Expression Dispute under Copyright Law: A Synthesis Study

Rima Ghosh[1]

Abstract

Copyright inherently counteracts writers and publishers' conditions for regulating and paying their use of work against the reader and user demands for unlimited access to works at minimum or no cost. Indeed, the fundamental reason for copyright is to prevail over and above the added expenses which copyright monopolies on the public, arising mainly from the monopolistic collection of legal rights, which provide the requisite economic incentives to create and disseminate artistic and intellectual works. The public benefit is the wide variety of creative and academic works and their broad dissemination. There are two types of general expenses: the extra copying expenses and the right to use copyrighted works whose costs are set by the proprietor, and the limits on the use of the previous work in order to produce more works are not to be feared by any healthy competition. The costs and advantages of the copyright system will also change,like the elements of copyright affecting the balance.This work focuses in particular on copyright law, which discusses both the public and the rightsholders' conflicting needs. Any part of copyright law was regulated by idea speech.

Nevertheless, 'speech' dynamics are continually evolving. It not only threatened the value of copyright and created confusion but also brought into question the very validity of the whole copyright definition. This thesis addresses copyright law in particular, how the word and the public emerge and how the existing legal system enforces it.

Keywords: *Copyright, Idea, Expression*

I. Introduction

Creativity is encouraged by utilizing copyright.[2] Though it cannot directly promote creativity because it has some pros and callsas in when someone's work is being used, they need to ask or take permission from the concerned person for

[1]*Research Assistant*, Centre for Regulatory Studies, Governance, and Public Policy, The W.B. National University of Juridical Sciences

[2] S. Vaidhyanathan, 2003. *Copyrights and copy wrongs: The rise of intellectual property and how it threatens creativity*. NYU Press (2003).

the work being used.[3]Moreover need to take legal permission from the lawyer to use the work. In this advanced internet age, this permission on one side became more comfortable, and another way it's very tuff to track infringers.[4]It's all because of the use should be in the manner of the fairway and which is the most prominent to vouch for copyright. The concept of fair use which talks about principles, and it believes that everyone's creativity should flourish in the form of exclusive rights. It is about the creation of a person who comes from his or her absurd ideas. Fair use is a type of application which is generally used by the unauthorized user, but it should not be used for any commercial or social beneficial behavior.

The use of fair use is always based on subject to subject because a person's creativity is his ideas, which generally arises from rational thinking. As the proverb says,'Creativity does not come in cookie-cutter forms, creativity is messy, and unless the laws that messiness into account, the law will satisfy creativity.[5]Creativity is a human creation that is not readymade, and the law should provide creativity on fair use.Four factors have been seen over the centuries,essential analysis of the concept of fair use.[6] Among them, the nature and purpose of the defendant'sapplicationhave been the first and prominent one.This factor, which is generally examined, is about why and how the work of copyright has been used. This kind of examination helps or tries to find out that the use is unauthorized or not.The next factor examines the copyrighted work's nature. This factor is not considered so important because it examines regardless the tasksis correct or accurate from the various genuine assignment.[7]

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[3] M.A. Lemley, *Dealing with Overlapping Copyrights in the Internet*, *U. Dayton l. Rev.*, *22*, p.547 (1996).

[4] K.G. Rivera and D. Kline, *Discovering New Value In Intellectual Property*, HBR, *55* (2000).

[5] W. Patry,*Limitations and Exceptions in the Digital Era*, 7 IJLT1 (2011).

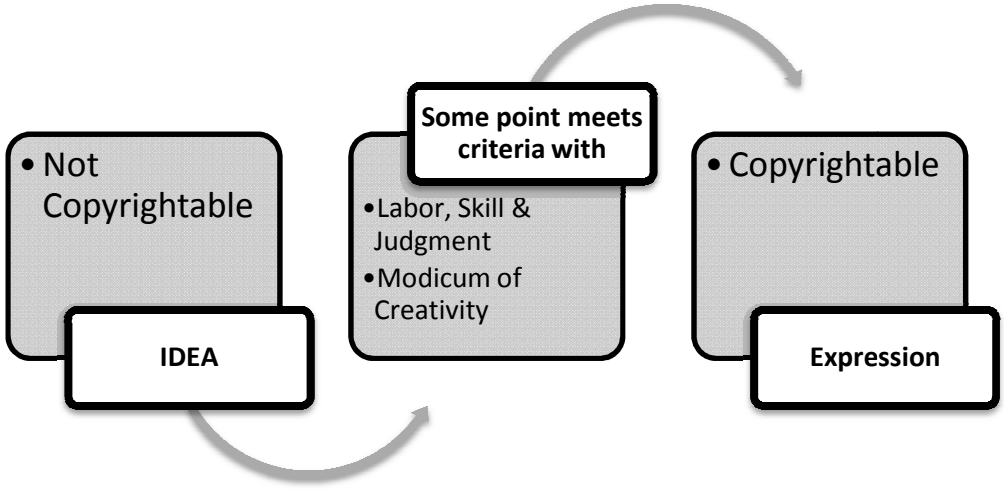
[6] L.P. Loren,*RedefiningTheMarket Failure Approach To Fair Use In An Era of Copyright Permission Systems*. 5 *J. iNtell. pRop.*1 (1997).

