IDEA – EXPRESSION DICHOTOMY: A COMPARATIVE STUDY OF LEGAL APPLICATION IN UK, USA AND INDIA

by

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ABSTRACT

Idea-Expression Dichotomy is a focal maxim of copyright law. Essentially, a copyright can only be granted for the expression of an idea. This paper examines the development of the principle of Idea-Expression Dichotomy and its applicability under the laws of USA, UK and India. Thus, the aim is to comprehend the legal stance of India in contrast to USA and UK.

This paper further discusses the Doctrine of Merger and Scenes a Faire, as an exception to the legal application of the idea-expression dichotomy in India. Thus, this paper aims to study the varying application of the Idea-Expression Dichotomy principle in the USA, UK and India, and concludes that the deficiencies in the proper usage of this principle can be improved by change in policy and execution. This paper thus, finds that there exists an enormous scope of elaboration with respect to utilisation of the principle of Idea-Expression Dichotomy in India, due to marginal usage.

Keywords: Idea-Expression Dichotomy, Doctrine of Merger, Scenes a Faire.

INTRODUCTION

It is considered to be a vital claim in the traditional practice of copyright, that copyright only protects an author's actual expression of an idea and never the idea itself.[1] This idea - expression dichotomy is believed to be the central axiom of copyright law to use when determining what is protected in infringement cases, by the court of law.[2]

In layman terms, an idea is a formulation of thought which maybe on any particular subjector topic. Whereas, on the other hand, expression, constitutes implementation the said idea. An idea can be expressed in numerous ways and this is where the copyright concern emerges. Ifthe same idea can be expressed in a number of different ways, a number of different copyrights may co-exist and no infringement will result.[3] In the words of Justice Brennan, "*[t]his distinction between protected expressions and unprotected ideas is at the essence of copyright.*[4]"

A major challenge arises, as it becomes difficult to demarcate between the idea and its expression. The root of the problem - that an idea cannot exist apart from some expression. Where an idea and the expression cannot be separated and are said to have merged, such an amalgamation is termed as the doctrine of merger. The doctrine of merger holds that when an idea can only be expressed in a certain way, the expression is not protectable.[5] Thus, drawing a distinction between the terms "idea" and "expression" cannot serve as a fundamental determinant for deciding what is protectible under copyright law. Rather, the sole distinction to be made is between those expressions which are protectible and those which are unprotectible.[6]

In other words, there can exist an idea where altering the expression of the same in a particular form would, as a result, change the very idea itself. Most courts consider these essential ideas not copyrightable, as to copyright them would also, in effect, copyright the idea. This type of merger is known as *scenes a faire*. The concept of idea – expression dichotomy is studied further in a broader perspective, along with its position in USA, UK and India.

[1] Narell v. Freeman, (9th Cir. 1989); Warner Bros. v. American Broadcasting Cos., (2d Cir. 1981)
[2] Sid & Marty Krofft Television Prods. v. McDonald's Corp., 562 F.2d 1157, 1163
[3] K.P. Abinava Sankar & Nikhil L.R. Chary, "The Idea - Expression Dichotomy: Indianizing An International Debate" 3 JICLT 129 (2008)
[4] Harper & Row Publishers v. Nation Enters., 471 U.S. 539, 589 (1985)
[5] Frybarger v. International Business Mach. Corp., 812 F.2d 525, 530 (1987)
[6] Richard H. Jones, "The Myth of The Idea/Expression Dichotomy in Copyright Law" 10 Pace L. R. 551 (1990)

THE CONCEPT OF MERGER DOCTRINE AND SCENES A FAIRE

Merger Doctrine

The concept of idea-expressions dichotomy can be explained by taking recourse to situations which are real-world. However, there may be instances where one may not be able to fathom a stringent dissimilarity. An idea can be expressed in a unique manner in in particular situations. It is in such examples, the 'doctrine of merger' comes into play and the idea and its expression can be termed to be 'merged' and in such an example the creation cannot be copyrighted. In such situations of merger, the expression cannot be copyrighted because allowing copyright over the expression confers the creator with an absolute monopoly over an idea, the prevention of which was the sole objective of creating the idea-expression dichotomy. For example, an algorithm to multiply two numbers or display a number on the display system cannot be expressed in only in a unique way. Granting copyright over such a type of expression confers a right-owner to restrict anyone from 'reproducing'[7] or even 'translate'[8] into another form of expression. Grant of far-reaching monopoly in such cases shall be detrimental to public good and therefore the law shall not grant copyright in cases where the doctrine of merger was applicable.

