

# Idea Expression Dichotomy in Copyright Law

## By 'Cf ctuj 'Tco cpwlep.'Rt cvggmDj cwcej ct { c'( Esheetaa Gupta

### Introduction

The idea-expression dichotomy was formulated to ensure that the manifestation of an idea (i.e. an expression) is protected rather than the idea itself. The doctrine has been widely used in the United States and is not really alien to Indian jurisprudence. Courts have repeatedly opined that ideas *per se* are not copyrightable; only the expression of an idea is copyrightable. An idea is the formulation of thought on a particular subject whereas an expression constitutes the implementation of the said idea. While many persons may individually arrive at the same idea, they can claim copyright only in the form of an expression to this idea. Such expression must be a specific, particular arrangement of words, designs or other forms. Thus, such a doctrine allows for several expressions to be available for the same idea.

### History and Purpose

The earliest case regarding the idea-expression dichotomy is the U.S. Supreme Court decision of *Baker v. Selden*,<sup>1</sup> which concerned the copyright over an account book. Selden had written a book which described an improved system of book keeping by a particular arrangement of columns and headings which made the ledger book easier to read. Baker accomplished a similar result, but using a different means of arrangement of columns and headings. The court held that while a copyright may exist over the publishing and sale of a book, it does not extend to the ideas and “art” illustrated in the book. The U.S. Supreme Court created a clear description between an idea and its expression, the primary reason being that otherwise, it would result in providing an undue scope of monopoly to the copyright holder and would amount to anti-competitive practice.

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<sup>1</sup> 101 [U.S. 99](#) (1879)

As once held by Judge Learned Hand in *Nichols v. Universal Pictures Corp.*,<sup>2</sup> particularly in the context of scripts and plays:

*“Upon any work, and especially upon a play, a great number of patterns of increasing generality will fit equally well, as more and more of the incident is left out. The last may perhaps be no more than the most general statement of what the play is about, and at times might consist only of its title; but there is a point in this series of abstractions where they are no longer protected, since otherwise the playwright could prevent the use of his "ideas," to which, apart from their expression, his property is never extended.”*<sup>3</sup>

With the inception of this doctrine, authors and publishers were encouraged to create more works, thereby stimulating and protecting creativity.

## Merger Doctrine

As the above case illustrates, while the idea-expressions dichotomy can be understood in practical terms, one may also contemplate a situation where such a strict distinction cannot be made. On certain occasions, there may just be one way to express an idea. In such cases, as per this doctrine of merger, the idea and its expression are said to be ‘merged’ and the work cannot be copyrightable. In such instances of merger, the expression is no longer copyrightable because granting copyright over the expression will effectively confer the owner with a monopoly over the idea itself, which was the avowed objective of creating the idea-expression dichotomy in the first place. For example, an algorithm to add two numbers or print a number on the screen can be expressed in only one way. Granting copyright over this will allow such right-owner to restrict anyone from ‘reproducing’<sup>4</sup> or even translate<sup>5</sup> into another form of expression, in order to perform basic operations or. Grant of such a broad monopoly will be against public good and therefore the law does not grant copyright in cases where the doctrine of merger applies.

## Scenes a Faire

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<sup>2</sup> See *Nichols v. Universal Pictures Corp.*, 45 F.2d 119

<sup>3</sup> *Id.*

<sup>4</sup> Section 14(a)(i), Copyright Act, 1957

One may also contemplate instances where the expression of an idea cannot be made without the use of certain elements, such that the idea cannot exist without those elements or form of expression. The Courts consider these essential elements of features as non-copyrightable since protecting these will effectively lead to the protection of the idea. Such essential elements are referred to as *Scenes a Faire*. A classic example is a gun shot in an action scene/sequence. *Thomas Walker v. Time Life Films Inc.*<sup>6</sup> is a U.S. case from the Second Circuit Court where the Court has made observations on what constitutes ‘*scenes a faire*’. In that case, the appellant, Walker, an officer once posted in South Bronx as a lieutenant for a year, published a book based on his experiences titled “*Fort Apache*” that narrated the harrowing impressions of myriad crimes, ranging from murders to robberies and draws a social pattern of South Bronx. The Defendants’ company contracted with another person to write the screenplay for a film titled “*Fort Apache-The Bronx*”, which also related to the crimes occurring in South Bronx. In a suit for copyright infringement filed by Walker, the Court held that elements such as drunks, prostitutes, vermin and derelict cars would appear in any realistic work relating to the occupation of policemen in the South Bronx. These similarities were, therefore, held to be not protectable under the “*scenes a faire*” doctrine. Effectively, *scenes a faire* does not extend the copyright exclusivity to “stock” themes commonly linked to a particular genre. This doctrine has also been discussed in the Indian case of *NRI Film Production Associates v. Twentieth Century Fox Film Corporation*.<sup>7</sup>

