

Copyright Dos and Don't For Researchers

S. MATILAL

What is Copyright? Bundle of Rights



- To reproduce the work in any material form
- To issue copies of the work to the public
- To perform the work in public
- To communicate the work to the public
- To make any **cinematograph** film or sound recording in respect of the work
- To make any translation of the work
- To make any **adaptation** of the work



Cinematograph => an early term used for several types of motion picture film mechanisms. The name was used for movie cameras as well as film projectors, or for complete systems that also provided means to print films.

Adaption => the state or process of changing to suit a new situation.



Requirement of Copyright

Trinity=>Trinity, in Christian doctrine, the unity of Father, Son, and Holy Spirit as three persons in one Godhead.

Fixation=> (psychology), the state in which an individual becomes obsessed with an attachment to another human, an animal, or an inanimate object; (in other way) when something is stuck firmly to another surface.

Trinity of
Copyright

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graph TD; A[Trinity of Copyright] --- B[Originality]; A --- C[Expression Not Idea]; A --- D[Fixation]
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Originality

Expression
Not Idea

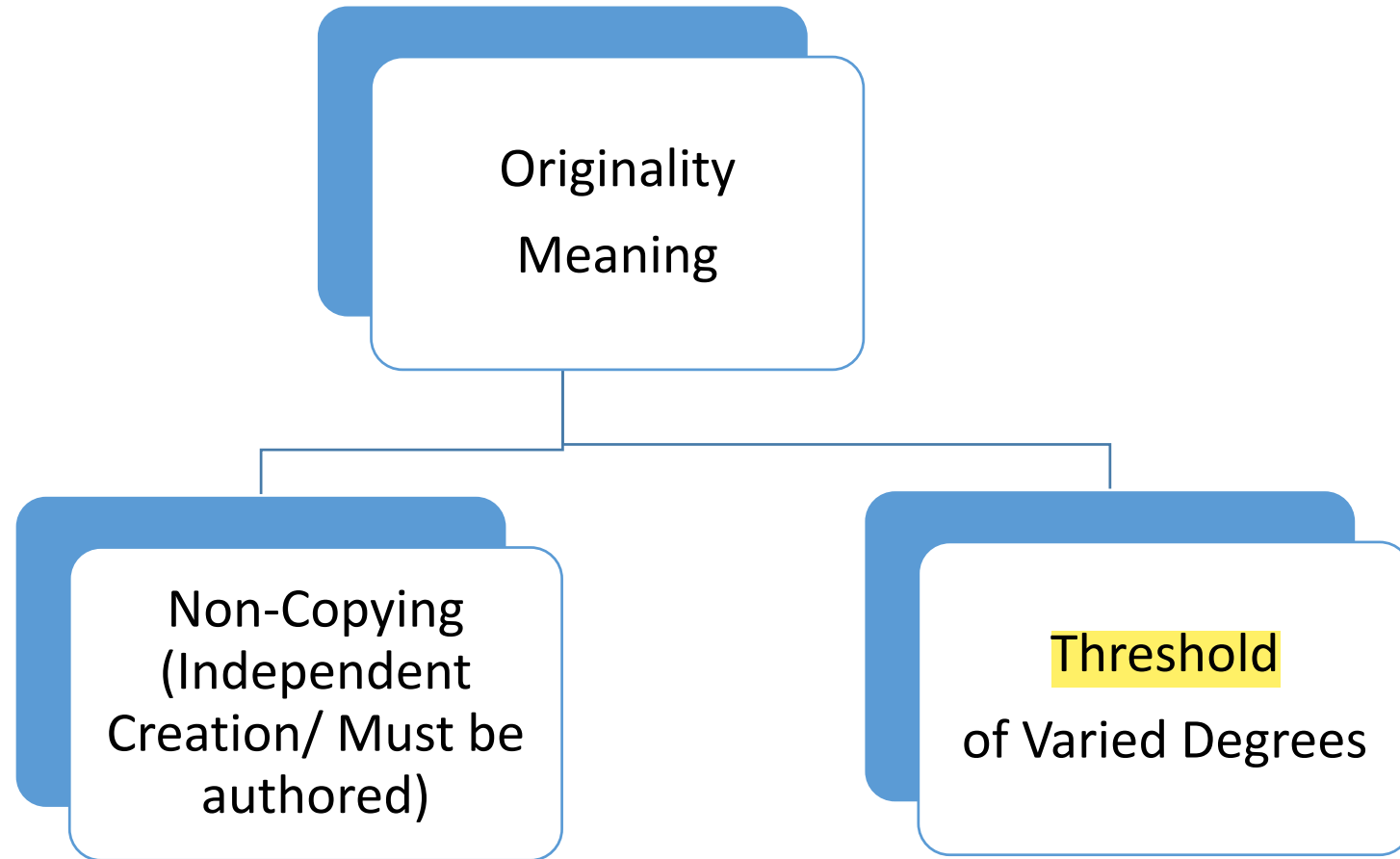
Fixation

Copyright Law in India contemplates that copyright subsists in original Literary, Dramatic, Musical and Artistic Work

Originality Requirement

Contemplate (verb)=>to look at somebody/
something, often quietly or for a long time.

Subsist (verb)=> to exist; continue in existence. "The
villagers subsist almost entirely on rice and fish".



Threshold=>(noun). the starting point
for a new state or experience.

