

Idea and Expression Dichotomy: A Conspicuous Demarcation

Vishal Mahalwar

Assistant Professor of Law, National Law University, Delhi, India

Abstract

“An idea that is developed and put into action is more important than an idea that exists only as an idea.”

Gautama Siddharta, the founder of Buddhism, 563-483 B.C.

This article discusses about the evolving jurisprudence of idea and expression dichotomy. It discusses the landmark judicial pronouncements which have great impact on the protectability of idea and expression. It highlights certain situation when ideas are protectable, on the other hand expressions are not protected under copyright law.

KEYWORDS: Copyright, Idea, Expression, Doctrine of Merger, Scenes a faire
Doctrine, Concept Note

Introduction

Basic principle of intellectual property is just to provide the protection to the intellect efforts of any individual. Similarly, copyright law provides the protection to the manifestation of idea rather than idea itself. Idea is just a thought or imagination; on the other hand expression is concrete form of idea. In order to get protection under copyright your expression should be in tangible form. Unless and until, you do not convert the idea in to the expression, you are not entitled to get the protection under the copyright law. We have philosophical justification behind this. According to John Locke, Human body is a property, if somebody commits any wrong against that property, then that person is subject matter to be prosecuted by the State. Similarly, if some one creates any work by employing skill and Labour, then fruit of Labour shall be considered as a property of the creator.¹ Expressions are subject matter to be created by employing skill and labour. That's why protection has been given to the expression.

Legal Sanctity

Copy right law provides the protection to expressions since copyright does not encourage the monopoly. It creates the balance between the author and the member of the society. Idea is in public domain, any body can access it. If, I write a book on Intellectual Property, it doesn't mean that I can restrain other authors to write a book on the similar title or similar theme. Copy right shall be given to expression only, not to the idea. Legal sanctity has been given to the protection of expression instead of idea.

We have international instrument like TRIPS² which clearly states that,

*“Copyright protection shall extend to expressions and not to ideas, procedures, methods of operation or mathematical concepts as such”.*³

Similarly, U.S. Copy right Act also provides that,

“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” .⁴

As far as Indian copyright law is concerned, no provision pertaining to the protection of expression & idea has been mentioned. But, we have numerous judicial pronouncements which establish that only expressions are copyrightable rather than idea itself.

Judicial Trends on Idea & Expression

Donoghue v. Allied Newspapers Ltd.⁵ is English land mark case which clearly talks about the copy right protection to expression and not to the person who delivered the idea. In this case, Donoghue delivered his ideas, thoughts and experiences to the reporter and reporter gave his expression to the idea in the shape of an article. Here the issue was that who is the owner of copyright? Court held that expression was of reporter who converted thoughts into expression. Therefore, Donoghue did not have any copyright. In R. G. Anand v. Delux Films,⁶ Plaintiff’s copyright in the play “Hum Hindusthani” was allegedly infringed by the defendant in his film “New Delhi”. Theme of both the works was common, i.e. “Provincialism”. Court held that there was no infringement of copyright as expression was quite different from each other. In this case the Supreme Court laid down the propositions that

1. *There can be no copyright in an idea, subject matter, themes, plots or historical or legendary 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 copyright work.*

2. *Where the same idea is being developed in a different manner, 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 fundamental or substantial aspects of the mode of expression adopted in the copyrighted work. If the defendant's work is nothing but a literal limitation of the copyrighted work with some variations here and there it would amount to violation of the copyright. In other words, in order to be actionable the copy must be a substantial and material one which at once leads to the conclusion that the defendant is guilty of an act of piracy.*

3. *One of the surest and the safest test to determine whether or not there has been a violation of copyright is to see if the reader, spectator or the viewer after having read or seen both the works is clearly of the opinion and gets an unmistakable impression that the subsequent work appears to be a copy of the original.*

4. *Where the theme is the same but is presented and treated differently so that the subsequent work becomes a completely new work, no question of violation of copyright arises.*

5. *Where however apart from the similarities appearing in the two works there are also material and broad dissimilarities which negative the*

intention to copy the original and the coincidences appearing in the two works are clearly incidental no infringement of the copyright comes into existence.

6. As a violation of copyright amounts to an act of piracy it must be proved by clear and cogent evidence after applying the various tests laid down by the case laws.