The Delhi High Court in the case of *MATTEL, INC. and ORS. Vs. Jayant Agarwalla and others*[9], explained the doctrine of merger very succinctly in following words:

"In the realm of copyright law, the doctrine of merger postulates that were the idea and expression are inextricably connected, it would not possible to distinguish between two. In other words, the expression should be such that it is the idea, and vice-versa, resulting in an inseparable merger of the two. Applying this doctrine courts have refused to protect (through copyright) the expression of an idea, which can be expressed only in a very limited manner, because doing so would confer monopoly on the ideas itself."

Scenes a Faire

There may be situations where the expression of an idea can only be made by using certain elements which are obligatory and it may not be possible to do so without the use of those elements. 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

[7] Section 14(a)(i), Copyright Act, 1957
[8] Section 14(a)(v), Copyright Act, 1957
[9] 2008 (38) PTC 416 (Del)

essential elements or form of expression. The Courts while deciding such matters grant an important consideration to the essential elements and features and hold that it is non-copyrightable since copyrighting the said features would effectively lead to the monopolization of the idea. Such essential elements are referred to as Scenes a Faire. An often cited example is of a gunshot in an action scene/sequence. *Thomas Walker v. Time Life Films Inc.*[10] is a U.S. case from the Second Circuit Court where the Court has made observations on what constitutes 'scenes a faire'. In the cited 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" and narrated the harrowing tale of unnumbered crimes, stretching from murders to robberies and also provided a pen-picture of the social pattern of South Bronx. The defendant's company contracted with another creator to transcribe the screenplay for a film titled "Fort Apache-The Bronx", which also related to the same theme. 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. The concept of 'scenes a faire' frowns at granting of the copyright exclusivity to "stock" themes associated to a specific genre. This doctrine has also found support in the Indian case of *NRI Film Production Associates v. Twentieth Century Fox Film Corporation*.[11]

IDEA – EXPRESSION DICHOTOMY IN THE USA

The idea-expression dichotomy originated in the United States. It was first observed in the leading case on the issue, namely, *Baker v. Selden*[12] decided by the US Supreme Court. The plaintiff was the copyrighted owner of a series of books explaining the American accounting system. The books had a schedule which consisted of certain formats of tables consisting of ruled lines and headings, elucidating the said system. The plaintiff filed a suit alleging that the defendant by making and using account books arranged on accounting system similar to his own infringed the copyright on the system, even when the forms were employed with different columns and headings. The US Supreme Court decided in favour of the defendant and held that there was a clear dissimilarity between the books and the art which they intended to demonstrate. The description of the art in a book, i.e. the expression, though

[10] Thomas Walker v. Time Life Films Inc., 784 F.2d 44 (2d Cir. 1986)
[11] 2005 (1) KCCR 126, ILR 2004 KAR 4530
[12] 101 U.S. 99 (1879)

copyrightable, did not entitle the plaintiff exclusive claim to the art, i.e. the idea in this case.

This principle as laid down in the American case, has since been consistently followed and has been incorporated in computer software. Copyright law grants the author of a computer program the exclusive right to reproduce copies, prepare derivative works, distribute copies, and perform and display the copyrighted work for the period of his life plus fifty years.[13] There are some exceptions to this rule such as self-use, teaching, research, or scholarship. The enumerated activities do not constitute infringement under the doctrine of fair use. The judicial decisions are in line with the statute which grants credence to the common law principle that ideas are not protected and cannot be copyrighted. The idea/expression dichotomy in US Copyright Act is defined in the following words:

"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."

It is, however, required to be clearly pointed out that despite the existence of the abovementioned provision in the statute book, the idea – expression dichotomy has remained mostly unsolved. In the year 1980, the National Commission on New Technological Uses of Copyrighted Works (CONTU) developed four goals for copyright in computer programs, which has made efforts to support the traditional idea of balancing protection and competition:

a) Copyright should proscribe the unauthorized copying of these works.

b) Copyright should in no way inhibit the rightful use of these works.

c) Copyright should not block the development and dissemination of these works.

d) Copyright should not grant anyone more economic power than is necessary to achieve the incentive to create.[14]

The recognition of computer programs as literary works settled the issue of protection ability,

[13] US Copyright Act 1976- Sec. 106: To constitute a derivative work, the infringing work must be based upon the copyrighted work and incorporate a portion of the copyrighted work in some form. A derivative work is defined in 17 U.S.C.