Sheldon v. Metro-Goldwin Picture Co., 89 F2d 49, 54 (2d Cir. 1936) aff'd 309 US 390 (1940)

- Judge Learned Hand had explained the concept in the following words:

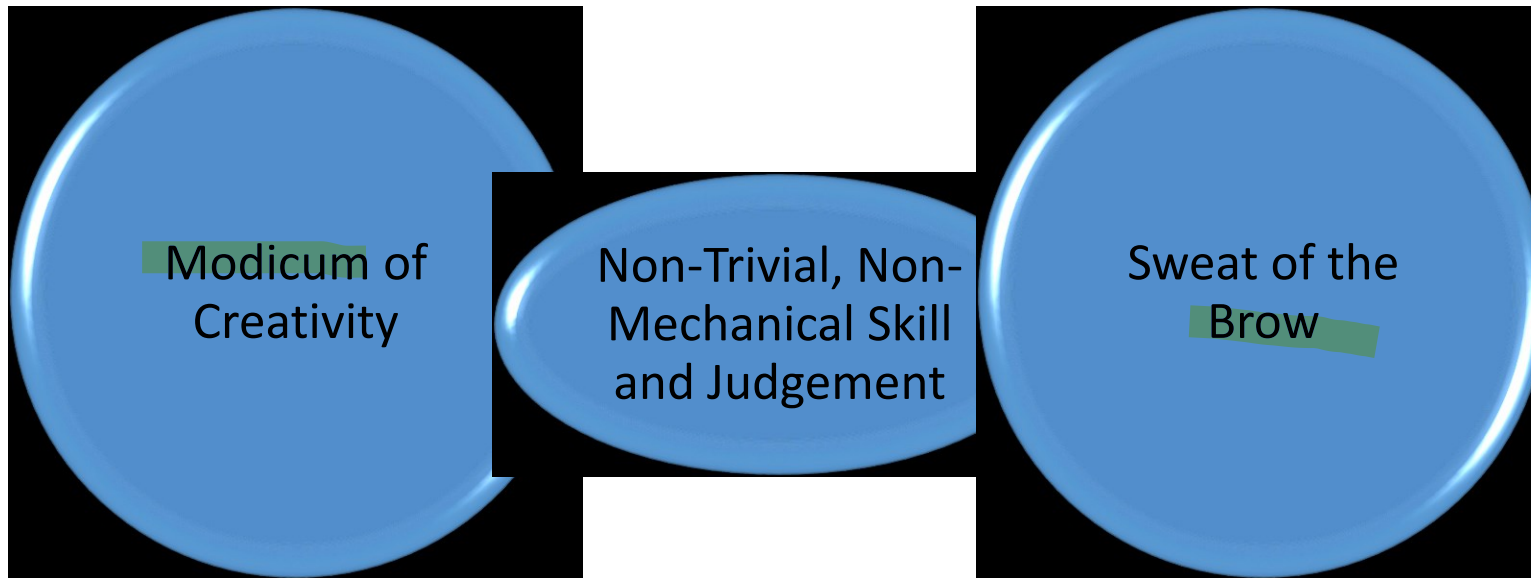
“[I]f by some magic a man who had never known it were to **compose** anew Keats’s *Ode on a Grecian Urn*, he would be an author, if he copyrighted it, others might not copy that poem, though they might of course copy Keats’s”.

Compose=> to produce music, poetry, or formal writing.

Threshold

Different Standards of Originality

Modicum=>A modicum of something, especially something that is good or desirable, is a reasonable but not large amount of it.



Sweat of the brow (phrase) =>by one's own hard work, typically manual labour.

Indian Approach to Originality

- In *Eastern Book Company v. D.B. Modak* [(2008) 1 SCC 1], our Supreme Court referring to the Canadian Supreme Court's decision in *CCH Canadian v. Law Society of Upper Canada* adopted the following approach:
 - Copyright protects the original expression not the idea
 - The expression must originate from the author
 - For producing the work the author needs to apply labor, skill and judgment with a flavor of creativity.

Not an Idea but the Expression of
the Idea

No Specific Provision in India but established by case laws

- Section 102(b) of the U.S. Copyright Act **contemplates:**
- “In no case does the 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”

Contemplate => to spend time considering a possible future action.

Embody=>to include or contain something.

R.G. Anand v. Delux Films (AIR 1978 SC 1613)

Ham Hindustani (1954)



1956 Hindi romantic comedy film directed by Mohan Segal



Plaintiff => a person or company that makes a legal complaint about someone else in a court of law.

Defendant => a person who is accused of a crime in a court of law.

R.G. Anand v. Delux Films (AIR 1978 SC 1613)

- The plaintiff wrote a Ham Hindustani and it soon became very popular.
- In 1954, the defendant Mohan Sehgal sent a letter to the plaintiff that he wishes to make a movie based on the play.
- The plaintiff met the defendant and discussed the entire play.
- The defendant did not commit anything, but the plaintiff later came to know that the defendant released a movie titled New Delhi.
- After watching the movie, the plaintiff was of the opinion that it is based on the story of his play.
- So he filed a suit against the defendant for permanent injunction and damages.
- Both the District Court and the High Court ruled against the plaintiff on a finding of the facts.

Injunction=>an official order to do or not do something.

Decision

- 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 copyrighted work.
- The Court was of the opinion that no prudent person after seeing both the works will get the impression that film is a copy.
- At most, the central theme of provincialism is the same but that is an idea not protected by copyright.

Prudent (adjective) => sensible and careful when making judgements and decisions; avoiding unnecessary risks.

Provincialism=> narrowness of mind or outlook; lack of sophistication.

Mansoor Haider v. Yashraj Films Pvt Ltd, 2014(59) PTC 292(Bom)

Mansoor Haider
(Run Bhoomi)



Dhoom 3



- The Plaintiff was the author of the film script “ONCE”.
- It was claimed that the film “DHOOM 3” infringed the Plaintiff’s copyright in the aforesaid script.
- The Plaintiff sought an order asking for credit in the titles of the film and interim injunction against release *via* satellite broadcast.
- According to the Plaintiff, the script was handed over to the Defendant in early 2010 for their perusal which was later used by the Defendant for “DHOOM 3” without the consent of the Plaintiff.

Infringe=>(verb) to break a rule, law, agreement, etc.

Aforesaid (adjective) => denoting a thing or person previously mentioned.

Interim (adjective) => temporary and intended to be used or accepted until something permanent exists.

Perusal (noun) => the action of reading through something, especially to find the part you are interested in.

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 copyrighted work.

Manifest=> to show something clearly, through signs or actions. Substantial (adjective)=>large in size, value, or importance.

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** imitation 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**.

Literal =>true to fact; not exaggerated; actual or factual: a literal description of conditions.

Piracy=> the illegal copying of books, video, tapes, etc; The crime of attacking ships in order to steal from them.

3. One of the surest and the safest tests 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 law discussed above.

Infringement=>an action that breaks a rule, law, etc.

Cogent=>(adjective) strongly and clearly expressed in a way that influences what people believe.

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 perspective, 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.

