The Doctrine of Originality in Copyright Law

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ABSTRACT

This research paper talks about the doctrine of originality prevalent in the copyright regimes all over the world including India. Originality is often viewed as the reflection of the creator's personality. Thus it can be said that this IP domain exists in the effort that showcases the creator's personality in some form or manner. Thus, works that are mere mechanical and do not redirect the creator's character such as works of investment do not warrant protection of copyright. The paper talks about the importance of creativity in a work to be secure under the copyright and how original, an idea is not protectable under copyright. It is the expression of such as idea that has to be protected. The paper also talks about versions of the doctrine around the world and the ways that it has been protected through some of the judgments. The paper concludes with talking about the need of a uniform method universally acceptable, to regulate work is unique or not.

Keywords
Copyright, creativity, Doctrine, Law, Originality.

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Introduction

Originality is one of the pre requisites of the copyright regime. The requirement has been statutorily recognised as one of the essential conditions for most countries for work to be covered under the copyright law. Originality derives from a readily perceivable dimension of ingenuity within the work.

In *University of London v University Tutorial Press* (1916), it was apprehended that: "Within this context the term original does not mean that the job desires to be the result of original or creative thinking. Copyright Acts do not involve the originality of works, rather the expression of speech ... moreover, the Act does not specify that the expression should be in an original or novel form, or that the content should not be replicated from another work – that it should derive from the original."

Authorship can be defined as the birth of content, capturing the thought of the author or the views of the author as well as another person in a way that can be communicated and is organized. The claim of authorship cannot be asked for by a person unless some creative thinking is not involved in his or her work. The right of authorship lies only with the person who does not only compose a work but also plans and arranges it. The author could have procured his work from another but he should not have out rightly copied it and should have utilized it and made it subject to his imagination.

Therefore, unlike the innovation obtained in a patent, the copyright statute does not require that the work be completely unique in terms of the design. The aim of the law is to grant copyright to materials that are original in expression. The idea can be something that has been seen before, but the execution of it, the expression of it has to be original. This is what is meant by originality with regard to copyright.

Originality is often viewed as the reflection of the creator's personality. Thus it can be said that copyright subsists in the work that showcases the creator's personality in some form or manner. Thus, works that are mere mechanical and do not reflect the creator's personality such as works of labour or investment do not warrant protection of copyright. "However, as viewed from a point of view of compensation, if a certain attempt has been made to produce a work, it can be argued that the maker needs such protection and seems to be a reason for the protection of individuals who practice work."

Originality is generally viewed as the dimension of the work born out of the creator. There is no reason for the job to have some creative attention placed into it, it may be old but the design must be new. The research needn't be original.

The Dichotomy Idea – Expression

"Under the copyright law, concept is not a protectable subject matter. This notion is the concept that needs security. In the case of *Designer Guild* v. *Russell Williams*, it was apprehended that "plainly there can be no copyright of an concept that is solely in the mind, as a literary, theatrical, musical or artistic work that has not been articulated in copyrightable form, but the difference between ideas and expression cannot mean anything as trivial as that."

It does not mean that safeguarding is solitary provided to the work's language, and that the originality of thinking is not essential. If that would be the case, the infringer of a work would be able to avoid and punishment just by altering the work a little, making it seem like a work that is original because of the creativity displayed, however meagre may it be.

"Lord Hoffman in the Designer Guild established this difference and declared that ' the original elements in the plot of a play or novel that play a significant part in order to infringe the copyright of a work which does not replicate a single sentence of the original."

In the case of *Nichols* v. *Universal Pictures*, it was held that "of example, to safeguard literary goods, whether in common law or under the statute, it is important that the privilege cannot be simply limited to the text, otherwise a plagiarist can benefit from immaterial variations. That was never the rule, but as soon as literal appropriation ceases to be the test, the entire issue inevitably becomes general …"A lot of trends of increasing generality will suit equally well on every job, because more and more accidents are being left out. The last may not be anything than the most general declaration of what the [work] is for, and may often consist solely of its title; but there is a stage in this set of abstractions where they are no longer covered, or the [author] would be able to deter them from doing so, In which, aside from their speech, his land has never been expanded ... No one has ever been able to address the boundary and no one can ever."

