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Idea – Expression Dichotomy: Introduction, Meaning, Various Aspects and Perspectives

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ABSTRACT

The idea of expression is the most important concept of copyright therefore, it is necessary to analyze what idea may be protected under copyright. However, the law of copyright always promotes or encourages creativity and originality and provides legal protection. Copyright laws protect ideas of expression not ideas themselves. Hence ideas are not protected in law but ideas of expression because ideas can be known to everyone but ways of expression, and creativity through the person's mind is protected by the copyright laws. Hence, it is very important to differentiate between ideas and expression. Therefore, this paper deals with the evolution, and meanings of ideas of expression and also covers various courts' decisions on the same aspects.

Keywords: Copyright, Idea, Expression, legal protection

INTRODUCTION

One of the most frequently repeated principles in the field of copyright law is the idea-expression dichotomy. It could have been criticised for being vague, fictitiously repetitive, and so on. Despite its lack of precision and justification in deciding cases, courts have repeatedly embraced it as a central axiom of copyright law. Historically, the Courts have refused to develop a narrow definition of the term "idea." In layman In simple terms, an idea is a thought formulation on any subject or topic. Expression, on the other hand, entails putting the idea into action. A thought can be expressed in a variety of ways, and this is where the copyright issue arises. Copyright protects the expression rather than the idea itself. If the same idea can be expressed in a variety of ways, a variety of copyrights can coexist without causing infringement. The distinction between protected expressions and unprotected ideas is central to copyright. First of all it should be clear that what an Idea does mean and what Expression.

IDEA

Oxford dictionary defines the term ' Idea' as "a plan, thought or suggestion about what to do in a particular situation.

The idea, a plan, thought or suggestion is the conception of the mind, of a human's ability to think and the intention to work upon it. It is present but formless, an imperceptible entity, and cannot be evaluated unless communicated or acted upon.

EXPRESSION

Cambridge dictionary defines the term 'Expression' as "the act of saying what you think or showing how you feel using words or action."

Expression is the act of saying, the act of communication of one's intention and feeling to others. The act of communication is an expression which can take various forms and ways which is perceived and presence evaluated and marked.

Idea and Expression, one gives a basic contour, an outline of something which is intended to be communicated or presented and the other is the full working voluntary structure of that something which is to be presented or communicated.

IDEA AND EXPRESSION: A STUDY

The idea is the conception of human mind and expression is its communication. The idea is the brain and the expression is the body. The idea is the notion and Expression is the translation into action.

A better understanding of the term 'Idea' could be tapped into by delving into its roots. In philological and etymological terms, As a noun, "Ideal" is akin to model or exemplar[1]. As an adjective, the term "Ideal is analogous to Utopian[2]. The etymology of "idea," in fact, goes back to the Greek word "idea,"[3] whose root meaning is equivalent to "beheld" or "seen" and is conceptually related to Latin term "species," from where the words *specere* and hence "spectator" are derived[4].

PLATO'S THEORY OF IDEAS

Plato contended that ideas, unlike spatial objects or in other words physical terrestrial objects, cannot exist in space or in time; rather they are "timeless" and "eternal". Ideas must not be seen through senses but through a process of reflection, creating a gap between the Intelligible and the Sensible world.[5]The distinction between Plato's, differences of Intelligible and Sensible world is analogous to the distinction between proprietary and intellectual property rights, idea is intelligible and imperceptible whereas expression is sensible and perceptible. This gap parallels the distinction between ideas and expression.

Plato's Ideas can be defined as timeless universal constructs or abstractions that can only possibly exist in minds of human beings.*"This conception is consistent with the intellectual property theory that ideas are free as air-that no one should claim ownership in what has not been created but rather belongs to our common intellectual patrimony*."[6]

ARISTOTLE'S THEORY OF IDEA

Aristotle disagreed with Plato and wanted to bridge the gap between the Intelligible and Sensible worlds, as formerly devised by Plato.

Aristotle spoke of potentialities of forms, to be realized in their end products[7], the idea of being intelligible cannot be perceived without being expressed and communicated, and a received object or thing remains a ghost to the existing world, is as meaningless and insignificant as a random epiphany of a person who might be low in the head or a madman or a super intellectual!, remains equivalent and tantamount, being imperceptible and unrecognized and undifferentiated. Ideas may exist in abstraction but only gains significance and importance in form as the shape of finished, differentiated and recognized products of arts.

Aristotle's conception of potentialities and the deductive methods and Plato's metaphysical views of ideas are useful principles in the legal analysis of the idea-expression dichotomy.