[14] "Final Report of the National Commission on New Technological Uses of Copyrighted Works" 3 Comp. L. J. 53, 77 (1981)

but failed to determine the scope of the protection to be granted. To fill the visible gap, the courts by enacting judge made law have evolved a framework which would protect time, effort, and money spent in the production of copyrighted creations to the exclusion of everything else. In the celebrated case of *Apple Computer, Inc. v. Franklin Computer Corp.*[15] it was held by the court that, 'copyright protection could also be extended to the object code version of a computer program embedded in a ROM.' The court opined that the mechanical process of coding from source code to object code contains the element of mental labour sufficient enough for privilege of copyright protection, as the stamping constitutes 'fixation'. This decision was a landmark judgment that recognized the right of protection of the object code of the software within the scope of a 'literary work' under the law. In regard to the application of copyright laws to computer programs, the US courts have more or less maintained that the purpose for which the program was created would constitute the idea. Further, the method in which a program operates, controls and regulates the computer in performing various functions such as receiving, assembling, calculating, retaining, correlating, and producing useful information shall be the expression of the idea.

This principle has attracted a diverse reaction from legal fraternity and courts in the world. Many authors and commentators have criticized the primary assumption that a computer program has only one underlying idea which if identified, must be delineated from everything else in order to qualify as expression. This disapproval takes into consideration the fact that the configuration of a computer program comprises of several sub-processes or sub-programs functioning concurrently to produce the anticipated outcome. Sub-programs often take into consideration their own ideas or goals which may be different from the overall idea intended by the designers. If such a situation arises, the court's classification of idea and expression are fruitless and insufficient.

To overcome this inefficiency, this principle was broadened in the case of *Computer Associates International Inc. v. Altai Inc.*[16] The plaintiff, Computer Associates International (CAI) alleged that the defendant Altai Inc. had utilized substantial portions of the its program while developing their own software program, and therefore, was liable for copyright infringement.

The U.S Circuit court figured out a three-step test to determine the scope and extent of the

[15] 725 F.2d 521, 524
[16] 982 F. 2d 693

idea-expression dichotomy. The three steps involved in this process are:

a) Abstraction
b) Filtration
c) Comparison

The process involved in this three-step test was to separate the allegedly infringed computer software into its component level operational parts and examine each of these parts for elements such as incorporated ideas, expression incidental to those ideas and elements taken from the public domain filtering out all non-protectable material. The main object behind this scheme was to draw on the copyright doctrines of merger, scenes a faire and public domain. The courts granted due importance and consideration to the fact that computer technology is a dynamic field which can quickly outpace judicial decision-making.

The Altai judgment has been held to be a good law in the US. It diversified the principle of idea-expression dichotomy in the territory of copyright law. The First Circuit court came up with a decision in the case of *Lotus Development Corporation v. Borland International Inc.,*[17] which held that the method of operation is a means by which a person operates something, whether it is a car, a food processor, or a computer, and is un-copyrightable.

Computer software using a specific process cannot operate without a definite command. The court held that while recognising the non-literal features of a computer software, it must first be identified if such elements fall under the principles of a method of operation. If such non-literal elements comprise of the method of operation, they are un-copyrightable and therefore, an idea-expression dichotomy analysis need not be performed.[18] The Court in the Lotus case recognised that the abstraction, filtration and comparison test was an effective means of identifying copyrightable elements in a computer program, but was ineffective in resolving an issue where factual copying of the program was admitted by a contesting party. The decision in the Altai case was read along with the decision of *Feist Publications, Inc. v. Rural Telephone. Service. Co.*[19] stating that, only original expressions of authors would be given copyright protection and that authors were encouraged to freely build on ideas and information conveyed by a work.

[17] 49 F. 3d 807 (1995)
[18] *Ibid*
[19] 737 F. Supp. 610, 622 (Kan. 1990)

IDEA – EXPRESSION DICHOTOMY IN THE UK

The reproduction of ideas is not a part and parcel of the Copyright law. It is only concerned with the reproduction of the form in which ideas are expressed.[20] Prior to 1911, the UK courts held that an idea was never subject to copyright protection and that it was only an expression of such idea which is subject to such protection. The principle was that there was no copyright in mere ideas, concepts, schemes, systems or methods.[21] The scope of copyright was, therefore, limited to the protection of a particular form of expression. If such copying persisted, the copyright was said to be infringed.[22]The sum and substance of the court pronouncements has been that if the idea of the plaintiff was adopted and made use of by the defendant, he would not be liable, no matter howsoever original the idea of the plaintiff may be.