[7] J. BADARACCO & R.R. ELLSWORTH, LEADERSHIP AND THE QUEST FOR INTEGRITY (Harvard Business Press 1989).

II. Conceptual Understanding

Several factors back the concept of copyright expression.In the realm of copyright law, Idea-expression dichotomy is one of the prominent essential principles.[8] Though it has been several times criticized but it happens to be the foremost l saying of copyright law. The concept of copyright law and its relation between expression has not been debate variedly in English case laws, unlike the United States.[9]The copyright law does not supportthe mere idea to be the copyrightable aspects. It is the accepted phenomenon that the judgment, skill, and labourwhich make the modicum of creativity.[10] The idea itself is not qualified, but the support of these three value addition options,it very much establishes the expression.

Flow Chart to Qualify Copyright



III. Indian Scenario

[8] P.N. Leval, *Toward a fair use standard*, 103(5) HLR 1105-1136 (1990).
[9] B.E. Marks, *Copyright Protection, Privacy Rights, and the Fair Use Doctrine: The Post-Salinger Decade Reconsidered*, 72 NYUL *Rev.* 1376 (1997).
[10] W. Patry, *Limitations and Exceptions in the Digital Era,* 7 IJLT 1 (2011). .

The Copyright Act, 1957, is being concerned with the laws related to copyright cases in India. This Act has, however, not defined ideas nor expression, and it has not issued any laws in the relation between the two.[11] It very hard to say that from the judicial point of view also it has not been developed in the chief expression of the idea-expression dichotomy because of the following case laws.

It was about the famous case of *R.G Anand v. Deluxe Films*[12],where the concept of the idea and expression dichotomy has come before the Apex Court. In this case, theAppellantwho was working as a part-time playwright and producer of stages plays, claims that the respondent, who was a maker of films had been copied some of the portions from has played and had made a new film. Therefore, the plaintiff fileda case against the defendant on violation of copyright. But it was the respondent who argued that thought there some standard portion, but he claims that the plaintiff idea was not an original.In the conclusion of the case, the honourable apex court was examining various findings of the subject on the situation and was in sum up in the underlying matters.

1. Copyright cannot be in any kind of idea, themes, subject matter, legendary or historical facts, and infringement of the copyright in such cases to the manner, form, and expression arrangement of the idea by the holder of the copyright.

2. In various differentmanners, the same idea can be used, but it should be taken into consideration that the sources being equivalent, there can arrive similarities. In the instance of the subject to case matter, the court should decide whether or not the similarities are on fundamental or substantial aspects of the mode of the expression used in the copyrighted work.As the respondent tasks are nothing but a liberal limitation of the copyrighted tasks with some variations here and there, then it might lead to infringement of copyright. If it needs to applicable that in saying the copy of the functions must be substantial and material one and that

[11] R.L. Okediji, *Regulation of Creativity under the WIPO Internet Treaties*, 77 *FLR* 2379 (2008).
[12]AIR 1978 SC 1613

the respondent has committed a fault as an act of piracy should be at the conclusion.

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3. If the reader, spectator or even the viewer finds that both the work after reading that is indicated andwhich provokes a mistakable impression that the reading work is being copied from the original work and thatexamination willbeone of the most definiteand cautious to decide that is there an infringement of copyright or not.

4. When the following work's theme is being introduced differently as the following looks like a brand-new work, then there cannot be any question of copyright infringement.

5. However, when there can be on a substance with more on dissimilarities then similarities which prevalent in both of the works but its intention is not to copy from the original work. Still, it just occurs, unfortunately, or coincidence, but it is copyright infringed.