Merger

- When an idea is inseparable from its own expression, that idea is said to merge with the expression, and such expression, in spite of originality, is denied copyright protection.



Scènes à faire

The incidents, characters or settings which are as a practical matter indispensable, or at least standard, in the treatment of a given topic are not copyrightable. Because it is virtually impossible to write about a particular historical era or fictional theme without employing certain “stock” or standard literary devices, scenes a faire are not copyrightable as a matter of law.

Scènes à faire => A French term refers to scenes or elements that are considered standard or necessary in a particular genre or type of story.

Fixation Requirements

Fixation: The ideas must be fixed in some tangible medium of expression. Copyright protection is automatic, although there are benefits to officially registering your work with the Copyright Office. Copyright protection is immediate, as soon as the expression is fixed in tangible form.

Statutory requirement=> is an established rule by law, like copyright, trademark protections, Sarbanes-Oxley Act (SOX). A regulatory requirement is established by government agencies.

Subsist (verb)=>to manage to Stay alive with very little food or money.

Statutory Requirement in the U.S.

- **Section 102(a) of the U.S. Copyright Act lays down:** “Copyright protection **subsists**, in accordance with this title, *in **original** works of authorship **fixed** in any **tangible** medium of expression*, now known or later developed, from which they can be **perceived**, reproduced, or otherwise communicated, either directly or with the **aid** of a machine or device.”
- **Section 101 of the U.S. Copyright Act lays down:**
- “A work is "fixed" in a *tangible medium of expression* when its embodiment in a copy or phonorecord, by or under the authority of the author, is *sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration.*”

Tangible (adjective) => that can be clearly seen to exist.

Perceive (verb)=> to become aware of (something) through the senses.

Aid (noun) => help.

Williams Electronics, Inc. v. Artic International, Inc., 685 F. 2d. 870 (3d Cir. 1982)

- The fixation requirement is met whenever the work is “sufficiently permanent or stable to permit it to be ... reproduced, or otherwise communicated” for more than a transitory period.
- The (video game’s) display satisfies the statutory definition of an original “audiovisual work,” and *the memory devices of the game satisfy the statutory requirement of a “copy” in which the work is fixed.*

Indian Law

Sec 2 (h) of the Copyright Act, 1957:

"dramatic work" includes any piece for recitation, **choreographic** work or entertainment in **dumb show**, the scenic arrangement or acting form of **which is fixed in writing or otherwise** but does not include a cinematograph film

Choreography (noun) => the arrangement of movements for a dance performance.

Dumb show=>gestures used to convey a meaning or message without speech; mime.

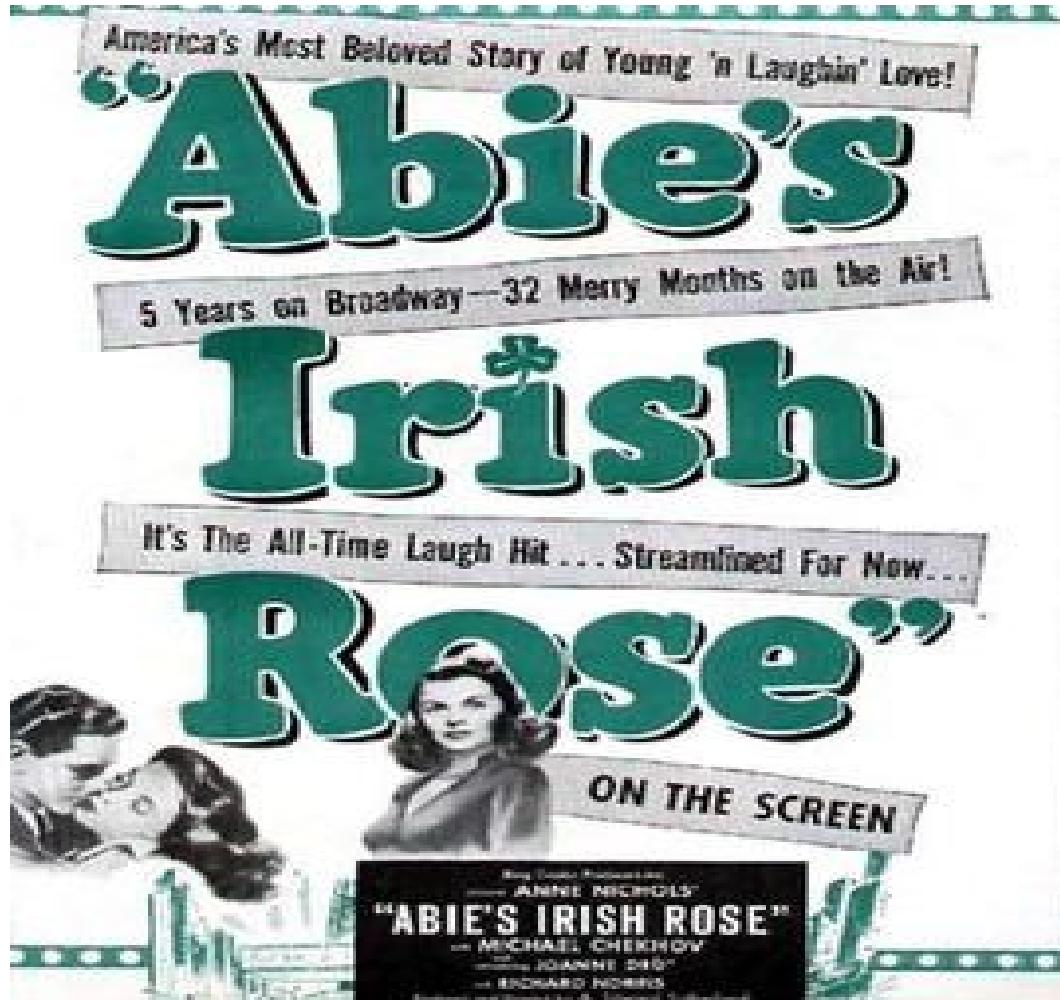
NON-Literal Copyright- An Insight

The copying of program design and structure can also result in copyright infringement. This 'non-literal' form of infringement has its origins in infringement of other works, particularly, plays and stories, where courts have expressly stated that copyright protection does not extend strictly only to the words.=> (See more)

Nichols vs. Universal Picture Corporation, 45F. 2d. 119 (2d Cir, 1930)

Anne Nichols [*Abie's Irish Rose*]

A Jewish boy marrying an Irish Catholic girl against the wishes of both of their fathers.



