The Principle of Idea-Expression Dichotomy in Copyright Laws: Legal Scenario in India Compared to the Laws of U.S.A and United Kingdom

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Abstract

The doctrine of Idea-Expression Dichotomy is a vital base of copyright law. Ideas are discussed as human mental conceptions or illustration. Thinking is generally viewed as concept manipulation and thus, involves expressions. What is eligible as a protectable factor in a movie plot? And how will it be properly judged? Therefore, the idea-expression dichotomy represents a tricky sliding scale in India. The purpose of this research is to understand the position of India in comparison to the laws of USA and United Kingdom.

In this study an endeavor will be made to examine the various laws on Idea-Expression Dichotomy across various nations. This paper initiates the discussion by enumerating the evolution of the doctrine of idea-expression dichotomy and further proceeds by depicting its approach in American, English and Indian jurisdictions discussing how the Indian courts are following foreign laws to decide upon the infringement cases. The research further lays down various exceptions to this rule such as doctrine of Merger and Scenes a Faire focusing mainly on the implementation of such doctrine in India. Basically, in developing countries like India, this concept has not yet reached the levels of abstraction that is needed and there has been only minimal application of this concept in the Indian context. However this scenario can be expected to change. This paper concludes by addressing the complexities of this principle and how court of law shall deal with the shortcomings by proposing specific policy development and implementation strategies.

Keywords: Creativity, Idea-Expression Dichotomy, Merger, Originality, Scenes a Faire.

A. Introduction

Intellectual Property is the outcome of the human intellect. It is produced by the human mind utilizing his intellectual expertise, work and inventiveness. What's more, the Intellectual Property helps an economy in the advancement monetarily and socially. Thus such creation and work needs statutory protection. One of the vital parts of the Intellectual Property Rights is Copyright. An exceptionally pervasive region of discussion in the field of Copyright has been the idea expression dichotomy.

There exists no copyright in ideas. It is only when the idea is expressed in a protectable form, it can be granted a copyright. Therefore, it is not the idea but the expression which is protected. An idea is the formulation of thought on a particular subject whereas an expression constitutes the implementation of the said idea. So basically even if a number of people comes up with a similar idea, protection shall only be given the one which
has implemented the idea in some form of expression. Such expression must be a explicit, particular preparation of words, designs or other forms. Thus, such this doctrine is utilised to protect multiple forms of the same idea.

Two authors may have the same idea for a book. However the way they express themselves i.e., the way they put down their idea in a tangible form is what that makes a difference. So basically when an idea is translated into expression it is protected. Similarly Computer programs are regarded as literary works. Although a general idea cannot be copyrighted, but when such an idea is expressed in the form of drawings, writing etc. where human labour is invested, can be protected and cases can be filed for infringement. Such cases involve stealing of the specific expression of the idea and not the idea itself.

The main reason for granting protection to expressions and not ideas is to protect the free flow of ideas. Ideas are too precious to be copyrighted. The copyrighting of ideas would bring creativity and innovation to a standstill. It is for this reason that the freedom to copy or getting inspired from ideas is central to the structure of the copyright laws.

B. The Origin of the Concept

The idea-expression dichotomy for the first time evolved in the case of Baker v. Selden decided by the US Supreme Court. The plaintiff was the owner of copyright in a series of books explaining accounting system along with certain forms consisting of ruled lines and headings etc. illustrating the accounting system. The plaintiff alleged that the defendant by writing and selling account books which has arranged accounting system similar to his own, has infringed his copyright on the said system, even though the forms were employed with different columns and headings. The US Supreme court took the decision in favor of the defendants and held that there was a clear distinction between the books and the art which they planned to demonstrate the accounting system. The portrayal of the art in a book, i.e. the expression, although copyrightable, did not permit the plaintiff exclusive claim to the art, i.e. the idea in this case.

The U.S. Supreme Court created a clear distinction between an idea and its expression, the main reason that otherwise it would result in providing an undue possibility of monopoly to the copyright owner and would amount to anti-competitive exercise of such rights. With the inception of this doctrine, authors and publishers were encouraged to generate more works, thereby motivating and protecting creativity.