6.The infringement of copyright which amounts to an act of piracy but it should be proved after the examination of the different test by the case law, and that must be with comprehensive and strong evidence.

7. If the issue is, however, whether a film producer or a director infringes on the copyright of stage works, it is harder for the plaintiff to show infringement. A film has a much broader perspective, a larger area, and a more general meaning in comparison to a stage play, where defendants may construct colour and ambiguity dissimilar from the way the original tasks conveyed the concept by adding several incidents. Furthermore, if the audience, after watching the movie, gets the limitation that the movie is simply a replica of the original script, a copyright breach can be deemed to be demonstrated.

The Apex Court was in the opinion that the comparison between the play and the film, though there is a similarity between the two. Still, the later one that is the film was presented and represented differently with a change in the story, so there is no infringement of copyright.

The Kerala High Court has implemented the seven tests of the famous case of R.G Anand[13] in *R.Madhavan v.S.K. Nair*.[14]The court was of the opinion that the comparison of the subject matter and scenes of the film and the novel was not there.It is to be noted that the scenes, plot, and the entire film portrayed was very different from that of the plaintiff's novel. There also other essential case laws related to idea-expression dichotomy are as Anil Gupta v. Kunal Dasgupta by the Delhi High Court.[15] Another critical case is Barbara Taylor Bradford v. Sahara Media Entertainment Ltd.,[16] the Calcutta High Court, In this case, the same thing that is happened idea is different from an expression ofsomeone'sopinion is expressed or represented in different ways it not a violation of copyright.In a very recent instant, there was the decision of the Apex Court on *Easter Book Company and Ors, v. D.B Modak*, where the court was in the opinion that the Copyright Act is not bothered with the originality of ideas but rather with the thought of expression which means ways of expression. In this case, it was about the Judgments of the Courts, which are copy-edited, are entitled to the protection of Copyright Protection. The Apex Court was in the opinion that in the public domain, the court'sjudgmentcould notbe claimed under copyright.

In the case of *US NRI Film Production Associates v. Twentieth Century Fox Films*,[17] the doctrine of Idea ExpressionDichotomy was talked in the court with a guideline of the famous Apex Court case of *R.G Anand v. M/s Delux Films And Ors*, the U.S. Court decided,*"there can be no copyright in an idea, subject-matter, themes, plots or historical or legendry facts and violation of the copyright in such cases is confined to the form, manner and arrangement and expression of the idea by the author of the copyrighted work."*[18]

"Also, it was stated that where the same idea is being developed differently, it is manifest that the source being common, similarities are bound to occur. In such a case, the courts should determine whether or not the similarities are on

[13] Ibid.
[14] AIR 1988 Ker. 39
[15] IA 8883/2001 in Suit no.1970 of 2001
[16] (2004) 28 PTC 474 (Cal) (DB)
[17] *NRI Film Production Associates v. Twentieth Century Fox Films, ILR 2004 KAR 4530*
[18] *R G Anand v. M/s Delux Films And ors., 1978 AIR 1613*

fundamental or substantial aspects of the mode of expression adopted in the copyrighted work. If the defendant's work is nothing but a strict limitation of the copyrighted work with some variations here and there, then it would amount to a violation of the copyright. In other words, in order to be actionable, the copy must be a substantial and material one."[19]

It was decided by the Court there wherein even the subject matter of thetheme of work might be similar, but if it is introduced and produced differently so that the presented work becomes a brand new work, that there cannot occur infringement of copyright.In India, a film of Rajnikant- starrer Lingaa was about to release. Still, arenownedfilmmaker alleged that the director of film Linga has copied his script and therefore filed a case in the High Court of Madras. This was the time when the doctrine of Scenes Faire was proclaimed in the public forum.As per the case, the petitioner was in the opinion that the film Linga's script had been copied from the petitioner soon to be released a Tamil film named 'MulaiVanam999'and moreover it was the script

Construct that was on the life history of Engineer who was from British and who come up with the idea of supporting theMullaperiyar dam. The plaintiff updated the entire story on YouTube on February 24, 2013. But the respondent claimed that unpublished work cannot claim for copyright infringement and as therefore denied the claim. As with this controversy, the leading case raisesan essential question related to the doctrine of the scènea faire as copyright cannot be proclaimed on a theme. So copyright protection can be issued to the director on the premise that he made on YouTube video of the story. The Justice Venugopal was an opinion that he reserved his court order on the plaintiff's plea to stay for to be released.