Universal Picture [The Cohens and Kellys]

An Irish boy who marries a Jewish girl from feuding families



Holding

- Copyright protection of literature is not only limited to the exact text, or else an **infringer** could get away with copying by making trivial changes.
- The question is whether had taken “substantial” or not.
- It is impossible to set a firm boundary demarcating the line between work and ideas,
- Nichols’s copyright did not cover everything of her play
- There was no **infringement**, as the ideas that are copied are really universal concepts and **stock characters**.

Infringement (noun) => a violation, a breach, or an unauthorized act.

Stock Characters => A stock character is a type of character used in fictional media that is instantly recognizable to audiences.

Judge Learned Hand **propounded** the famous **abstraction test** in order to determine the scope of copyright protection for the not textual elements of a traditional copyrightable work. Judge Hand stated:

"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 they play is about, and at times might consist only of its title; but there is a point in these series of abstractions where they are no longer protected, since otherwise the **playwright could prevent the use of his idea, to which apart from their expression, his property is never extended"**

Propound (verb) => to suggest a theory, belief, or opinion for other people to consider.

Abstraction test => A way to check if something has been copied without permission.

Playwright => a person who writes plays.

The Abstraction-Filtration-Comparison test (AFC) => is a method of identifying substantial similarity for the purposes of applying copyright law. In particular, the AFC test is used to determine whether non-literal elements of a computer program have been copied by comparing the protectable elements of two programs.=> (see more)

Computer Associates International, Inc. v. Altai, Inc., 982 F.2d 693 (2d Cir. 1992)

Proposed a sophisticated three tier abstraction-filtration-comparison test.

Sophisticated (adjective) =>having or showing a lot of experience and knowledge about the world and about culture, art, literature, etc.

Implicitly => in a way that is suggested but not communicated directly.

Substantial=>of considerable importance, size, or worth.

Dissect (verb) =>methodically cut up (a body or plant) in order to study its internal parts.

Step One: Abstraction

While the **abstractions test was originally applied in relation to literary works such as novels and plays**, it is adaptable to computer programs. In contrast to the Whelan approach, the abstractions test **"implicitly"** recognizes that any given work may consist of a mixture of numerous ideas and expressions

As applied to computer programs, the abstractions test will comprise the first step in the examination for **substantial** similarity. **Initially, in a manner that resembles reverse engineering on a theoretical plane, a court should dissect the allegedly copied program's structure and isolate each level of abstraction contained within it. This process begins with the code and ends with an articulation of the program's ultimate function.** Along the way, it is necessary essentially to **retrace** and map each of the designer's steps--in the opposite order in which they were taken during the program's creation.

Allegedly (adverb) => accused but not proven or convicted.

Articulate =>to give clarity or distinction to.

Retrace=>'To retrace' is 'to walk the same path again'.

Merger =>(noun)a combination of two things, especially companies, into one.

Step Two: Filtration

Once the program's abstraction levels have been discovered, the substantial similarity inquiry moves from the conceptual to the concrete. Professor Nimmer suggests, and we endorse, a "successive filtering method" for separating protectable expression from non-protectable material. This process entails examining the structural components at each level of abstraction to determine whether their particular inclusion at that level was "idea" or was dictated by considerations of efficiency, so as to be necessarily incidental to that idea; required by factors external to the program itself; or taken from the public domain and hence is nonprotectable expression.**

Unprotected Elements

- ✓ Ideas
- ✓ Merger
- ✓ Scènes à faire
- ✓ Public Domain Materials
- ✓ Dictated by functionality
- ✓ Industry standard

A scène à faire => (French for "scene to be made" or "scene that must be done"; plural: scènes à faire) is a scene in a book or film which is almost obligatory. E.g. A car chase in an action movie; A love triangle in a romantic comedy etc.