At the international scenario also, the TRIPS convention under Article 9(2) states that the ideas alone cannot be copyrighted. This law has been acknowledged by almost every country through their national laws.

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C. Developments in the U.S. And U.K. Approach

I. The Laws in United States:

The US law expresses that there is no copyright security for a unique work of creativity in terms of an idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or personified in such work.

The idea-expression dichotomy originated in U.S through the case of Baker v. Seldon. The principle laid in this case has been followed in later court rulings and also incorporated in the sphere of computer software in United States. Copyright law allows the author of a computer program to enjoy exclusive rights to produce copies, set up derivative works, distribute copies, execute and display the copyrighted work for the period of his life plus fifty years. There are however, some exceptions to this exclusive right such as for the purpose of own use, teaching, research, or scholarship which would not constitute infringement under the doctrine of fair use.

Sub-programs are often created with their own new ideas or goals which may be different from the overall idea proposed by the designers which is likely to make the court’s classification of idea and expression futile and inadequate. To overcome this inefficiency, this doctrine was further explained and broadened in the case of Computer Associates International Inc. v. Altai Inc. The U.S Circuit court came up with a three-step test to determine the extent and scope of the idea-expression dichotomy. The three steps involved in this process are:

- Abstraction
- Filtration
- Comparison

The process involved in this three-step test was to divide the allegedly infringed computer program into its basic structural parts and study each of these parts for elements such as integrated ideas, expression supplementary to those ideas and elements taken from the public domain, thereby filtering out all non-protectable materials from it.

The US Copyright Act defines idea/expression dichotomy in the following words: “In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.”

In spite of such a provision this dichotomy has remained unsolved. In the 1980s the National Commission on New Technological Uses of Copyrighted Works (CONTU), created by the Congress to study the application of

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intellectual property law to computer software, came out with a final report that set forth four goals for copyright in computer programs, which reflect the traditional attempt to balance protection and competition:

1. Copyright should proscribe the unauthorized copying of these works.

2. Copyright should in no way inhibit the rightful use of these works.

3. Copyright should not block the development and dissemination of these works.

4. Copyright should not grant anyone more economic power than is necessary to achieve the incentive to create.

Further in Harper & Row Publishers, Inc. v. Nation Enters., the Supreme Court stated that "copyright's idea/expression dichotomy 'strike[s] a definitional balance between the First Amendment and the Copyright Act by permitting free communication of facts while still protecting an author's expression.'" Additionally, in Mazer v. Stein, the Supreme Court stated "Unlike a patent, a copyright gives no exclusive right to the art disclosed; protection is given only to the expression of the idea—not the idea itself."

II. The Law in United Kingdom:

The law in United Kingdom can be studied in two phases, one is before 1911 and the other is after 1911. Before 1911 the law with regard to idea expression dichotomy is similar to the United States of America law but it has been expanded later. Prior to 1911, the believed that an idea alone cannot be secured under law and it is the expression of such idea that can be protected. Therefore, developing and expressing through creative means on the same idea does not cause copyright infringement.

After 1911 period, the courts still regarded the law that ideas, thoughts and plans existing mentally within an individual is not considered as a “work” under the Copyright Act. But their expression is secured under the law. A second scenario is that a general idea alone is not qualified for protection. A complete or an elaborate proposition or a compilation of ideas, pattern of incidents or a collection of information is a matter for Copyright protection. The principle has been well stated in the case of Ibcos Computers Ltd v Barclays Finance Ltd. The Court stated that an original work representing a sufficient general principle, then the mere taking of that idea would not violate the copyright laws. The UK law has taken the stand as in the above case that a general principle cannot be protected but it can protect a comprehensive literary or creative expression. The justification behind this that the Courts might have adopted that a general principle is available at the common platform and available to all, hence, cannot be protected. Anyone can utilize the resources which is available in the public sphere but when somebody uses it adds on to it with the help of a detailed expression, then it is subject to copyright

8Id. at 539, 556.
protection. This also means that the author if borrowing the idea from somewhere has to put his own considerable quantity of skill and creativeness.\textsuperscript{11}

Thus, to summarize the idea-expression dichotomy in the United Kingdom Copyright system, it can be inferred that where certain ideas articulated by a copyright work are not unique, they are not entitled to copyright protection as the borrowing of such idea shall not constitute the extraction of a substantial part of the work. Moreover, the skill, labour and judgment utilised must be related to the cause. A mere deliberation of an idea like the objective supposed to be achieved by the computer program, is not included within the ambit of appropriating skill, labour and judgment essential to amount to infringement.

