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Copyright Laws – Protection of 'Idea' and 'Expression of Idea'

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Copyright protects the expression of thought, not the ideas themselves. The term 'idea' is subjective, not because it only deals with its abstract nature, but because it varies from person to person. An idea is always in an abstract form, which in itself cannot be demonstrated in a physical form. But the same can be done in physical form by giving it expression. My same idea can be expressed by writing an article, book, or short story. Some scholars have made a clear distinction between these two kinds of infringement: copying and creative reuse.[1] The second kind of infringement alone i.e. reuse of characters by the creation of original derivative works, which is significant in its own right and can generally be distinguished from mere copying quite effortlessly.[2] This article will deal with the interesting concept of the copyright of an idea and whether the idea can be copyrighted in my name or not. Also discusses the Doctrine of Dichotomy in the light of important judgments.

Keywords: *copyright, idea, dichotomy, infringement, merger doctrine, expression.*

INTRODUCTION

In the **Copyright Act 1957,** section 13(1)[3] talks about the concept of originality concerning artistic, literary, and musical works. It states that copyright shall not subsist if originality is not

[1] Christopher Sprigman, 'Copyright and the Rule of Reason' (2009) 7 Journal on Telecommunications and High Technology Law
[2] Leslie, A. Kurtz, 'The Independent Legal Lives of Fictional Characters' (1986) Wisconsin Law Review
[3] Copyright Act 1957, s 13

present. This originality mainly focuses on the originality in the expression of ideas and not mere originality in ideas. Similarly, th**e Berne convention** speaks for the Protection of Literary and Artistic Works.[4]

The Copyright laws of India do not offer any sort of protection to ideas and it only provides protection for the expression of an idea or theme. It is allowed however that a person chooses an idea of his interest and molds and develops it in a manner that is his own and gives expression to the idea by also managing in keeping it differently from others. Until and unless given a tangible form with adequate details and modeling an idea does not get any sort of copyright protection. One single idea can make way for or lead to the development of multiple scripts and stories, each being capable of separate copyright protection.

Ideas need not be copyrighted. An expression is the implementation of all the ideas we desired, whereas ideas are suggestions about the same. If securing copyright over the ideas happens then it will lead to offering copyright to the general ideas and thus leads to giving a monopoly over ideas which will enhance censoring. This will finally result in the act of violating freedom of speech. Ideas shouldn't be constricted; it needs to flow. Also, ideas should develop gradually; modifications and rectifications should be part of the process. In addition to that if the court started to give copyright over ideas then there would be case floods, which practically shouldn't be promoted. Therefore, we come to a decision that a creation that is inspired by the original work cannot infringe the copyright of the original work.[5] 'Original' is the independent input of the author from which others are derived.[6] Originality can never be made a necessary requirement for copyright granting especially in the sound and cinematographic fields.[7]Because artistic fields, or any fields are the result of skill and hard work, and everyone's thought process is different and artistic approach is different. Under the Indian Copyright Act, the derivative works are referred to as 'adaptations'.[8] For example, the Indian music industry clearly is in an

[4] Berne Convention for the Protection of Literary and Artistic Works 1886
[5] Timm Neu, 'Bollywood is Coming! Copyright and Film Industry Issues Regarding International Film Co-Productions Involving India' (2006) 8(123) San Diego International Law Journal
[6] Krishna Hariani & Anirudh Hariani, 'Analyzing "Originality" In Copyright Law : Transcending Jurisdictional Disparity (2011) 51(3) The Intellectual Property Law Review
[7] Copyright Act 1957, s 13
[8] Copyright Act 1957, s 14

advantageous position as the Act protects the adaptation of musical works. Thus, if a song noticeably borrows a harmony from an earlier song it can be termed as a 'derivative work', however, it would be considered harmful by society only when its material similarity to the original adversely affects the demand for the original.

DIFFERENCE BETWEEN AN IDEA AND AN EXPRESSION IN COPYRIGHT PROTECTION

Both these words always tend to overlap. Idea is a precise desire to do something whereas Expression is the execution part. Always we tend to examine both either similarly or not giving much relevance. To explain this statutory provision, relying on precedents is necessary.

Baker v Selden[9] was the case first case in the US that tried to bifurcate the idea and the expression of the idea. Here plaintiff stated that the fundamental accounting approach he established for the book is protected by his copyright. Here judgment held that the plaintiff only desired copyright for his ideas. In addition to that court held that copyright cannot be extended to the 'ideas' and the 'art' that have been used in the book. Also, there were remarks on pictures, and patterns associated with that and held all are not copyrightable. In this manner, the judiciary made a distinction between ideas and expressions because asserting copyright over ideas would give the copyright holder a monopoly over the market and thus hinder free flow.

In Nichols v Universal Pictures Corporation[10], the court used the abstraction test. According to the abstraction test, the similarity of the two works does not prove that there is a copyright infringement. In addition to idea similarity, there must be a considerable amount of work similarity. In this case, when the abstraction test was applied no similarity was shown and thus no infringement was proved.

INDIAN CASE LAWS

When we analyze the India scenario, protection is available for the expression of the idea and not for the idea itself. The courts have many times enumerated substantial and material similarity tests. In one way or another, these tests and principle applications aided the

[9] *Baker v Selden* [1879] 101 U S 99
[10] *Nichols v Universal Pictures Corporation* [1930] 45 F.2d 119 (2d Cir.)

filmmakers to a greater extent. An important case in this regard is that of RG Anand v Deluxe Films[11], this is the first case in India where the copyrightability of an idea was discussed by the court. The plaintiff was the author of the play. The defendant Mohan Sehgal expressed his desire to make a movie based on the play. According to the plaintiff and defendant met but they didn't reach any contract. Later the plaintiff came to know that the defendant had released a movie on the same theme. Plaintiff filed a suit against the defendant for a permanent injunction and damages. The appeal of the plaintiff's case finally reached the Supreme Court of India.