It has been often stated that the rule whereby the ideas are non-protectable stems from public policy. The rule makes sure that the people can still make the use of the very core of an idea and then develop it a way that is original and unique and that has been never seen before. Therefore, in one of the cases, where the owner of a source code had brought a suit for the infringement of his License from a person who has tried to imitate the program's practical actions by looking at the source code. The court was of the opinion that there was no violation of copyright because the source code is a pure concept and thus does not deserve protection.

In *Baigent* v *Random House*, the accusation was that the author's novel, *Dan Gray*, infringed the rights of the film 'The Sacred Blood and the Sacred Grail' It was claimed that what was picked up from the book is simply facts and concepts on such an abstract nature that there was no room for any infringement. In holding the same, the judges claimed that "the line between concept and speech is to strike a fair balance between respecting the author's rights and facilitating literary growth."

In the case of *Allen* v. *Bloombury*, The copyright of 'Willy the Wizard' written by Adrian Jacobs was reportedly infringed by one of the popular Harry Potter novels, Harry Potter and the Goblet Of Fire. The five elements of the plot supposedly compromising the previous research were:

1. WTW and Goblet 's core characters are wizards who are finally to participate in a wizard contest that they win.
2. To deduce the exact nature of the principal mission, the main characters are required.
3. In a toilet, the main characters covertly reveal the essence of the main mission.
4. The main characters use knowledge obtained from helpers to complete the key mission.
5. The key job for the principal there were other twenty seven sub plots elements in the books that ere claimed to be similar.

The court did not go on to courts but even certain conclusions may be made. "Similarities on which Mr Allen depended were fairly basic and abstract concepts and he was highly inclined to conclude that they were at such a high degree of generality that they fall to concepts rather than phrases" "The difference between the general idea and the experience of the research is so intense that there is some significant distinction between the credulity of the two strains." Yet are they? The author claims that while they have not read any of the novels, the reason that both judges have come to this conclusion is. The writers, as a person who has read Harry Potter and the Goblet of Fire, thinks that Allen's 5 plot elements paint a very good image of the elements found in Goblet of Fire."

The distinction between concept and speech is very small, but for particular situations it has to be fluid and can be measured.

Doctrine Of Originality Around The World

Countries like England and New Zealand, in a work, add value to originality. Originality was not a criterion of Ann 1701's very first statute and was used instead for the first time in the 1814 Art Copyright Act. Ability, labour, and decision were the three parameters for assessing England's level of innovation and New Zealand 's view was the same.

Wham-OMFG Co. v Linclon Industries Ltd. it was said that:

"The originality provided by the Act pertains to the way in which the copyright claimant has conveyed ideas or thoughts. The Act does not mandate that the work be novel in nature but should come from the author and should not be copied from another work."

This check applies in all of the countries that obey English Common Law. The law has three different elements and the sum of all three elements is to be significant rather than negligible.

The test was also applied inconsistently and where it came to the use of expertise, it was observed that the judges were likely to defend the job only though the protection was limited, while the use of labor was difficult to grant when the amount of labor was difficult to grant.

CCH Canadian Ltd v *Law Society of Upper Canada* (2004), it was held that:

"This must be more than a pure reproduction of another work for a work to be 'original' under the scope of the Copyrights Act. It does not need to be imaginative at the same time, in the way that it is original or special. An exercise of talent and discretion is what is needed to gain copyright rights in the creation of a concept. By competence, I mean the use of one's experience, established aptitude or functional capacity to deliver the job. Through decision I mean the use of one's discernment potential or ability to shape an opinion or assessment through considering different possible alternatives in creating the job. It must not be so simple to exercise the ability and judgement required to deliver the work that it may be described as a mere technical exercise. For e.g., any talent and judgement that might merely modify a work's font to create 'that' work will be too meaningless to warrant copyright protection as an original work"

In the case of *Sawkins v Hyperion Records (2005)* it was held that:

"The rational criteria of creativity, utility, inventiveness, interest, consistency or importance are not enforced by originality. A job may be absolutely garbage and utterly useless, but it may have copyright rights."