D. The Indian Perspective of Idea-Expression Dichotomy

I. Development of the Indian Law

The law regarding copyrights in India has been comprehensively stated under the Copyrights Act, 1957. The Copyright Act, does not define neither an idea nor expression and is also silent on the difference in the action of the two. From the judicial perspective as well, there has not been much development in the principle of idea-expression dichotomy due to very less number of case laws.

The case of R.G. Anand v. Deluxe Films\textsuperscript{12}, the issue of idea-expression dichotomy which came before the Supreme Court was one of the most early and vital cases in India on the concept. Here, in this case, the plaintiff, was a part-time playwright and producer of stage plays complained that the defendant, who was a film-maker had copied extensive portions from his play and had remade it into a movie. The main theme of the play was provincialism, where the plot implicated persons from different provinces (Punjab and Tamil Nadu). The movie taken the same theme, simply reversing the gender of the person belonging to the above mentioned provinces. The plaintiff filed a case for violation of his copyright. The respondent argued that the theme idea was common to both the play and it was not plaintiff’s original or creative idea.

The Court first compared the play and the movie from a broad perspective and stated that the film’s theme was broader, as it is covering both provincialism and dowry practices. The Court held that copyright cannot be acquired over an idea (the idea here is provincialism in this case), and factually held that the dissimilarities between the two works was substantial enough for one to conclude that there was no colourable replication of his play’s script. As it was a Supreme Court decision, the principles enumerated in this case form part of the law of the land and holds good even in the current days.

This case was also applied by Kerala High Court in deciding the case of R. Madhavan v. S.K. Nair\textsuperscript{13}. The court found that the resemblance or similarity in the theme, scenes and situations of the film and hence the novelty


\textsuperscript{13}R. Madhavan v. S.K. NairAIR 1988 Ker. 39.
criteria was clearly lacking. The material incidents, situations and scenes depicted on the film were significantly and materially different from those in the plaintiff’s novel.

But again an exception was also noticed in one of the cases. In 2002, it was the turn of the Delhi High Court addressed the issue of idea-expression dichotomy in the case of Anil Gupta v. Kunal Dasgupta. The plaintiff case up with the idea of a reality match-making television programme and approached the defendant regarding the working on the same. The plaintiff argued that the defendant had stolen his idea and implemented it and claimed for infringement action against violation of his copyright. The defendant argued that it was only the expression of the idea and not the idea itself which could be protected under the copyright. The Court agreed that an idea per se cannot be protected by a copyright and also ruled that where the concept which is the subject matter of the dispute is a novel and innovative concept, and hence it can be copyrighted even though it is just a mere idea.

In the recent scenarios, judgment reporting was added as another facet to idea expression dichotomy when in 2008, where the Supreme Court came up with the decision of Eastern Book Company and Ors. v. D.B. Modak. The court declared that the Copyright is less concerned with the originality of ideas, rather more with the expression of such thought. On the issue of whether "copy–edited" judgments were entitled to copyright protection, it was decided that the judgments of a Court which are in the public domain and no copyright can be claimed on the same. Other High Court judgments on this issue includes, Mattel Inc. v. Mr. Jayant Agarwalla, which was with reference to the famous “Scrabble” board game along with Barbara Taylor in the case of Bradford v. Sahara Media Entertainment Ltd., which was with reference to the adaptation of a book titled “A Woman of Substance” into a TV show named “Karishma - The Miracle of Destiny”.

So basically as we can see that the courts have to be very much alert while differencing between the copy of an idea or a plot and an expression of the author. The courts have to be also careful while ruling the differentiating points between an idea and from where its expression start.