7. Where however the question is of the violation of the copyright of stage play by a film producer or a Director the task of the plaintiff becomes more difficult to prove piracy. It is manifest that unlike a stage play a film has a much broader prospective, a wider field and a bigger background where the defendants can by introducing a variety of incidents give a colour and complexion different from the manner in which the copyrighted work has expressed the idea. Even so, if the viewer after seeing the film gets a totality of impression that the film is by and large a copy of the original play, violation of the copyright may be said to be proved.

In the year of 2008, Supreme Court again held that Copyright Act is concerned about the manifestation of idea rather than novel idea. All the judgments are in public domain; therefore no copyright can be claimed on the same.⁷

Doctrine of Merger

There is an anti-thesis to the general perception which talks about the legality of expressions. We have *doctrine of merger* which is an exception to the fundamental rule. According to the doctrine that doesn't provide the protection to idea and expression.⁸ When Idea and expressions are blended with each other, then no protection can be given to idea and expression. For illustration, "Sun rises in the East". Neither idea nor expression can be separated from each other. There is no other way to express this statement since it is a universal truth.

Scenes a faire Doctrine

There is another exception to the general rule i.e *Scenes a faire*. In certain situation, nobody can claim copyright over incidents, characters or settings, which are, as a practical matter indispensable or at least standard, in the treatment of a given topic. For instance, if some one is intends to make a picture on religious theme, then worship of God would be indispensable and essence part of cinematography. In case of using similar things in a movie by another person shall not amount to infringement of copyright, since there is no copyright over indispensable part for the treatment of intended topic.⁹

Concept note

Protection of concept note is new dimension of idea and expression dichotomy. Judiciary provides the protection to the elaborated idea rather than Idea. In case of Anil Gupta v. Kunal Dasgupta¹⁰ court held that

“An idea per se has no copyright. But if the idea is developed into a concept fledged with adequate details, then the same is capable of protection under the Copyright Act.”

In various cases, new jurisprudence pertaining to the idea and expression has been evolved. According to which if some one develops the idea into concept note, character sketches, detail plot of episodes, he become entitled to copyright protection.¹¹

Epilogue

Though theoretically, idea and expression are different. But practically both are overlapping to each other. Drawing a line between the two is as arduous as far from possible. There are no exhaustive parameters to figure out what are protected expressions and unprotected ideas. As Judge Learned Hand said:

“Obviously, no principle can be stated as to when an imitator has gone beyond copying the ‘idea,’ and has borrowed its ‘expression.’ Decisions must therefore inevitably be ad hoc.”¹²

In the past few years, many land mark judgments have been delivered by Hon’ble Judiciary, but still there is need of hour to evolve the concrete jurisprudence on the idea and expression dichotomy.

References:

1. John Locke, “Labour Theory of Property” in Rational Basis of Legal Institution. p.195.
2. Agreement on Trade Related Aspects of Intellectual Property Rights was negotiated in 1994. TRIPS provides a minimum standard for many forms of intellectual property.
3. Art.9 (2) of TRIPS
4. Sec. 102.(b) of U.S. Copy right Act 1976
5. Donoghue v. Allied Newspapers Ltd 1937 3 All E.R. 503
6. R. G. Anand v. Delux Films AIR 1978 S.C. 1613
7. Eastern Book Company and Ors. v. D.B. Modak AIR 2008 SC 809
8. See, Herbert Rosenthal Jewelry Corp. v. Kalpakian, 446 F.2d 738 (1971), Baker v. Selden, 101 U.S.99(1880)
9. Cain v. Universal Pictures Co. 47 F. Supp. 1013 (1942), A. A. Hoehling v. Universal City Studios Inc, 618 F.2d 972 (1980)
10. Anil Gupta v. Kunal Dasgupta 2002 25 PTC1
11. Also See, Zee Telefilms Ltd. Sundial Communications Pvt. Ltd. 2003 (27) PTC 457(Bomb), Urmi Juvekar v. Global Broadcast News Ltd. 2008 (36) PTC 1(SC)
12. Peter Pan Fabrics, Inc. v. Martin Weiner Corp., 274 F.2d 487 (2d Cir. 1960).