IV. US Stand

The idea-expression dispute majorly comes to the practical application. This concept was disputed in the court of law, and different opinions reflected. To overcome this inefficiency, this principle was broadened. It was the case of *Computer Associates International Inc. v Altai Inc*[20] where the petitioner was in

[19]Ibid.
[20]14 982 F. 2d 693

the opinion that they had used some of the parts of the programs while developing their software program and that it caused copyright infringement. As per this case, the U.S. circuit court introduced a three-stereo test for any copyright infringement, in reference to idea-expression dichotomy. The test includes Abstraction, Filtration, and Comparison. The objective of the test was to examine each of the parts of elements used in the development of the software program as incorporated the idea into expression. It will help in the references copyright doctrine of merger, the scene a faire.

Lord Denning MR, in one of the famous cases, for a copyrighted work, an injunction was withdraw and decided that *"the law will not intervene to suppress freedom of speech except when it is abused."*[21] The freedom of expression was support when several courts were aware and grant an injunction. For this instance, for example, memoirs of Lady Thatcher that include unauthorized quotes of publication, which was then yet to be published, after leaving 10 Downing Street, the Appeal from the court was disturbed from the overbroad injunction, and its issue was denied. The copyright law and breach of confidence were the claims that were both put forward in the case, but it was noted that the court took forward the latter issue and describe that it includes the former one too. The freedom of expression was also taken into reflection in another case that is PCR v Dow Jones Telerate Ltd,[22] The fair dealing defense and the public interest defensewas brought into the reflection of conversation, and the Article 10 ECHR was also quoted.[23]

V. Copyright and Freedom of Expression: Two Conflicts

There are a clash and conflict that exist between copyright law and the freedom of expression, which is being observed in the judicial area, and it happened to be an internal copyright mechanism. To relevant this point, a case of as down where the American Courts were in opinion since copyright does not protect an idea, then there should not be any clash. Still, other Courts were in the opinion that there copyright mechanisms such as the fair use defense think rationally that

[21] Hubbard v Vosper [1972] 2 Q.B. 84, 97 (CA).
[22] [1998] F.S.R. 170, 186 (Ch. D.)
[23] Times Newspapers Ltd v MGN Ltd, [1993] E.M.L.R. 445.

it authorisedcompulsory respire capacity at large,and there is a potential dispute.[24] So there two conflicts should be identified and should be the internal one.

Due to this, it gives some tools and measures to understand the relationship between the law between the copyright and the freedom of expression. Moreover, there should be an underand of internal and external conflict.The main point is that these two concepts should be categorically examined for an understanding purpose.

V.I. Copyright does not Subsist in Style

The styles and methods used by the respective directors of the two films are remarkably similar. But no copyright remains in a simple form or technique introduced by the pointillist technique that was created by Seurat and Signac, the neo-imperialists. That was an excellent example of how Seurat could not have taken action against him through the canons of English copyright law if he had seen La Bagne, Asnières at the Salon des Artistes Independents in 1884 and had used precisely the same technique in painting the ruralsettings.The"sprung rhythm" of the verse of Gerard Manley Hopkins or the thematic build-up of Sibelius' second symphony are other examples of original artistic styles or techniques whose imitations in the development of a completely different subject may not consider such a practice. So here, *"the subject matter of the two films being ... very different one from the other, the similarities of style and technique are insufficient to give the claimant a cause of action against the defendants."*[25]

[24]Harper & Row 471 US at 560; Sid & Marty Krofft 562 F.2d at 1165; Disney 581 F.2d at 751; Triangle 626 F.2d. at 1179; Quinto v Legal Times of Washington, Inc. 506 F.Supp. 554 (D. D.C., 1981); Encyclopaedia Britannica Educational Corporation v Crooks 447 F.Supp. 243 (W.D.N.Y. 1978); Fantasy Inc. v Fogerty 664 F.Supp. 1345 (N.D. Cal, 1987); Los Angeles News Serv. 973 F.2d 791; Lish v Harper's Magazine 807 F.Supp. 1090, 1105 (S.D.N.Y., 1992).

[25] Ibid.