II. Towards which of these jurisdictions does India incline itself- United States or United Kingdom?

There is an extensive difference between the legal systems in the USA and the UK. The general similarity of Indian Legal framework to English law is one of the key factors which produce solid debate between the applicability of US and UK laws in the copyright cases in Indian jurisdiction. The US Copyright laws originate from the Constitution while the same in the other case, the UK laws owe their origin to codification common law principles which evolved by the courts. It is important to state that it is difficult to make a clear distinction between an idea and an expression. The American courts with the help of their decisions have established guidelines for making ideas free from copyright protection while on the other hand, the British courts have

16 Mattel Inc. v. Mr. Jayant Agarwalla, 2008 (38) PTC 416 (Del).
maintained that where the level of idea is such that it becomes impossible to demarcate it from its own expression, then such an idea can still be copyrighted and protected. The American courts have been accurate in developing methods of analysing a computer program and dividing it into steps for establishing the copyrightable element which is given only to expression and not to ideas, and that itself outlines their relevance in determining the degree to which possibility lies to demarcate the idea from its expression. The American system, therefore, provides greater freedom to authors for using the available ideas and knowledge.

In R.G. Anand case the Supreme Court cited a number of American and English case laws. The court of law missed a trick by not explicitly mentioning and bringing to the differences between the American and English law on the subject. At some point of time, the Supreme Court will have to examine and analyse the difference between the English and American laws on the issue of idea-expression dichotomy and make significant efforts to come to terms with it by making a judicial pronouncement on the same.

Indian courts have traditionally followed the English law and adopted a conservative approach towards copyright law in general. This conservative approach of India is inclined more towards protecting the interests of the society at large at the cost of the inventor. The interests of society would be affected more in the scenario where a person is dejected from developing ideas than in the one wherein a novel idea has been thought of by someone and protected for a prescribed period of time. This has been the prime reason behind the Indian courts preferring the traditional approach to the liberal one with regard to copyright laws in general.

E. Exception to the Rule: The Doctrine of Merger and Scenes a Faire

I. The Doctrine of Merger

The fundamental rule of Copyright law is that facts and ideas are not copyrightable, it is only the creative and unique method of expressing such ideas and facts that is rewarded by law, by conferring a right to exclusively make use of such expression for a given period of time. However, in certain situations where the idea and expression are indivisible or merged, the courts apply Doctrine of Merger. This doctrine suggests that where the idea and expression are inherently linked, and that the expression is indistinguishable from the idea, copyright cannot be granted. Therefore, if the idea and expression are so well merged or fused that the idea itself becomes copyrightable, it would hamper the growth of creativity which is against the main objective of copyright law.

The doctrine of merger states that there is only one way to express certain the idea, as a result of which idea and expression often become indistinguishable, in such scenarios the expression becomes non-copyrightable.

In Herbert Rosenthal Jewellery Corporation v. Kalpakian18, the plaintiffs filed a complaint to refrain the defendants from manufacturing bee shaped jewel pins. The Court held that the jewel shaped bee pin was an idea

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that anyone was free to copy, the expression of which could be possible only in a few limited ways only and hence such form of expression cannot be copyrighted.

In the case of Mathel, Inc. and Ors. Vs. Jayant Agarwalla and others\(^\text{19}\), the Delhi High court explained the doctrine of merger in following words:

“In the realm of copyright law the doctrine of merger postulates that were the idea and expression are inextricably connected, it would not possible to distinguish between two. In other words, the expression should be such that it is the idea, and vice-versa, resulting in an inseparable merger of the two. Applying this doctrine courts have refused to protect (through copyright) the expression of an idea, which can be expressed only in a very limited manner, because doing so would confer monopoly on the idea itself”\(^\text{a}\).

II. The doctrine of Scenes a Faire:

The next concept that we shall discuss under exceptions to the rule of idea-expression dichotomy is Scenes a faire. “Scenes a faire” is a term that refers to characters, places, story elements, language, etc., which are standard to some general theme or topic, and are often an indispensable part of that theme or topic. Such scenes a faire is not capable of being protected by copyright laws.