LEGAL PERSPECTIVES: CRIMINAL AND CIVIL ANALOGIES

In criminal jurisprudence, the idea-expression dichotomy is comparative to *actusreusmensrea* theory. Actusreus corresponds to the act, the expression, the translation of notion into action and *mensrea* corresponds to the mental element, the idea behind the act when combined form the essentials of an offence. And hence the maxim:

Actus non facitreum nisi mens sit rea

The apex court in the case of Om Prakash v. State of Punjab[8],held thatwhere a man deliberately did not give his wife food, the Court held him to be guilty of attempting to kill his wife by his illegal omission as he had a legal duty to provide food for his wife, fulfilment of both *actusreus* and *mensrea* is sufficed.

Hence in criminal analogy, both mental and physical, both idea as well as well as expression is essential to be found guilty of an offence.

In the civil backdrop, namely in tortous liability the idea expression dichotomy finds relevance in the maxim *Damnum Sine injuria* and *Injuria Sine Damnum*. *Damnum Sine Injuria* refers to damages without injury, meaning physical damage without any injury or violation of legal rights, which is not actionable as the act is within parameters of legal limits and any damages incurred within are*per se* not wrong. *Injuria Sine Damnum* is the legal maxim for injury or infringement of legal rights without any physical, monetary damage with is actionable as a violation of a right is involved. The right of an individual has been given paramount importance rather than any physical tangible damage.

[1]Webster's new dictionary of synonyms 411 (1973)
[2] Ibid
[3] Ibid.
[4] Oxford English Dictionary
[5] History of ideas .
[6] Ibid
[7]Ibid.
[8]1961 AIR 1782

The paramountcy affords to a legal right, a fiction, an idea rather than any actual, corporeal damages weighs in on the side of Idea in the Idea-expression dichotomy as far as tortuous context is concerned.

EXPRESS IMPLIED ANALOGY

In the contractual paradigm, the idea-expression dichotomy takes a shift into expressed and implied forms of contract. Expressed contracts are those contracts whose proposal is communicated and acceptance is verbatim accepted clear and well demarcated whereas Implied contracts are those contracts borne out of the behaviour or conduct of parties as well as the intention of parties to be duty bound to the terms and conditions of the contract. Express contracts are expressions of the contracts verbally whether written or orally and Implied contracts are the Idea mere of contracts, both equally enforceable if duly made and duly intended.

In *Narandas Sunderlal Rathi v. Ghanashyamdas Bdala*[9], the High Court of Judicature at Bombay held that when a verbal contract is all it takes to enforce the obligations of the said contract, why cannot an implied contract do the same and be equally enforceable likewise.

In the terms of the contract, the idea of an existing contract, as could be traced by the conduct of parties, and expression of contracts, i.e., expressed contract is kept on the same footing.

IDEA EXPRESSION DICHOTOMY AND CONSTITUTIONAL RELEVANCE

Idea pervades not only what is apparent or expressed but also what is latent. The doctrine of Pith and Substance, the doctrine of Colourable legislation, the doctrine of Basic Structure and The doctrine of Harmonious Construction delves right into what is hidden behind texts and evokes the true soul and spirit and intention of mere trite and vapid words.

The soul spirit and intention behind words are the domain of interpretation, interpretation being synonymous with expression enlivens the organic nature of the constitution. It is the expression or interpretation which brings out the true colour to the vapid words of the constitution.

Howsoever, the mere words remain equally important as it is the idea of the basic provision which leads up to the various interpretations and expansions of various rights. Harmony being the idea and expression is paramount such that one cannot and must not do without the other.

Hence in constitution parlance, the idea-expression dichotomy is not of distinction and specialization but of harmonization and consistency which gives life to the constitution and transforms the provisions into living authoritative and benign sovereigns.

IDEA –EXPRESSION DICHOTOMY AND COPYRIGHTS

ORIGIN OF IDEA-EXPRESSION DICHOTOMY

The seminal case of *Baker v. Selden*[10] is often cited as the source of the idea-expression dichotomy, although the terms are not used in the opinion, which speaks instead of a distinction between the "art" and the "description of the art". The explicit distinction between ideas and expression apparently was formulated first in another landmark case, Mazer v. Stein[11].

In Baker v. Selden, the plaintiff had published a series of copyrighted books that contained an introductory explanation of a book-keeping system and headings in a special arrangement designed to facilitate so-called "double-entry" bookkeeping. The defendant, whose books were arranged substantially under the same system, contended that the matter alleged to be infringed was not the proper subject of copyright. The court reasoned that, where that art taught by a book cannot be applied without using the methods and diagrams illustrating the book, these methods and diagrams are "necessary incidents to the art" and, therefore, within the public domain. Consequently, the copyright could not secure "the exclusive right to make, sell, and use account books prepared upon the plan set forth in such a book."

These landmark cases became trailblazer and traced the origin of the idea-expression dichotomy leading to ample of recognitions and formulations to solve the complexities of such nature through various legislations and acts, which became the mother of the laws of copyrights present today.