** Generally, copyright protects the expression of ideas but does not protect the ideas themselves.



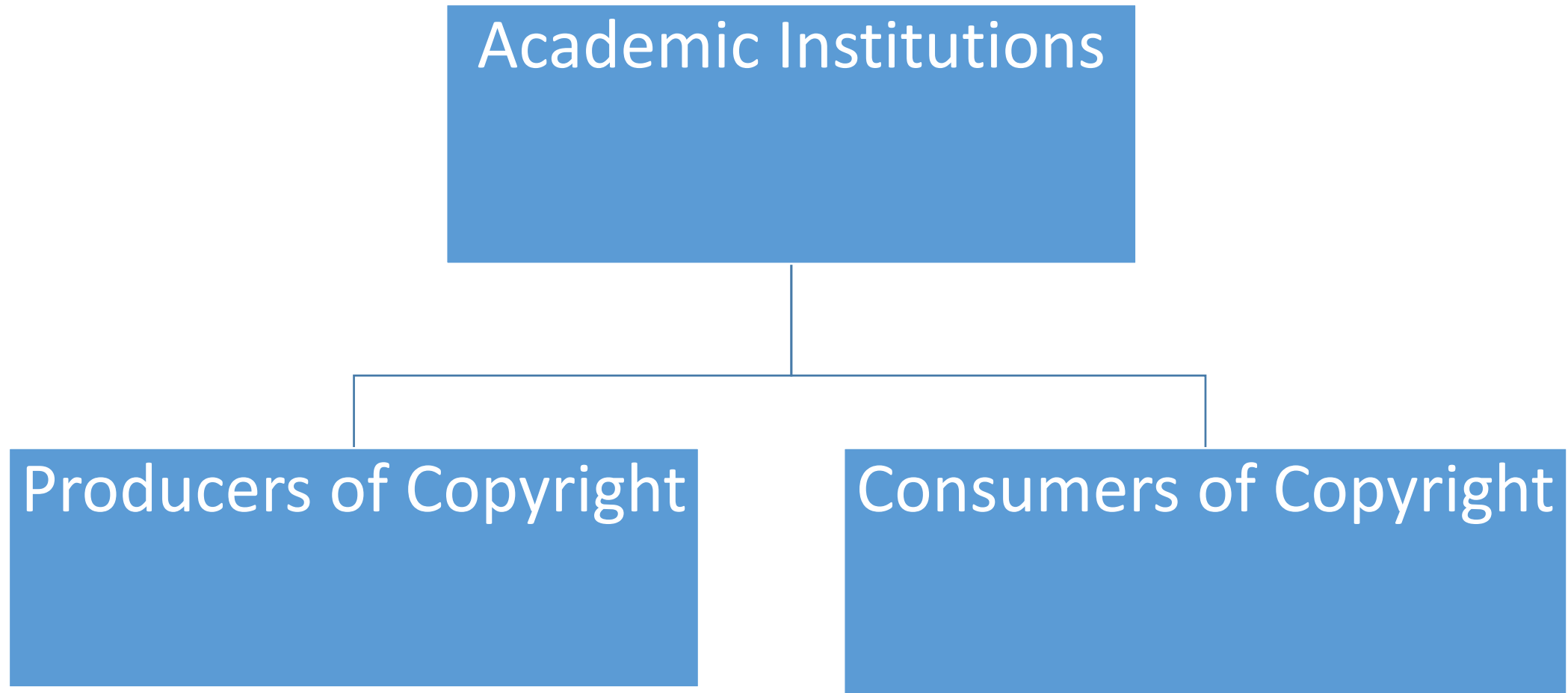
Step Three: Comparison

Entail (verb)=>involve (something) as a necessary or inevitable part or consequence; (in law: noun) a limitation of the inheritance of property to certain heirs over a number of generations.

Nugget (noun) => a lump of something, as of precious metal.

The third and final step of the test for substantial similarity that we believe appropriate for non-literal program components **entails** a comparison. Once a court has sifted out all elements of the allegedly infringed program which are "ideas" or are dictated by efficiency or external factors, or taken from the public domain, there **may remain a core of protectable expression**. In terms of a work's copyright value, this is the golden **nugget**. At this point, the court's substantial similarity inquiry focuses on whether the defendant **copied any aspect** of this protected expression, as well as an assessment of the copied portion's relative importance with respect to the plaintiff's overall program

Why Copyright Is Relevant for Universities?



Academic Institutions- As Producers of Copyrighted Contents

- The researchers and students write research papers and dissertations.
- The faculty members, researchers, students write and publish scholarly monographs, books, conference proceedings, journal articles.

Monograph => a specialist written work or exhibition on one subject or one aspect of a usually scholarly subject, often by a single author or artist.

Conference=>a formal meeting of people with a shared interest, typically one that takes place over several days.

Academic Institutions –As Consumers of Copyrighted Contents

- They procure books, journals, provide photocopying services.
- They use software tools, digital contents, and e-databases.
- These contents are used by faculty members, researchers, students and in some cases general public.

Managing Copyright- As Consumers and Producers [Avoiding Infringement]

What is Infringement?

Violation of any of the Rights

For example **photocopying** of a book violates right to reproduction.

Scanning of a book violates right to reproduction.

Sending the scanned book through email violates right to circulation.

Deemed (verb: past participle)=>to consider or judge something in a particular way.

Contravention (noun) =>an action which offends against a law, treaty, or other ruling.

Confer (verb) =>grant (a title, degree, benefit, or right); to exchange ideas on a particular subject.

51. When copyright infringed.—
Copyright in a work shall be **deemed** to be infringed—

(a) when any person, without a licence granted by the owner of the copyright or the Registrar of Copyrights under this Act or in **contravention** of the conditions of a licence so granted or of any condition imposed by a competent authority under this Act— (i) does anything, the exclusive right to do which is by this Act **conferred** upon the owner of the copyright, or

Do Research Works Constitute Infringement?

- Every Research uses quote from Text Books and Articles
- Thus, every Research *prima facie* violates reproduction right, circulation rights and communication rights.

Prima facie (adverb) =>on the first impression.

Section 2(o) of the Copyright Act, 1957

“literary work” includes computer programmes, tables and compilations including computer databases;

Literary work =>Literary works include nondramatic textual works with or without illustrations. They may be published or nonpublished. Computer programs and databases also are considered literary works. Plays, dramas, and screenplays are not in the literary works category.

How to Escape Infringement?

- Take License.

Or

- Ensure that the activities fall within the ambit of exceptions, the major of which is fair dealing/fair use.

Ambit (noun) => the scope, extent, or bounds of something.

Fair use=>Fair use is a legal doctrine that says use of copyright-protected material under certain circumstances is allowed without permission from the copyright holder.

Fair use vs. Fair dealing

Though the two terms fair dealing and fair use may seem synonymous, there is a difference in their scope and meaning. Fair dealing applies only to those uses or exceptions mentioned in the law. However, under fair use, the list is illustrative and very subjective. Fair dealing has a narrower scope compared to fair use as fair dealing can be applied only for the given purposes, while fair use should only pass the test of fairness even if used for a purpose not specified. Fair use is flexible and adaptable to changes leading to uncertainty. Fair dealing exceptions have been argued to be uncertain as well.

Vesting=>In law, vesting is the point in time when the rights and interests arising from legal ownership of a property are acquired by some person.

HOW FAIR USE/FAIR DEALING PROVISION MAY BE CASTED IN A COPYRIGHT STATUTE?

Standard Based Approach: It can be done in the form of laying down broad-based standards **vesting discretion** upon the courts to decide what uses are fair. Example U.S.

Discretion =>the power or right to decide or act according to one's own judgment; freedom of judgment or choice: "It is entirely within my discretion whether I will go or stay".

Rule Based Approach: The other approach is laying down well defined bright-line rules, indicating the precise situations that constitute fair use. Normally, this kind of casting requires **meticulous** detailing of the circumstances that may qualify as fair use. Example India

Meticulous (adjective) => Showing great attention to detail; very careful and precise.

Ex Post Determination by the Court (Risk of Uncertainty)

- The copyright owner may not **concur** with the fair use interpretation of the user.
- Ultimately, the dispute may have to be resolved by a **litigation**. If the court finds that the use was unfair use, then the user will be treated as infringer and he/she may have to pay damage to the copyright owner.

Concur=> (verb) be of the same opinion; agree.

Litigation (noun)=> the process of taking legal action.