"The sole source of copyright is the right which each person has to freely own and manage the result of his own labour. How would an inferior compositional writing be prohibited from becoming a property subject? It would be a very dangerous precedent to establish a rule that weighs the

quality of a composition before investing it with the title of property. Which explanation can be offered that an uneducated person's illiterate and poorly spelt letters would not be as much the topic of property as a well-known author's elegant and learned epistle? The substance of the property's nature is the labour employed in the concoction; the creation and the reduction of ideas into a concrete and meaningful form; and may it be claimed that work is less in the former than in the latter? Every letter is, in the general and proper acceptation of the term, a literary composition. -- Letter is a literary work, in the general and proper interpretation of the word. It is that, and nothing else; and it is so, though it may be flawed in meaning, syntax, or orthography. Any writing in which sentences are structured so as to express the writer's thoughts to the reader's mind is a literary composition; and the meaning extends just as clearly to a trivial letter as to an elaborate treatise or a finished poem"

Copyright does not exist to merely grant exclusive ownership to a person on his creation but rather also exists for the purpose of providing creative with encouragement to come forward for the creation of their work. Gaging originality based on the above-mentioned terms created a condition in which pure mechanical sketches of items were subject to copyright protection while the same was not often true for extensive written work.

"This would be a risky endeavour for law-trained professionals to be ultimate judges of the importance of pictorial representations, within the narrowest and most clear limits. On the one end, those brilliant creations will definitely lack recognition. An own novelty would find them repulsive before the public understood the modern language an author was fluent in. Of eg, it might be more than questionable that Goya's etchings or Manet's paintings might have been assured of security when first seen. On the other hand, photographs which appeared to a less informed audience than the judge should be refused copyright. But if they dominate the interests of any public, they have a commercial value — it will be arrogant to suggest they do not have an artistic and cultural value — and the taste of any public should not be regarded with contempt."

England's courts have been very lenient in awarding copyright rights and thereby awarding rights even though the imagination isn't much. It was written, in the case of Ladbroke v. William Hill:

"Reproduction of a portion that has no originality by itself (emphasis added) will not necessarily be a significant part of the copyright and will thus not be covered. And that which does not draw copyright but because of its collocation would not be a substantive part of the copyright if stripped of the collocation and so the courts would not find its replication as a infringement. That, I believe, is implied from one or two judicial findings that 'there is no copyright' in any unoriginal portion of a copyrighted whole"

In one of the other cases called Land Transport Safety Authority of NZ v. Glogau (1991), it was held that:

"If the originality is small, it is to be assumed that something other than near-accurate duplication does not justify an assumption of copyright amounting to piracy, while if there is a higher degree of originality in the work an assumption of copying will be made more readily even though the degree of resemblance is smaller. In this way the incentive would continue to be related to the degree of originality in the defensive field. Therefore keeping a low security threshold does not pose any damage."

The originality in a work has to be determined through examining the fact that whether the work is the creation of the intellect of the author himself. Intellectual creation stands for the originality in the origin and not the originality with respect to novelty.

"Collections of literary or artistic works such as encyclopedias and anthologies which constitute creative creations by means of the compilation and arrangement of their contents shall be preserved as such, without regard to the copyright of any of the works which form part of those collections."

Conclusion

The assessment of originality is done through different ways in different parts of the world and there does not exist a uniform way to find out as to what constitutes an original work and what doesn't which means that the essential parameters for copyright ability are different in different sections of the world. The measure of Author's own creative development seems ideally suited to being extended universally across the globe.

Governmental conferences governing intellectual property law, such as the Berne Conference, WIPO, Copyrights Protocol, Journeys, have also proposed the study. Because of the recommendation, the incorporation of the rule by the member countries would not take much of the time and energy of the legislature.

The other country 'assessments are the ability work and judgement test and the basic level of originality assessment. 'Possessing Intellectual Development Examination by the Student' consists of elements of both measures. The method has been shown to have performed both between jurisdictions and in action. The European Commission has been conducting the study for a long time, without any complications. The only untested factor of the study itself is how it can impact economic factors, as Europe has comparable economies in general.

The test seems to be satisfying the purpose of copyright law. For copyright to be granted to a work, the requirement from the work should be such that it is not impossible to achieve but at the same time, is not easily achievable.

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