.2d 1222, 1236-38 (3d Cir. 1986) (citation modified). “Because an author can only demonstrate substantial similarity by referencing those aspects of his work that embody his creative contribution, he will have a more difficult time proving infringement if his work contains only a minimal amount of original expression.” *Kay Berry*, 421 F.3d at 208. For compilations of factual material, copyright protection is “thin,” and others “remain[] free to use the facts contained in another’s publication to aid in preparing a competing work, so long as the competing work does not feature the same selection and arrangement.” *Feist Publ’ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 349 (1991).

In his appellate brief, Roshan acknowledges that the concepts, formulas, and figures in his course materials are not subject to copyright protection. *See Baker v. Selden*, 101 U.S. 99, 103 (1879) (“The copyright of a work on mathematical science cannot give to the author an exclusive right to the methods of operation which he propounds, or to the diagrams which he employs to explain them[.]”). However, Roshan maintains that he was entitled to copyright protection in: (1) his “geometric-intuitive” approach to teaching machine learning; (2) his “explanatory expressions and visualizations,” (3) the “selection, sequencing, and arrangement of topics and subtopics” in his course; and (4) the “conceptual sequence” of his assignments and exams. Appellant’s Br. at 16.

“Only similarities in protectable expression may be considered” when analyzing substantial similarity. *See Tanksley*, 902 F.3d at 173. Roshan’s geometric approach to

teaching machine learning is not itself protected content — it is fundamentally an idea that can be explored through an individual’s chosen expression. *See Feist*, 499 U.S. at 349-50 (“[C]opyright assures authors the right to their original expression, but encourages others to build freely upon the ideas and information conveyed by a work,” and this “fact/expression dichotomy limits severely the scope of protection in fact-based works.”); *see also Baker*, 101 U.S. at 100-01 (“Where the truths of a science or the methods of an art are the common property of the whole world, any author has the right to express the one, or explain and use the other, in his own way.”). Roshan argues that his approach is unique because three courses at other universities employ a statistical (rather than geometric) approach to teaching machine learning, but does not explain how this shows that his approach is an expression of a concept rather than the concept itself.

Next, even assuming for purposes of this discussion that the remaining areas were protectable, no reasonable trier of fact could find substantial similarity between CS 675 and DS 675. Looking at both courses side-by-side, they cover material in a different order, using a different format, with different examples and images, and no overlap in their textual explanations of each topic.⁶ *Cf. Feist*, 499 U.S. at 349 (explaining that the “same facts and ideas may be divorced from the context imposed by the author, and restated or reshuffled by second comers”) (citation modified). The materials also included some topics that were unique to each course. *See Kay Berry*, 421 F.3d at 209

⁶ We note that several of the side-by-side module examples Roshan provided to compare with DS 675 are from an entirely different course, CS 677, which is not at issue here.

("[W]hen there is only a limited number of ways to express an idea[,] the burden of proof is heavy on the plaintiff who may have to show 'near identity' between the works at issue.") (citation modified). Given the differences in both order and content, the courses cannot be said to "feature the same selection and arrangement."⁷ See *Feist*, 499 U.S. at 349. As the District Court explained, that CS 675 and DS 675 teach many of the same topics is "expected when two works express the same idea or explore the same theme," *Kay Berry*, 421 F.3d at 208, as they are both introductory machine learning courses.

Roshan fares no better when we compare the exam questions and assignments for both courses. Of at least 19 midterm questions and 20 final exam questions in DS 675, Roshan identified only three in each that shared a topic with the exam questions from CS 675, and even those questions differed in format, had no similarity in written text explaining the assignment or topic, and were in a different order.⁸ See *Educ. Testing Servs. v. Katzman*, 793 F.2d 533, 540 (3d Cir. 1986) (explaining that an entity "cannot appropriate concepts" to prevent others from having the "opportunity to frame noninfringing questions testing the same subjects"). Roshan argues that four of the six assignments in DS 675 covered the same topics as the assignments in CS 675, but there is

⁷ Roshan devotes large portions of his brief to his argument that CS 675 and DS 675 are more similar to each other than to an introductory machine learning course from Stanford. However, the fact that one other course differs in its pedagogical style and has less overlap in its material than DS 675 and CS 675 does not establish substantial similarity between DS 675 and CS 675.

⁸ Two additional examples provided by Roshan compared diagrams from DS 675 exam questions to diagrams covered in the CS 675 course but not its exams, which does not aid his argument.

no similarity in the written text or images explaining the assignments, and they are presented in a different format and order. Accordingly, his complaint is insufficient to plausibly allege substantial similarity in the two courses' exam questions and assignments for purposes of Roshan's copyright infringement claim.

The District Court thus appropriately dismissed Roshan's complaint at this stage of the litigation. *See Tanksley*, 902 F.3d at 172 (“[W]here no reasonable juror could find substantial similarity, justice is best served by putting a swift end to meritless litigation.”) (citation modified). Because granting further amendment of Roshan's complaint would have been futile under the circumstances of this case, as Roshan had already provided all the relevant documents for consideration, the District Court did not abuse its discretion in denying him leave to amend. *See Grayson v. Mayview State Hosp.*, 293 F.3d 103, 106 (3d Cir. 2002).

For these reasons, we will affirm the District Court's judgment.