STANDARD BASED APPROACH

THE U.S. PARADIGM

Notwithstanding=>(preposition) in spite of.

Section 107 of the U.S. Copyright Act, 1976

Limitations on exclusive rights: Fair use

Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes **such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright.** In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include—

- (1) **the purpose and character of the use**, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- (2) **the nature of the copyrighted work**;
- (3) **the amount and substantiality of the portion used** in relation to the copyrighted work as a whole; and
- (4) **the effect of the use upon the potential market** for or value of the copyrighted work.

The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.

Purposes such as (not exhaustive)

- Criticism
- Comment
- News reporting
- Teaching (including multiple copies for classroom use)
- Scholarship
- Research

Exhaustive (adjective) => including or considering all elements or aspects; fully comprehensive.

The four factors that the U.S. courts take into account in determining fair use

- **Purpose and character of use**
- **Nature of the copyrighted work**
- **Amount and substantiality of the portion taken**
- **The effect of the use upon the potential market**

Sustainability => the ability to be maintained at a certain rate or level.

Potential market => A potential market is a consumer segment, region, or demographic that would likely be interested in buying a product from a particular brand but hasn't yet. Identifying and capturing a potential market is one way a business can grow revenue and expand its reach.

BRIGHT LINE RULE BASED APPROACH

THE INDIAN PARADIGM

Fair Dealing

Section 52 of the Copyright Act, 1957 contains elaborate list of cases that do not constitute infringement. For instance Section 52(1)(a) contemplates that the following acts shall not constitute an infringement of copyright:

“a fair dealing with any work, not being a computer programme, for the purposes of-

- (i) private or personal use**, including research;
- (ii) criticism or review**, whether **of that work or of any other work**;
- (iii) the reporting of current events** and current affairs, including the reporting of a lecture delivered in public.

Explanation.-The storing of any work in any electronic medium for the purposes mentioned in this clause, including the incidental storage of any computer programme which is not itself an infringing copy for the said purposes, shall not constitute infringement of copyright"

Hubbard v Vosper, [1972] 2 Q.B. 84

- ✓ The Indian understanding of fair dealing to a great extent is being influenced by the English developments.
- ✓ In the leading English case of *Hubbard v. Vosper* (often cited by the Indian Court).

Church => a building used for public Christian worship.

Scientology => Scientology is a set of beliefs and practices invented by the American author L. Ron Hubbard, and an associated movement.

While dealing with the copyright infringement allegation by the Church of Scientology against one of its former members (Mr. Vosper, who criticized Scientology in his book The Mind Benders), Lord Denning observed:

“It is impossible to define what is "fair dealing." It must be a question of degree. You must consider first the number and extent of the quotations and extracts. Are they altogether too many and too long to be fair?...

Extract => (noun) a short passage taken from a text, film, or piece of music; (verb) remove or take out, especially by effort or force. "natural plant extracts".

Then you must consider the use made of them. If they are used as a basis for comment, criticism or review, that may be fair dealing. If they are used to convey the same information as the author, for a rival purpose, that may be unfair. Next, you must consider the proportions. To take long extracts and attach short comments may be unfair. But, short extracts and long comments may be fair. Other considerations may come to mind also. But, after all is said and done, it must be a matter of impression.

Rival (noun) => a person or thing competing with another for the same objective or for superiority in the same field of activity.

As with fair comment in the law of libel, so with fair dealing in the law of copyright. The tribunal of fact must decide. In the present case, there is material on which the tribunal of fact could find this to be fair dealing.”

Libel (noun) =>a published false statement that is damaging to a person's reputation; a written defamation.

Tribunal (noun) =>a body established to settle certain types of disputes; a court of justice. "an international war crimes tribunal".

THE SCOPE AND EXTENT OF THE IMMUNITY

Intellectual property (IP) refers to creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce. There are four main types of intellectual property rights, including patents, trademarks, copyrights, and trade secrets. Owners of intellectual property frequently use more than one of these types of intellectual property law to protect the same intangible assets.

Justification for Limitation

- **No one starts from Zero.**
- **Standing on shoulders of the Giants**
- **The current literary and scientific developments are incremental in nature and they rely upon the pre-existing understanding.**
- **If intellectual property regime creates a rigid property right that would give rise to situations, like reinventing of wheels resulting in wasteful repetition of society's resources.**

Due Diligence No: 1

- a *fair dealing* with a literary, dramatic, musical or artistic work not being a computer programme for the purposes of private use *including research*. [Section 52(1)(a)]
- Fair Dealing is a question of degree and always an *ex post determination* by the court.

Ex-post meaning is => 'after the event'. Ex-post analysis looks at financial results after they have occurred and utilizes them to predict the likelihood of future returns.

Fair Dealing v. Unfair Dealing

It is impossible to define what is fair dealing

- You must consider first the number and extent of the quotations and extracts. Are they altogether too many and too long to be fair?
- Then you must consider the use made of them. If they are used as a basis for comment, criticism or review, that may be fair dealing. If they are used to convey the same information as the author, for a rival purpose, that may be unfair.
- Next, you must consider the proportions. To take long extracts and attach short comments may be unfair. But, short extracts and long comments may be fair.
- Other considerations may come to mind also. But, after all is said and done, it must be a matter of impression.

Lord Denning in *Hubbard v Vosper*, [1972] 2 Q.B. 84

Working
Around
Allowed

Is your work sufficiently Transformative?
Purpose and character of use

Is the new work (here your work that claims fair use) is transformative or not?

Is your work is a mere derivative work of the original or it does *adds something new to the original with a further purpose or different character altering the original with new expression, meaning or message.* [Campbell v. Acuff-Rose Music Inc., 510 U.S. 569 (1994)].