After 1911, the courts have consistently adjudicated that ideas, thoughts and plans existing in a man's brain are not 'works' but once expressed in writing or in some other form, such ideas through their material form, may be susceptible to copyright protection.[23] A general idea underlying the copyright is not subject to protection. Ideas are as free as fresh air of which everyone has the right to breathe. The position is that if the idea encompassed in the plaintiff's work is sufficiently original, the mere taking of the idea will not cause copyright infringement. But if the idea is worked out in some detail by the plaintiff and subsequently the defendant reproduces the expression of that idea, then it may be an infringement.[24] In such a case, it is not the idea but its detailed expression which is said to have been copied.

According to Farwell J. in *Donoghue v. Allied Newspapers Ltd*.,[25]

"This at any rate is clear beyond all question, that there is no copyright in an idea, or in ideas. A person may have a brilliant idea for a story, or for a picture, or for a play, and one which appears to him to be original; but if he communicates that idea to an author or an artist or a playwright, the production of which is the result of the communication of the idea to the author or the artist or the playwright is the copyright of the person who clothed the idea inform,

[20] W.R. Cornish, Intellectual Property: Patent, Copyright, Trademark and Allied Rights 28 (Universal Law Publishing Co. Pvt. Ltd, New Delhi, 3rd edition, 2001)
[21] Johnstone Safety Ltd. v. Peter Cook (Int.) (1990) F.S.R. 161; Harman Pictures N.V. v. Osborne (1967) 1 W.L.R. 723 at 728; Hollinrake v. Trustwell (1894) 3 Ch. 420; McCrum v. Eisner (1917) 87 L.J. Ch. 99
[22] Hollinrake v. Trustwell (1894) 3 Ch. 420
[23] *Ibid*
[24] Supra note 21
[25] (1938) Ch. 106 at 109 (UK)

whether by means of a picture, a play, or a book, and the owner of the idea has no rights in that product."[26]

In *L B (Plastics) v. Swish Products*,[27] it was observed:

"Of course, it is trite law that there is no copyright in ideas... But, of course, as the late Professor Joad used to observe, it all depends on what you mean by 'ideas'."

In *Designer Guild Ltd. v. Russell Williams (Textiles) Ltd*.,[28] the House of Lords discussed the question of what is meant by the concept that there is no copyright in ideas, and what is the basis of the idea-expression dichotomy. It was pointed out that all copyright works have idea as their basis and that all works are the expression of the author's ideas denoted by his decision to use certain modes of expression.

It has been held in several judicial decisions that even sole and inseparable methods of expression can be subject to copyright. Copyright law for Computer Programs in the United Kingdom is no longer confined to the rules imposed by the Copyrights, Patents and Designs Act, 1988. Post 1991, three legislations are relied upon for deriving the rules and regulations governing copyright of computer programs in the UK jurisdiction. They are: Copyrights, Patents and Designs Act, 1988; European Council Directive on the Legal Protection of Computer Programs, 1991 and Copyright (Computer Programs) Regulations, 1992.

Computer programs are classified as literary works under the 1988 Act.[29] Even though an idea cannot be copyrighted, instances in which the labour involved in expressing such an idea in the form of drawings, writing etc. are invested, have been held to be cases of copyright infringement.[30] Such cases involve copying of the detailed expression of the idea and not the idea itself.[31] The originality required and protection conferred are directly connected to the expression of thought used in producing the work. This principle has been applied and affirmed in a plethora of case laws.

[26] Steven Ang, "The Idea-Expression Dichotomy and Merger Doctrine in the Copyright Laws of the U.S. and the U.K." 2 Int'l J.L. & Info. Tech. 114 (1994)
[27] (1979) R.P.C. 551, HL at 629 (UK)
[28] (2001) F.S.R. 11 HL
[29] CDPA 1988, Sec. 3(1)
[30] Supra note 3
[31] William Hill (Football) Ltd. v. Ladbroke (Football) Ltd (1980) R.P.C. 539 at 546

