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Prasanna S,

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No. 08, Arul Nagar, Seera Thoppu,

Maudhanda Kurichi, Srirangam,

Tiruchirappalli – 620102

Phone : +91 94896 71437 - info@iledu.in / Chairman@iledu.in



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The Concept of Originality under the Copyright Law

Author - Aashi Jain, Student at National Law University and Judicial Academy

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Abstract

Originality in works protected by copyright is a requirement of every copyright regime in existence. The definition of "original" as it is generally understood is "new" or "not done before." There has been more than one ideology that has attempted to define "originality," but there isn't a clear-cut, universal definition of the term and hence various doctrines have been introduced. The researcher in this article tries to talk about the concept of originality and its application in different jurisdictions. However, the researcher also believes that while giving copyright the standard set for originality should not be way too high so that it becomes difficult to get the right nor shall it be too low so that anyone by making a few modifications qualify for the copyright protection as this will only lead to the less qualified works. Hence, it is utterly important that a balance between the two is done so as to maintain decorum.

Keywords: Copyright, producer, original, doctrine, creative

Introduction

When a person has some legal right over a property that has been produced by him is known as Copyright. In this right a person has to seek the person of the owner to use the material, which can be described as the definition of copyright. A work can be reproduced only by the owners or the person who have the authority to do so.

However, a fact to be mentioned is this that the owners have the right over the work for a certain

period of time i.e. they can reproduce and use the same for a limited period. This right has been granted to the producers as they give their time and efforts to make the product and hence due credit must be given for the intellectual property they have produced so that not any kind of illegal production is done on the same. "Computer programs, works of art, poetry, graphic designs, musical lyrics and compositions, novels, films, innovative architectural designs, website material, etc. are examples of unique inventions". Hence, this is one of the measure in protecting the efforts of the content creator.

Originality under the copyright is considered only when original ideas are used by the author rather than something done through copying or plagiarism. "A work of this kind is referred to as an Original Work of Authorship (OWA)." A person gets the copyright if he has an original work hence preventing others from using the same i.e. to copy. In order to get a stronger position for the work done the person should use the legal means to apply for a copyright.

"Not all kinds of work are protected by copyright. Copyright laws do not cover ideas, discoveries, concepts, or hypotheses. Titles, domain names, slogans, and brand names are not covered under copyright legislation. An original work must be in physical form in order to be protected by copyright. This means that in order for any speech, discovery, musical composition, or idea to be protected by copyright, it must be physically recorded"²¹⁸⁸.

Indian copyrights act, 1957

"According to **Section 13 of the Indian Copyrights Act, 1957**, copyright is given to the works which show characteristics of:

1. Original literary, dramatic, musical, and artistic work;
2. Cinematographic films, and;
3. Sound recordings."²¹⁸⁹

Originality

²¹⁸⁸ Will Kenton, "Copyright Explained: Definition, Types, and How It Works", Investopedia.

²¹⁸⁹ Indian Copyrights Act, 1957.

Originality in works protected by copyright is a requirement of every copyright regime in existence. The definition of "original" as it is generally understood is "new" or "not done before." Originality is the quality that distinguishes invented or made works as being fresh or novel. It was written with a distinct style and message. When describing the originality of writers, artists, and intellectuals, the word "originality" is frequently used as a compliment. In law, the quality of an idea's expression is given more weight. There has been more than one ideology that has attempted to define "originality," but there isn't a clear-cut, universal definition of the term and hence various doctrines have been introduced which are explained below²¹⁹⁰:

- *"UK's Sweat of the Brow Doctrine"*: in this doctrine it has been held that the producer acquires rights through "due diligence" while he produces the work. Hence, it can be said that this idea is totally dependent on the skill, talent and labor of the content creator, hence leading to the aspect of creativity in the work. This theory was first seen in the case of the UK which is known by the name **Walter v. Lane**²¹⁹¹, "where it was seen that an actual speech was copied completely in a newspaper article and it was debated whether such verbatim replication would give rise to copyright in the work. The court held that the reporter used his own skills to write the same and hence the work is protected by copyright, according to the court."

In the case of **"University of London Press v. University Tutorial Press"**²¹⁹², "it was explained by The Chancery Division of England that the test of originality under the prototypical "sweat of the brow," need not be in an original or innovative form in order for it to be protected under the Copyright Act.