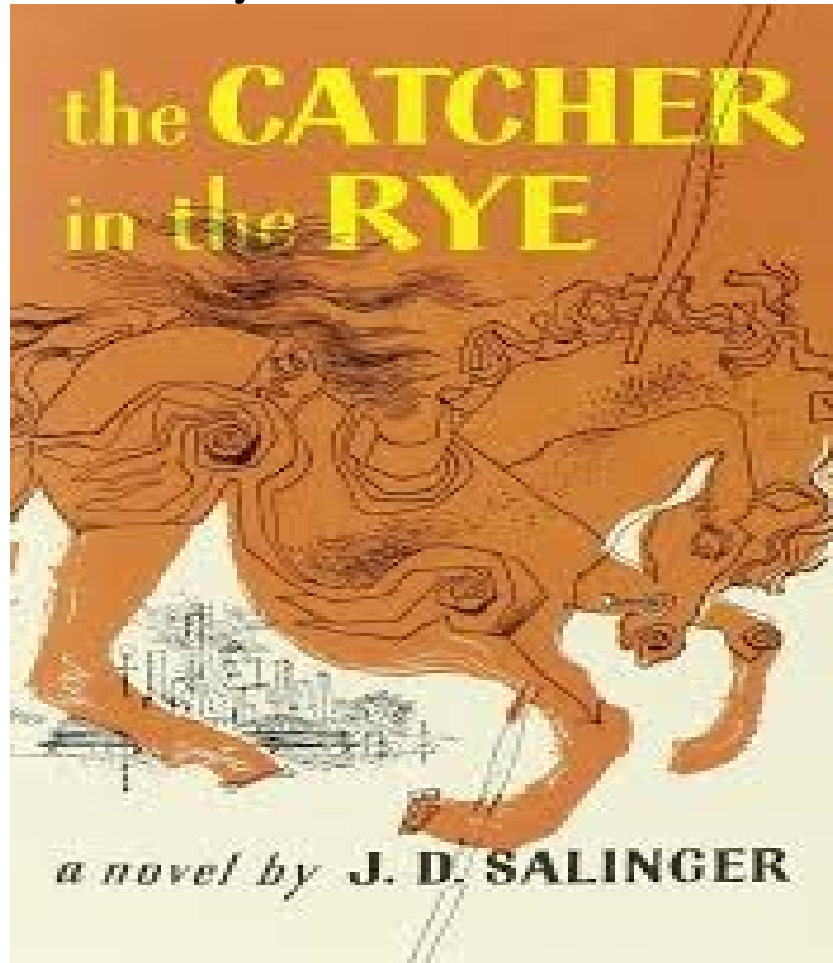
Derivative work =>A derivative work is based on a work that has already been copyrighted.

Transformative work =>A new work based on an old one work is transformative if it uses the source work in completely new or unexpected ways. Importantly, a work may be transformative, and thus a fair use, even when all four of the statutory factors (as mentioned in page 46) would traditionally weigh against fair use!

Example of Transformation

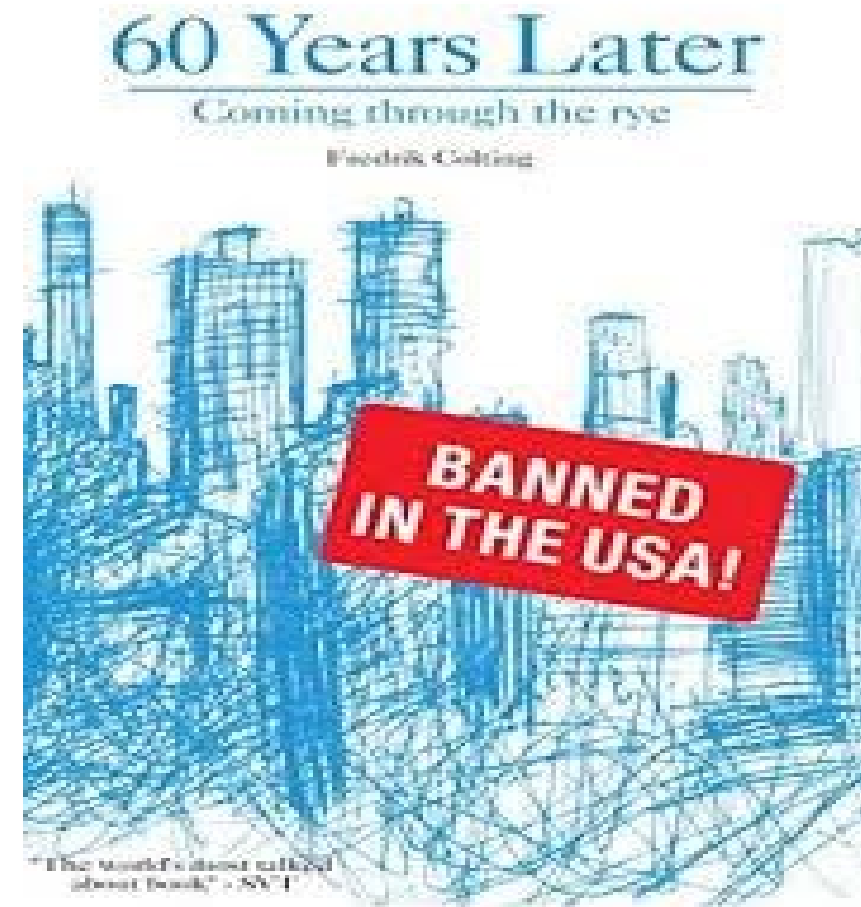
- ✓ In *Chancellor, Masters and Scholars of University of Oxford v. Narender Publishing House* [2008 (38) PTC 385 (Del)], guide books that solved all the problems of the mathematics book of the plaintiff, was held to be fair dealing.
- ✓ Though the guide books copied all the problems of the mathematics book, but the Court found the same to be transformative.

Salinger v. Colting, 641 F. Supp. 2d 250 (S.D. N.Y. 2009)



The case went to the Second Circuit of Appeals and finally settled by the parties.

Colting agreed not to publish or distribute the book in the U.S. or Canada until Salinger's novel falls in the public domain.



Rogers v. Koons, 960 F.2d 301 (2d Cir. 1992).



Kelly v. Arriba Soft Corporation, 280 F.3d 934 (9th Cir. 2002)



Due Diligence No: 2

52(1)(i) the reproduction of any work—

(i) by a teacher or a pupil in *the course of instruction*; or

(ii) as part of the question to be answered in an examination; or

(iii) in answers to such questions;

Diligence=> steady, earnest, and energetic effort.

DU Photocopy Case

“in the course of instruction” would include reproduction of any work while the process of imparting instruction by the teacher and receiving instruction by the pupil continues.....