In *Ibcos Computers Ltd. v. Barclays Finance Ltd*.[32] the plaintiff alleged that the defendant's computer software was indistinguishable from the original software as both were developed and written by the same developer in spite of an undertaking signed by the developer not to design or sell similar software after his resignation from the plaintiff's company. For this purpose, the Court scrutinized whether the software in question comprised of the element of originality. While considering the idea/expression dichotomy issue arising in connection with the whole package being a copyright compilation, the court disagreed with a former ruling which held that only method of expressing an idea is not the subject of copyright. The court held that it was true that a copyright cannot protect any sort of general principle, but it can protect a detailed literary or artistic expression. The court further opined that where an idea was sufficiently general, then even if an original work embodied it, the mere taking of that idea would not infringe a copyright. But if the idea was detailed, then there is a possibility of infringement, the determination of which was a question of degree. The court found it apposite to examine the edifice of the computer software package as a whole in the light of it being a copyright work in addition to the literal bits of code and the program structure within the software. The Court held that the component programs and structure are individually subject to copyright as sufficient skill, effort and judgment was invested into their design and development.

The decision in Ibcos turned out to be a landmark judgment in the realm of UK Copyright law. The court not only categorized and elucidated in articulate manner, the extent of applicability of the idea-expression dichotomy in UK jurisdiction, it also contradicted and set right a number of judicial decisions which proposed theories contrary to the court ruling in the present case.[33]

The aforesaid case was further cited in *Navitaire Inc. v. Easyjet Airline Company*.[34] The case was concerning a claim for copyright infringement in a computer software for an online ticketing program, which was indistinguishable from the former in its user interface. The plaintiffs also claimed that that the copyright in their program was infringed by non-textual copying. The Court determined the issues considering the idea-expression dichotomy. The point for consideration was whether the 'compilation' of the collection of commands that went into creating the software and the 'non-textual copying' was an infringement of copyright. The

[32] [1994] F.S.R. 275
[33] Kenrick & Co. v. Lawrence & Co. (1890) 25 Q.B.D. 99; John Richardson Computers v. Flanders [1993] F.S.R. 497
[34] [2004] EWHC 1725

Court held that such a compilation would be entitled to copyright in support of it, pointed out the difference between the US and English law and rendered Baker vs. Seldon[35] inapplicable in this case and relying on the distinction in both the legal regimes, the court concluded that the collection of commands in the program was not to be granted copyright on the basis of it being a compilation as there was no pre-existing material to form the subject matter of a compilation. Regarding the issue concerning idea-expression dichotomy in non-textual copying, the court held that every element in the expression of an artistic work constituted the expression of an idea on the part of the author. It was further held by the court that the expression of such ideas was protected as a whole and also to the extent to which they form a substantial part of the work. The phrase 'substantial part' was held to be indicative of a qualitative analysis of the work rather than a quantitative analysis and as a result of this, the part which is regarded as substantial would be a feature or combination of features of the work, abstracted from it rather than forming a discrete part.

Therefore, in conclusion, the idea-expression dichotomy in the United Kingdom Copyright regime is that where certain ideas expressed by a copyrighted work are not original, they are not entitled to copyright protection as the borrowing of such idea would not constitute the taking of a substantial part of the work. A mere contemplation of an idea similar to the objective sought to be achieved by the computer program, does not fall within the purview of appropriating skill, labour and judgment essential to constitute infringement.

IDEA – EXPRESSION DICHOTOMY IN INDIA

In India, the law relating to copyrights has been enacted by the Indian Parliament in the Copyrights Act, 1957. The Copyright Act neither defines an idea nor an expression and is also silent on the difference in the treatment of the two. If the judge made law is seen then too there is not much development in the principle of idea-expression dichotomy in India due to sparseness of case laws.

In *R.G. Anand v. Deluxe Films*,[36] the issue of idea-expression dichotomy came up for consideration before the Supreme Court of India. In this case, the plaintiff, who was a part-time playwright and producer of stage plays alleged that the defendant, who was a film- maker had copied substantial portions from his play and had remade it into a film. The plaintiff alleged

[35] Supra note 12
[36] AIR 1978 SC 1613

a violation of his copyright. The respondent argued that the theme was common to both the play and it was not plaintiff's original idea. In deciding the issue, the Supreme Court on carefully examining, considering and elucidating various authorities and case laws, evolved the following propositions:

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.*

While comparing the play and the film, the Court held that although the theme of provincialism was the same but the presentation and treatment of the later work was dissimilar. The glaring similarities in the two works were material but the broad dissimilarities showed that the author had no intention to copy the original. Thus, it was held that there was no infringement of copyright in this matter.