V.II. Copyright does not Subsist Merely in News

The case of Wainwright Securities Inc. v. Wall St. Transcript Corp,[26] where the financial reports were subscribed as issued by the plaintiff. But the defendants there in his newsletter summarized the reports and crediting the plaintiff as a source.The Court was in the opinion that there is a manner of expression but no copyright in the news. The materials, interpretation of news, choice of words are the elements that were copied by the defendants in this summary, and there arise copyright infringements by the plaintiff.

VI. Consequences of The Distinction between Ideas and Expression

In the case of *Donoghue v. Newspaper Ltd*,[27] the person who was answerable for the work's expression was the author. Here the plaintiff who was famous for his horseracing career and as a known jockey and ready to give interviews to the popular Newspaper agencies for a series of article. At the same time, the journalist of the newspaper prepares drafts from the notes which he took during the interviews of the plaintiff. But the journalist Felstead showed that he tried to change some comments which were made by Donoghue. What were the actual articles talked by Donoghue during the interview, which were published later?But afterward, it was found by the plaintiff that one of the articles where published against the plaintiff's wish and not known to him. So, therefore, the plaintiff filed a case against the journalist of the Newspaper claiming damages and injunction.

MR JUSTICE FAREWELL: As there cannot be copyright in an idea. A human being may have many absurd ideas in the form of tangible medium byways or pictures, plot, or a play which he thinks to be his original ideas. Still, in reality, it is just irrational thinking.When anybody expressed ideasinthemanners of expression, it cannot be considered or urged for copyright in any ideas.

[26] 558 F.2d 91 (U.S. Court of Appeals, 2d Cir. 1977),
[27] [1938] Ch. 106 (U.K.: High Court)

VII. "SCÈNES À FAIRE" Concept

The concept of Scenes A Faire means to be *"scene to be made,"* and it is a French term.[28] In the Law of Copyright, it is a conceptualizationthat says that specific creative tasks cannotbeproactedunderthese laws as they are a particular genre and manded by a customary.In the treatise *"Nimmer on Copyright,"* while dealing with the topic - Action - Substantive aspects, the doctrine of "Scenes a Faire" has been elucidated in the following words:

"Bearing in mind the ancient wisdom of Ecclesiastes that there is nothing new under the sun, certain patterns and situations are bound to recur. The claim (and variations thereon) is often advanced that the entire dramatic literature of the world can be reduced to some three dozen situations".[29]

The Scène à faire doctrine was not explicitly defined in the Indian Copyright Act. After the previous statements in their U.S. and U.K. counterparts, the courts addressed this issue. The practice is American, and Indian courts did not vary significantly from the law decided in the United States.An example can be cited, suppose the two scenarioswhere if they want to use the idea that is unprotected in the South Bronx of the life of police, natural to depict for each it will be any "*drink, prostitutes, vermin and derelict cars."*Judge Leon Yanwich passed a very notional judgment in favour of the defendant related to this doctrine. In this the copying part of the defendant is not similar to the plaintiff movie fact. Hence it is not constituted as an infringement of copyright.[30]

VIII. Conclusion

In the concluding statement, there has been substantial trouble in explaining and appealing the idea-expression dichotomy in general. Many writers who have discussed various types of issues with the dichotomy of idea-expression have discovered that there is no idea but one expression. For copyright purposes, it makes no sense to talk of an ideal term, regardless of whether the work has been

[28]*Scène à faire under Copyright Law, Ivan Hoffman, BA JD.*
[29]Schwartz v. Universal Pictures Co. 85 F. Supp 270(S.D. Cal. 1949)
[30]*Cain v. Universal Pictures Co., 47 F.Supp. 1013 (1942).*

copyrighted. Since the past five years, the Bollywood star Abhishek Bachchan started endorsing 'Idea' telecom services with a quote,*"WHAT AN IDEA SIR JI."* But when it comes to copyright, it would not be wrong to say *"WHAT AN EXPRESSION SIR Ji."*

Now that the doctrine has become applicable in Indian jurisdiction, it is clear from the discussion in the last chapter that the idea-expression dichotomy in India is still in its infancy and in the R.G. The courts referred to legal rulings by the United States and the United Kingdom, in reaction to each substantive judgment that followed.Of course, the courts have tried faithfully to represent the aforementioned theory, and to some degree, to make it a critical component of the Indian Copyright Act. The growth and acceptance of the dichotomy of idea-expression could not take off because the Indian courts failed to understand the difference between U.S. and English laws, which led to contradictions, differences, and inconsistencies.