[9] O C J Appeal L; suit n.. 60 of 1932; 2068 of 1931
[10] 101 U.S. 99(1880)
[11] 347 U.S. 201 (1954)

LAW OF COPYRIGHT

The Law of copyright protects the Expression as distinguished from the Idea. The Supreme court in *R.G. Anand v. Delux*[12] Films, where the question of whether the film "New Delhi" was violating the copyright of the petitioner in his dramatic work "Hum Hindustani", stated:

"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. Where the same idea is being developed in a different manner, it is manifest that the source is common, similarities are bound to occur. Then, 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."

In *Anil Gupta v. Kunal Das Gupta*[13], where the question was whether 'shubhvivah' reality show was the same as 'swyamvar' and swayamvar as a concept would be entitled to copyright protection, it was held that the concept would be entitled to copyright protection, it was held that the concept 'fledged with details of how the whole program is depicted is entitled to copyright protection.

Similarly, in *Zee Telefilms v. Sundial communications and Anr*[14], the concept of 'Kanhaiya' expressed in notes, character sketches, detailed plots and episodes translated into audio-visual form through the production of the pilot, was held to be sufficient development of the idea and hence a subject matter of copyright protection.

TRIPs states by Article 9(2) :
"Copyright protection shall extend to expression and not to ideas, procedure, method of operation or mathematical concepts as such."

Section 102 of the **US Copyright Act** states:
"(b) In no case does copyright protection for an original work of authorship extend to any idea, procedures, 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."

The Merger theory

Where the Idea is capable of being expressed in only one way or a very limited way, the expression will not get protection as the idea gets 'merged' with the expression. The doctrine of the merger will operate, and such expression will not get copyrighted.

In the case of *Morrissey v. Proctor & Gamble Co.*,[15] the doctrine of 'merger' originated which has been described as "a close cousin to the idea-expression dichotomy," wherein the plaintiff owned the copyright to a set of rules for a sweepstakes-type promotion based on the social security numbers of the participants, and the defendant Proctor & Gamble copied one of the rules almost verbatim. The Court, however, held for the defendant, reasoning that:

"When the subject matter is very narrow, so that 'the topic necessarily requires…' if not only one form of expression, at best only a limited number, to permit copyrighting would mean that a party or parties, by copyrighting a mere handful of forms, could exhaust all possibilities of future use of the substance."

DISTINCTION BETWEEN PATENTS AND COPYRIGHTS

In the landmark case of Mazer v. Stein[16], the plaintiffs claimed the ownership of the copyright for statuettes of male and female dancing figurines that had been adapted into bases of table lamps by the respondents. The petitioner's Mazers challenged the validity of the copyright in the statuettes because they were mass-produced, "utilitarian objects"[17]. The court, however, summarized the gradual enlargement of copyright in 1790, 1870, and 1909 copyright acts and found significant that the distinctions between aesthetic and useful works in the 1870 act were erased in 1909. In finding for the plaintiffs, the Court further reasoned that "unlike patina, a copyright gives no exclusive right to the art disclosed; protection is only given to the expression of the idea-not the idea itself."[18]Consequently, anyone could produce statuettes of human figures. No one, however, could copy the original statuette, whether or not incorporated into lamps.[19]

[12]AIR 1978 SC 1613
[13]AIR 2002 Delhi 379
[14] 2003(27) PTC 457 BOM
[15]379F .2d 675 (1sr CIR. 1967)
[16] Supra note 11
[17] Ibid
[18] Ibid
[19] Ibid

CONCLUSION

Idea-Expression dichotomy, from basic definition of these terms, as one being thought or suggestion and the other being the act of saying of communicating, to Plato's theory of Ideas as timeless and eternal, creating a gap between the terms as that of between intelligible and sensible, to Aristotle's attempt to bridge the said gap devised by Plato, by stating one remains non-existent without the other, to the Civil and criminal analogies where in criminal backdrop idea and expression takes on the form of *Actus reus* and *Men's rea* conception of an offence and in the civil backdrop it adopts the features of Expressed and Implied and on tortious liability, it is *Damnun Sine Injuria* and *Injuria Sine Damnum*, and finally to its constitutional relevance where the basic Idea remains equally tantamount to its expansive Expression, where distinction and specialization is not earmarked but harmonization and consistency is appreciated as well as admired with delight.

Idea-Expression dichotomy in copyrights, expression prevails over Idea when it comes to protection, as one is protected under the provisions of various acts and rules on copyrights whereas the other is not. The rationale being the expression being perceptible can be recognized and marked whereasthe idea being mere abstraction remains alien to the physical real world and is unprotected.

The idea remains idle unless brought into life through expression. Copyrights protection is not meant to provide exclusive protection to a mere idea, formless in existence and imperceptible in presence. Copyrights protection is meant for expression of the ideas, for ideas are thin as air and claim of exclusive rights upon such will stifle the very existence and presence. The idea-expression serves as a touchstone to measure the distinction between consequential and inconsequential, which may serve as the foundation of the fortitude of indispensables.