This seven-point test of *R.G. Anand* case[37] was applied by Kerala High Court in *R. Madhavan v. S.K. Nair.*[38] The court held that the resemblance or similarity in the theme, scenes and situations of the film and the novel was clearly lacking. The material incidents, situations and scenes portrayed on the film were substantially and materially different from those in the plaintiff's novel. In 2002, the Delhi High Court considered the question of idea- expression dichotomy in *Anil Gupta v. Kunal Dasgupta*.[39] The plaintiff conceived a reality match-making television programme and shared the idea with the defendant regarding its telecasting. The plaintiff argued that the defendant had rejected his idea and implemented it on its own. Therefore, the plaintiff claimed for infringement action against violation of his copyright. The defence put up by the defendant was that it is only the expression of the idea. and not the idea itself which could be protected under the copyright. The Court accepted the argument of the defendant and held against the plaintiff.

In *Barbara Taylor Bradford v. Sahara Media Entertainment Ltd*.[40] the Calcutta High Court elucidated on the idea-expression dichotomy and held that the law protected the originality of expression and not the originality of the central idea due to the balancing of two conflicting policies. The first policy was that the law must protect originality of work, thereby allowing

[37] Ibid
[38] AIR 1988 Ker. 39
[39] IA 8883/2001 in Suit no.1970 of 2001
[40] (2004) 28 PTC 474 (Cal) (DB)

the authors to reap the fruits of their labour and stopping unscrupulous pirates from enjoying those fruits. The second policy was that the protection must not become over-protection eventually limiting future creativity. In the recent times, judgment reporting was added as another dimension to idea expression dichotomy when in 2008, the Supreme Court came up with the ruling of *Eastern Book Company and Ors. v. D.B. Modak*.[41] The court held that the Copyright Act does not concern with the originality of ideas, but with the expression of thought. On the issue of whether copy–edited judgments were entitled to copyright protection, it was decided that the judgments of a Court are in the public domain and therefore no copyright can be claimed on the same.

The Copyrights Act has not been very responsive to the concepts of functionality and substantial similarity while deciding the value of a copyright, particularly in a computer program. There lies no clear-cut indication as to whether the courts in India would adopt the procedure followed by the U.K. Courts as laid down in the Ibcos and Navitaire cases, or would they adopt the objective test strategy evolved and validated by the American Courts in the Altai Case. The similarity of Indian Legal framework to English law is one of the key factors which generates confusion in between the applicability of US and UK laws in the copyright cases in Indian jurisdiction.

In R.G. Anand case the Supreme Court cited several American and English case laws. The court, however, chose not to elucidate on the differences between the American and English law on the subject. In an appropriate case, the Supreme Court is expected to examine and analyse the difference between the English and American laws on the issue of idea- expression dichotomy and align it with the provisions of the Copyright Act.

CONCLUSION

There has been considerable difficulty in defining and applying the idea-expression dichotomy because there is a difference of opinion between the experts and the legal system they follow. However, the broad consensus is that an idea cannot exist apart from some expression. For copyright protection expressing an idealess expression makes no sense, no matter whatever maybe the nature of work being copyrighted. The applicability of the doctrine in Indian jurisdiction is still at its nascent stage and from R.G. Anand to every subsequent ruling and the courts referred to judicial decisions of United States and United Kingdom, without much clarity

[41] AIR 2008 SC 809

on which school of thought is to be emulated. Although the courts made sincere efforts to bring the aforesaid doctrine into picture and to some extent, even succeeded in making it a vital element of Copyright law in India, much more work needs to be done in this area.

The growth and recognition of idea-expression dichotomy has not been successful due to the failure of Indian courts in appreciating the distinction between American and English laws leading to uncertainties, discrepancies and inconsistencies. Further, the Indian Copyright Act has not defined the terms 'idea' and 'expression'. This is another reason why there is uncertainty in the evolution of the principle of idea-expression dichotomy in India, and can only be reduced by parliamentary action. Going by the decisions of *R.G. Anand* and *Anil Gupta* cases, it can be inferred that it is the English law which finds a greater application in India compared to the American law. However, keeping in view the accuracy shown by the American courts in delineating ideas from expressions and granting copyright protection to the latter the principle finds express mention in the US Copyright Act of 1976. It is important for the courts, particularly the Supreme Court, to study and analyse the principles formulated in both the laws and lay down an Indian legal policy on the issue which would take into account the American and English schools of thought. This way the Indian courts will be able to lay down an appropriate legal system conducive to public good in the India Legal ecosystem.