For example, a science fiction story may have robots, high-tech gadgets, spaceships, a hero fighting against a dictatorial leader, etc. These are all scenes a faire and not protectable by copyright laws. However, the application and expression of these elements in any given story would be protectable depending on the situation.

This doctrine first came into picture in the famous US case of Cain v. Universal Pictures Co.\(^\text{20}\), wherein Judge Leon Yankwich while passing the order in the favour of the defendants admitted that the scene from the plaintiff's book and the defendant's movie were similar yet it cannot be regarded as a copyright infringement. This is because here, the judge stated that the idea of a couple taking shelter from a storm in a church was regular scene and as cannot be made a subject matter of copyright protection.

III. The problem with the ‘Merger’ Doctrine in India:

A inspection of most cases of copyright infringement in film (specially the movies by Hollywood producers against Bollywood versions), discloses that it is often not easy to prove to an Indian judge that one cinematographic film has been copied from another. This is done by enumerating the idea in the original film at a rather low level of abstraction i.e. vesting it with more specificity and details.

Let us take the Raabta-Magadheera example.\(^\text{19}\). The recent Hindi film ‘Raabta’ was recently sued with a copyright infringement suit by the producers and writers of the Telugu film ‘Magadheera’. Telugu writer, SP Chary has claimed that the story behind ‘Magadheera’ was copied from his work-book, ‘Chanderi’. Both films depict lovers who find each other in a second life. Other similarities include corresponding visualization of the two

\(^\text{19}\)Mathel, Inc. and Ors. Vs. Jayant Agarwalla and others, IA No. 2532/2008 in CS (OS) 344/2008
different “births” or generational settings – with the previous one being a royal, medieval setting. And both films have a notable antagonist vying for the woman’s warmth and fondness.

One might argue that the bare concept of reincarnation is a very “abstract” general idea and can be expressed in a multiple number of ways – each of which can be protectable. The current is more “expressive” than the earlier idea of just reincarnation. However, under the categorization by the courts, this would be seen as an “abstract idea” which merges with the expression.

Indian courts have treated even the above specific plot line as an abstract idea that merges with the expression under the idea-expression dichotomy. It is not yet clear as to how much of detailing in the plot line would take it out of the “abstract” idea category and into the purely mobile part. Surely, if this means only the final cut of the film itself, then Indian courts have efficiently reached the same conclusion as other courts.

F. CONCLUSION AND SUGGESTION

It has been noticed often that there has been major difficulty in defining and applying the idea-expression dichotomy in general. Most observers who have raised different sorts of issues with regard to the idea-expression dichotomy have identified that an idea cannot exist apart from certain expression. For the reason of copyrightability, speaking of an idealess expression makes no sense, no matter whatever maybe the nature of work being which is being copyrighted. It has been almost five years since the film star Abhishek Bachchan started endorsing ‘Idea’ telecom services with a slogan “What An Idea Sir Ji”. But when it comes to copyright laws, it would be better to say “What An Expression Sir Ji”.

Now applying the doctrine in Indian jurisdiction, the discussion in the previous chapter makes it crystal clear that idea-expression dichotomy in India is still at an early stage and from R.G. Anand case21 to every subsequent ruling which was decided, the courts referred to various judicial decisions of United States and United Kingdom.22 Needless to say, that the courts made lot of efforts to bring the aforesaid doctrine into picture and to certain extent, it has succeeded in making the concept a vital component of Copyright law in India.

Going by the decisions of R.G. Anand23 and Anil Gupta cases24, it can be deduced that it is the English law which finds a greater application in India than that of the American law. It is very important for the courts, particularly the Supreme Court, to examine and analyse the advantages and disadvantages of both the laws and adopt a middle path which would lie in between the American and English schools of thought. It should examine what qualifies as a protectable element in a movie plot? And how will substantiality be judged? As we have

noted earlier, the idea-expression dichotomy presents a tricky sliding scale in India. So basically, this way the Indian courts will be able to prevent the extremities of the approaches executed by USA and UK courts.

References