The Supreme Court established three key principles regarding ideas and expression in its judgment:

1. First, while ideas, themes, historical details, and subject matter cannot be protected by copyright, the means and forms in which they are expressed can.
2. Second, the court will determine these parallels if the idea is the same. They must determine whether or not there is a substantial similarity between the works, as well as whether or not a reasonable viewer would find that there is a substantial similarity between the works. It is significant to note that the abstraction test in Nichols v Universal Pictures Corp.[12] applies to the substantial similarity test as well.
3. Last but not least, there is no possibility of infringement if merely the ideas are the same and the expression is entirely different. Before applying the substantial similarity test, the courts must decide that there are more similarities between the two works than just the ideas they express. For the cases involving idea expression, the Indian courts followed this decision. The ideas are typically not copyrightable because they are overly broad or abstract. It's vital to keep in mind, though, that abstract ideas are not required. Functionality, systems, processes, methods, and technicality are all acceptable, but they won't be protected by copyright because they are ultimately just ideas.

[11] *RG Anand v Deluxe Films* (1978) 4 SCC 118
[12] *Ibid*

Finally, after the application of the test and dichotomy doctrine the court couldn't find any copyright infringement. Here ideas were similar, but the work –how they were expressed was different.

In another landmark judgment regarding the protection of ideas under copyright law, the Calcutta High Court in the case of Barbara Taylor Bradford v Sahara Media Entertainment Ltd.[13] decided that there was no infringement of copyright as a theme is not protected under the Indian Copyright Law. Here the complaint was against a serial. This serial was produced by a public company. Here court upheld an interesting note on idea protection, i.e. idea can be protected if it is shared confidentially. In this judgment, the court upheld the R.G. Anand v Delux Films[14] decision. Another important case to be noted here in this regard is the case of Zee Telefilms Ltd. v Sundial Communications Pvt. Ltd.[15] Here Sundial Communication's idea of the script was accused of being taken by Zee Telefilms. The confidentiality aspect was proved against Zee Telefilms and thus the court granted an injunction order against Zee Telefilms as it would harm the business of the plaintiff. Later on in the case of *Mansoob Haider v Yashraj Films*[16], Here the Plaintiff, a scriptwriter, is the author of the film script entitled '**ONCE**'. Plaintiff claimed that the film, ***Dhoom 3***, infringed on his copyright. In this suit, the plaintiff required the claim in film. Here the court held that the similarity of ideas doesn't lead to copyright infringement and upheld once again the fact that ideas are not to be copyrighted.

In the case of *Mattel Inc. v Jayant Agarwalla*,[17] the issue was over the word 'SCRABBLE' trademark. The Plaintiffs claimed rights in the trademark as the defendants had launched an online game under the name 'SCRABULOUS'. Here the Extraction test was applied, i.e., separate ideas from expressions and if it comes ambiguous then the work can't be copyrighted too.

Recently, in the Aarur Tamilnadan v S. Sankar[18], the Madras High Court found that there is some dissimilarity between the plaintiff's story 'Jugiba' and the story of the defendant's film

[13] *Barbara Taylor Bradford v Sahara Media Entertainment Ltd* (2004) (1) CHN 448
[14] *Ibid*
[15] *Zee Telefilms Ltd. v Sundial Communications Pvt. Ltd* (2003) (3) BomCR 404
[16] *Mansoob Haider v Yashraj Films* (2014) (59) PTC 292
[17] *Mattel Inc. v Jayant Agarwalla* CS (COMM) 429/2018
[18] *Aarur Tamilnadan v S. Sankar* CS No 914/2010

'Enthiran'. The court points out the possibility that when the same idea is being developed differently, it is manifest that the source being common, similarities are bound to occur. Therefore, to be actionable the copy must be substantial and material one which at once leads to the conclusion that the defendant is guilty of an act of piracy. But in this case, it was not proven. Hence court held that idea can't be copyrighted. In addition to that, the court held that while considering infringement related to theme, plot, and facts there needs to be consideration of the manner and form in which the impugned idea is expressed.

CONCLUSION

There are some situations where the expression of the idea itself is narrowed. In this situation distinguishing between the idea itself and the expression of the idea is impossible (Merger Doctrine). In this case, we discussed three different aspects of the protection of ideas under Copyright law. First is when idea and Expression are separable. Secondly when the idea is expressed confidentially. Lastly when the idea and expression of the idea are inseparable. In such cases the copyright protection of Expression is impossible.[19]

Further, we can infer from the analysis of whether ideas are protected by copyright law above that in the majority of copyright infringement cases, the court has applied the dichotomy doctrine to consider originality in the expression of ideas. Idea-Expression Dichotomy helps in prevent monopoly in the market and promotes the free flow of ideas.

Furthermore, it is evident that the idea-expression dichotomy has been applied extremely frequently in the United States of America and is also well-known in Indian jurisprudence. But the idea-expression dichotomy occasionally falls short in cases of copyright infringement. However, the courts continued to uphold this concept, which increased confusion. Practically speaking, courts never thoroughly analyze this notion, and even when they do, it rarely helps in case judgments. The dichotomy doctrine has a fairly broad statement that challenges any specific application, thus this might come as a shock. Actions must be taken to address these issues and broaden the scope of the doctrine.

[19] *Morrisey v Proctor & Gamble Co* [1967] 379 F. 2d 675 (1st Cir.)