However, it also means that the work shouldn't be plagiarized. Since the exam questions are created by the authors they are unique in the sense of the copyright laws. The court ruled that the plaintiff's copyright cannot be denied just because other examiners have asked questions akin to hers". Other countries, such as Canada, Australia, and India, also adhere to this idea.

- *"USA's Modicum of creativity doctrine"*: The United States have the most advanced copyrights laws and is considered as the one having the oldest copyrights laws. In the country, the courts have given prior importance to the creative contributions of the producers since the 17th century. With this said, the court have even applied the same doctrine in the case of **"Feist Publications, Inc. v. Rural telephone Service Co."**²¹⁹³ "where the American Supreme Court had refuted the above discussed theory and maintained that a work must demonstrate a "modicum of creativity" in addition to being the result of separate production in order to be considered original. According to this idea, originality exists in a piece of work if it was produced with enough intellectual inventiveness and judgment. Although a certain level of innovation is required for copyright protection, but it need not necessarily be high. The main legal issue was whether or not a compilation like a phone book was covered by the Copyright legislation. The court ruled that while individual facts, such as names and addresses, are not protected by the copyright, collections of data are. This is largely due to the original way of expressing oneself through arranging, and if it exhibits even a bare minimum of innovation, it will be protected by copyright. The Court determined that Rural's directory failed to meet the

²¹⁹⁰ Mimi, Anshuman, "Originality under Copyright Law-Is There Any Definite Standard?" Legal service India.

²¹⁹¹ Walter v. Lane (1900) AC 539.

²¹⁹² University of London Press v. University Tutorial Press (1916) 2 Ch. 601

²¹⁹³ Feist Publications, Inc. v. Rural telephone Service Co. 499 U.S. 340 (1991)

requirements for copyright protection since it was just a compilation of data lacking the minimum amount of inventiveness necessary for copyright protection". As a result, Rural's case was dropped²¹⁹⁴.

The United States Supreme Court reviewed the issues of originality with regard to copyright in the 1903 decision of **Bleistein v. Donaldson Lithographing Co**²¹⁹⁵, and "it rejected the idea that originality should be determined in relation to the artistic merits of the work. The court focused on whether or not the purported artist's own expression was present rather than the work's originality or ingenuity. The law presumes that if an item shows a "distinguishable variation" from another work, such variation bears the imprint of the author's person and qualifies for copyright protection. Later, this Bleistein test was used in a variety of other issues, particularly those involving fine art copyright."

- "*Doctrine of Merger in India*": previously, even India favoured the "sweat of the brow" doctrine. By adopting the strategy of the English courts, it was noted by the Supreme Court that if certain modifications or some advances or changes have been done in the work by using the original work then the copyright law is not affected and hence the person doing the same is not prevented from doing so. It is not necessarily required that there must be some creativity to claim copyright. Hence, it can be said that a copyright can be claimed even by compilations like "dictionaries, gazettes, maps, arithmetic, almanacs, and encyclopaedias" as decided by the court. In "**Burlington Home Shopping v. Rajnish Chibber**"²¹⁹⁶ it was held that that

the compilation is copyrightable, "where the facts were analogous to those in Feist's case.

The Supreme Court of India rejected the "Sweat of the Brow" concept and adopted a "Modicum of creativity" approach, which is the standard in the US", in "**Eastern Book Company v. D.B. Modak**"²¹⁹⁷, "the most significant case on this topic. The issue pertains to whether or not judgments can be copyrighted. The facts of the case were as such as that, The Supreme Court Case Reporter, SCC, was offended by third parties violating their copyright and publishing software that included judgments edited by SCC as well as other additions made by the editors of SCC, such as cross references, head notes, the short note's lead words, and the long note's brief summary of the facts and pertinent passage from the court's judgments, as well as standardization and formatting. In this instance, the idea of "flavour of minimum necessity of originality" was introduced. It was decided that in order to establish copyright, some degree of ingenuity in the work was necessary in order to make a copyright claim, rather than something having to be novel or obscure. The Court determined that these contributions made by the SCC editors qualify for copyright protection because they call for the editor to apply legal expertise, ability, and judgment. As a result, this activity and its development have a minimal creative flair and benefit from copyright protection.

The Court consequently granted copyright protection to the SCC editors' changes and contributions. The Court also ruled that no copyright could be asserted on court orders and rulings because they are in the public domain

²¹⁹⁴ Shuchi Mehta, "Analysis of doctrines: 'Sweat of the brow' & 'Modicum of creativity' vis-a-vis Originality in Copyright Law", 2015, India Law.