JUSTICE RAJIV SAHAI ENDLAW in *The Chancellor, Masters & Scholars of the University of Oxford & Ors. v. Rameshwari Photocopy Services & Anr.*[Paragraph 72]

Impart (verb) => to make known; tell; relate; disclose. to impart a secret.

Due Diligence No: 3

The reproduction or publication of any judgment or order of a court, tribunal or other judicial authority, *unless the reproduction or publication of such judgment or order is prohibited by the court, the tribunal or other judicial authority, as the case may be* [Section 52(1)(q)(iv)]

Plagiarism vis a vis Infringement

- Plagiarism is taking someone else's work as your own without acknowledgement and due credit.
- Plagiarism does not amount to copyright infringement if the work used has fallen in public domain or the use is fair use.

UNIVERSITY GRANTS COMMISSION (PROMOTION OF ACADEMIC INTEGRITY AND PREVENTION OF PLAGIARISM IN HIGHER EDUCATIONAL INSTITUTIONS) REGULATIONS, 2018 (Came into in force 23rd July, 2018)

- ✓ “Academic Integrity” is the intellectual honesty in proposing, performing and reporting any activity, which leads to the creation of intellectual property;
- ✓ “Author” includes a student or a faculty or a researcher or staff of Higher Educational Institution (HEI) who claims to be the creator of the work under consideration
- ✓ “Plagiarism” means the practice of taking someone else’s work or idea and passing them as one’s own

Intellectual property=>Intellectual property (IP) is a category of property that includes intangible creations of the human intellect.

Who is Joint Author?

U.K	India	U.S.A
<p>Section 10.— Works of joint authorship.</p> <p>(1) In this Part a “work of joint authorship” means a work produced by the collaboration of two or more authors in which the contribution of each author is not distinct from that of the other author or authors</p>	<p>Section 2(z) "work of joint authorship" means a work produced by the collaboration of two or more authors in which the contribution of one author is not distinct from the contribution of the other author or author</p> <p>Distinct=> Intellectual property (IP) is a category of property that includes intangible creations of the human intellect.</p>	<p>Section 101 A “joint work” is a work prepared by two or more authors with the intention that their contributions be merged into inseparable or interdependent parts of a unitary whole.</p>

Mere (adjective) => used to emphasize how small or insignificant someone or something is.

Resolution (noun) => the quality of being determined or resolute.

Fateh Singh Mehta vs O.P. Singhal And Ors.,

AIR 1990 Raj 8

Before the trial court, there was report of Dr. K. Lingaiah, Professor and Head of Department of Mechanical Engineering and Principal, University Visveswaraya College of Engineering, Bangalore and he had stated that Shri Fateh Singh Mehta's thesis contains several reproductions from the thesis of the [O.P. Singhal]. He has given details thereof in his report. Mere resolution of the 'Research Board, Faculty of Engineering at its meeting held on 22nd Nov. 1984 warning Shri Fateh Singh Mehta for not making due acknowledgments in his thesis of the material reproduced from the M.E. thesis of the [O.P. Singhal] and asking him to submit the revised copy of thesis indicating due acknowledgments at proper places will not [absolve his liability.]

Absolve (verb) => declare (someone) free from guilt, obligation, or punishment.

Liability (noun) => debt or obligation; the state of being legally responsible for something.

Najma Heptulla vs Orient Longman Ltd. And Ors., AIR 1989 Delhi 63,

- India Wins Freedom 30 unpublished pages.

Erikson v. Trinity Theatre, Inc., 13 F.3d 1061 (7th Cir. 1994)

- Copyrightable Contributions from all the authors.

Tone-deaf => relatively insensitive to differences in musical pitch; Having or showing an obtuse insensitivity or lack of perception particularly in matters of public sentiment, opinion, or taste.

MARTIN v KOGAN [2020] F.S.R. 3

Socialite=> (noun) a person who is well known in fashionable society and is fond of social activities and entertainment.

Delusion => belief in something that is not true.

A dispute concerning the screenplay for the 2016 Hollywood biographical comedy “Florence Foster Jenkins” (FFJ) – a film about a **tone-deaf** New York **socialite** who labours under the **delusion** that she is a talented opera singer.



A collaborative work is different from a derivative work. If an author takes as his or her starting point the work of another and decides to adapt, **embellish** or improve on it, the result may attract copyright, but it will not be a work of joint authorship. **The second author may be entitled to copyright in the resultant work, but it will be a work of sole authorship,** the originality of which could only lie in the contribution made by the second author.

Embellish (verb) => make (something) more attractive by the addition of decorative details or features.

Sole=>(adjective) being the only one.

Pertinent (adjective) => relating directly to the subject being considered.

More **pertinently**, there will be cases where a person makes a contribution **prior** to the completion of the work being undertaken by an author, but the work will remain a work of sole authorship because the contribution was not made in the course of a collaboration **pursuant** to a common design. The work must be created by collaboration.

Prior (adjective)=> existing or coming before in time, order, or importance.

Pursuant => in accordance with.

Striking=>attracting attention by reason of being unusual, extreme, or prominent.

Friends of the author who make suggestions otherwise than in the course of a collaboration will not become joint authors. A **striking** illustration is the contribution made by Ezra Pound to The Waste Land. When T.S. Eliot showed him the original draft, Pound proposed very extensive deletions and revisions, with considerable consequences for the poem as published (indeed he became its **dedicatee**). But neither poet ever considered it a work of joint authorship, and it has not been regarded as such in the century since it was published, even though Pound's contribution is now widely known. This is because he was acting as a friend and critic and not a collaborator in a common design

Dedicatee=> one to whom a thing is dedicated.

- ✓ “collaboration” has the idea of people undertaking “jointly to create a work with a common design”;
- ✓ “authorship” does not simply refer to the individual who “wields the pen” or “fixes” the copyright work, but also the “skill and effort involved in creating, selecting or gathering the detailed concepts, data or emotions which those words or lines have fixed”;
- ✓ any “contribution” must be “authorial” (i.e. that of an author) and “sufficient” (i.e. a “substantial” part of the whole work, judged from a qualitative and quantitative assessment); and
- ✓ “not distinct” means that the contributions are **fused** (and so neither party can rely on their distinct part)

Fused=>joined or blended to form a single entity.