## The Law in India

Copyright Law in India is governed by the Copyright Act, 1957. The Act is exhaustive with Section 13 of the Act defining the scope of existence of copyright by listing those works in which copyright subsists. Section 14(a) defines the meaning of copyright in literary, dramatic, musical and artistic works and describes the exclusive rights given to the author of the work. Assignments of, and licenses to, copyrighted works, have been explained in detail in the Act.<sup>8</sup>

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<sup>5</sup> Section 14(a)(v), Copyright Act, 1957

<sup>6</sup> See *Thomas Walker v. Time Life Films Inc.*, 784 F.2d 44 (2d Cir. 1986); *Joshua Ets-Hokin v. Skyy Spirits Inc.*, 225 F.3d 1068 (9th Cir. 2000); *Williams v. Crichton*, 84 F.3d 581, 587 (2d Cir. 1996)

<sup>7</sup> 2005 (1) KCCR 126, ILR 2004 KAR 4530

<sup>8</sup> See Sections 18-19 & 31, Copyright Act, 1957

The Act also extensively deals with issues of infringement as under Section 51 as well as the exceptions to infringement under Section 52.

However, the Act remains silent on the idea-expression dichotomy. *R.G.Anand v. Deluxe Films*<sup>9</sup> is the only Supreme Court decision that seems to have given some credence to idea-expression dichotomy. That case dealt with the alleged infringement of the script of a play, arising from the adaptation of the same into a cinematograph film. The main theme of the play was provincialism, where the plot involved persons belonging to different provinces (Punjab and Tamil Nadu). The film retained the same theme, simply reversing the gender of the person originating of the above provinces. The Court first compared the play and the movie from a broad perspective and opined that the film's theme was broader in scope, covering both provincialism and dowry. In concluding that infringement was not established, the Court held that copyright can not be acquired over an idea (the idea being provincialism in this case), and factually held that the dissimilarities between the two works was substantial enough for one to conclude that there was no colourable imitation of his play's script. Being a Supreme Court decision, the principles established in this case form part of the law of the land and holds good even today.

The Hon'ble Delhi High Court, in the case of *Chancellor Masters and Scholars of the University of Oxford v. Narendra Publishing House and Ors.*<sup>10</sup> has extensively dealt with the idea-expression dichotomy.<sup>11</sup> In concluding the act of publishing a guidebook that included independently solved solutions to the problems provided in the plaintiff's textbook was not an infringement of the plaintiff's copyright, the Hon'ble Delhi High Court, *inter alia*, relied on the idea-expression dichotomy. Other High Court judgments on this issue include, *Mattel Inc. v. Mr. Jayant Agarwalla*,<sup>12</sup> which was with reference to the famous "Scrabble" board game and *Barbara Taylor Bradford v. Sahara Media Entertainment Ltd.*,<sup>13</sup> which was with reference to the adaptation of a book titled "A Woman of Substance" into a TV show named "Karishma - The Miracle of Destiny".

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<sup>9</sup> See *R.G.Anand v. Deluxe Films*, AIR 1978 SC 1614

<sup>10</sup> 2008 (38) PTC 385 (Del)

<sup>11</sup> *Id.* at para16.

<sup>12</sup> 2008 (38) PTC 416 (Del)

## Conclusion

It is clear that Indian Courts have indeed appreciated and applied the concept of the idea-expression dichotomy under copyright law. At the same time, the kind of nuanced approach seen in the USA is not really present in India. One example is the merger doctrine; another example is the three-step process to determine infringement of a copyrighted computer programme,<sup>14</sup> whereby certain essential elements necessary to write a program are excluded from the scope of copyright exclusivity. It may be that Indian courts never had any real opportunity to deal with such questions. However, the trend of relying on both UK and US jurisprudence,<sup>15</sup> indicates that Indian Courts are ready and willing to borrow appropriate principles from other jurisdictions and therefore, will be ready to face any doctrinal challenges.

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<sup>13</sup> 2004 (28) PTC 474 (Cal)

<sup>14</sup> See *Computer Associates International, Inc. v. Altai, Inc.*, 982 F.2d 693 (2d Cir. 1992)

<sup>15</sup> See, e.g., *Eastern Book Company v. D.B. Modak*, 2008 (1) SCC 1.