²¹⁹⁵ *Bleistein v. Donaldson Lithographing Co.* 188 U.S. 239

²¹⁹⁶ *Burlington Home Shopping v. Rajnish Chibber* 1995 PTC (15) 278

²¹⁹⁷ *Eastern Book Company v. D.B. Modak* 2002 PTC 641

and everyone has the freedom to use and publish them²¹⁹⁸.”

Other Approach

Civil law countries, such as “France and Germany, give more weight to the rights of writers and composers and have stricter standards for originality”. Authors’ rights, commonly known as *droit d’auteur*, are these rights (also German *Urheberrecht*). Although the precise definition varies from nation to country, in these jurisdictions the author is the individual whose originality resulted in the creation of the protected work. The requirement that the object being protected must have been created by the author, rather than just the result of his or her labor or investment, is a key component of authors’ rights. In both these countries, an important factor to consider for copyright is to protect the work that has been there in the minds of the producer. This has indeed lead to the creation of the link between the rights and the person. A factor to be noted is that the European Union legislation also upholds authors’ rights under civil law and places stricter requirements on “originality.”

Originality v. novelty

These two terms have different meanings in their words, like originality can’t be said that something is only new. It can also means that that the producer has produced the work entirety form the scratch and has not copied it. Whereas novelty on the other hand is something where the producer does something beyond the present work through his creativity so as to have a patent. The essence of copyright is the protection of the concept and not the idea, and the most important aspect is the uniqueness rather than the replication of the work of someone else. Hence, it is not necessary that the work be original or new but can be the sole concept of the producer.

In case of copyright, an important feature is this that two authors having the same idea with no

plagiarism may get a copyright for the works contributed by them. However in case of patent, the two producers who have the same concept in the work that they do will be prevented from getting the work registered under the same even though the contribution was different from each other. This is the essential differentiation between the two intellectual property rights.

Some Exceptions²¹⁹⁹

- *Derivative Works*: derivations are those works which if seen form a distance may be presumed that they are some modified version of the original work but in fact they will be considered as the original work. Examples of the same could be translations, three-dimensional copies of two-dimensional works, two-dimensional copies of three-dimensional works, etc. The court stated in “**Martin v. Polyplas Manufacturers Ltd.**”²²⁰⁰ “that the three-dimensional coins held such precision and details that involved a great deal of skill and labor and, as a result, held that the coins were copyrightable though the three-dimensional plastic coins were created from a two-dimensional photograph of the coins.”
- *Adaptation*: An adaptation is when a book is turned into a movie, or the other way around.

When the question arose that whether the film title “Odyssey” will be original work as it was an adaption of homers “Odyssey”, the court in “**Christoffer v. Poseidon Film Distributors Ltd.**”²²⁰¹ “stated that, in terms of presentation, laying out someone else’s narrative story in the form of a script suitable for filming manifestly involves original work. Whether it’s done successfully or poorly, the writer puts his or her personal effort into it and produces a work that didn’t exist before.”

²¹⁹⁸ Madhu Noonina, “India: Doctrine of Originality in Copyright”, 2019, Mondaq.

²¹⁹⁹ Bharat Sharma and Anusha R, “The Concept Of Originality In Copyright Law”, Zest IP

²²⁰⁰ Martin v. Polyplas Manufacturers Ltd. [1969] N.Z.L.R. 1046

²²⁰¹ Christoffer v. Poseidon Film Distributors Ltd. [2000] E.C.D.R. 48

Conclusion

Hence, it can be concluded by saying that the main gist of the copyright law is to protect the time and efforts of the producer, while it is open to others to use the same with some changes and modifications. However while giving copyright the standard set for originality should not be way too high so that it becomes difficult to get the right nor shall it be too low so that anyone by making a few modifications qualify for the copyright protection as this will only lead to the less qualified works. Hence, it is utterly important that a balance between the two is done so as to maintain decorum.

As seen above the doctrines that have been described follow different methods to qualify for the definition of originality. The originality standards for different countries and jurisdictions varies from each other hence in terms of originality it can be said that the copyright law is in contradiction. The main aim of the copyright law is to provide a balance between the work that has been done by the owner that is by providing due credits for the time and efforts and between the overly protection given that leads to monopoly. In addition, because of these reasons originality makes it understand what can be and cannot be protected by the copyright law. A step forward in the same could be the judiciary, which through its judgements in the cases can determine the concept of originality, even though the concept of originality is still not fully understood.

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