



# THE RELEVANCE AND EVOLUTION OF THE IDEA-EXPRESSION DICHOTOMY UNDER COPYRIGHT LAW

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## ABSTRACT

The concept of the idea-expression dichotomy is a foundational principle in copyright law, designed to maintain a delicate equilibrium between fostering creativity and safeguarding intellectual property. This doctrine differentiates between the fundamental ideas and the specific way these ideas are presented, acknowledging that ideas themselves are not subject to copyright protection but the distinctive and tangible manifestations of those ideas. Copyright law is in place to protect the original and concrete manners in which ideas are communicated, not the ideas in their abstract form. This principle is pivotal in stimulating innovation and preventing monopolies over elementary concepts or themes. When ideas and expressions become indistinguishable, there is what's known as a merger, and this may preclude the granting of copyright protection.<sup>2</sup>

Implementing this dichotomy can be challenging for courts, especially in intricate cases concerning literature, art, cinema, and software. They must ascertain whether the copyrighted work contains safeguarded expressions or merely embodies unshielded ideas. The criteria for defining what qualifies as a protected expression can be complex contingent on the work's level of abstraction and detail. This article will discuss the history and origin of the Idea- Expression Dichotomy, the laws that are provided from an Indian perspective, and their exceptions.

**KEYWORDS:** Creativity, Idea-Expression Dichotomy, Merger, Originality, Scenes a Faire.

## INTRODUCTION

Intellectual Property arises from human creativity and intellectual capabilities. It is the product of the human mind, involving skills, effort, and innovation. Intellectual Property plays a significant role in promoting economic and social progress, which is why it requires legal protection.<sup>3</sup> Copyright is a crucial component of Intellectual Property Rights, and a central issue within the realm of Copyright is the concept-expression divide.

In essence, ideas themselves are not subject to copyright protection. A concept cannot be awarded copyright protection unless it is expressed in a material form that can be legally protected. Therefore, rather than protecting an idea itself, copyright protects how it is expressed. An idea represents the conceptualization of a notion, whereas expression entails the realization or embodiment of that idea. Consequently, if multiple individuals conceive a similar idea, copyright protection is granted only to the one who has conveyed the idea

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<sup>2</sup> Legal analysis of theory of IDEA-expression dichotomy iPleaders, <https://blog.ipleaders.in/legal-analysis-of-theory-of-idea-expression-dichotomy/> (last visited Feb 5, 2024)

<sup>3</sup> A Change in Year Brings Change in IP Laws and Policy | IIPRD. <https://www.iiprd.com/a-change-in-year-brings-change-in-ip-laws-and-policy/> (last visited Feb 5, 2024)

in a distinct and specific manner, typically through written words, designs, or other tangible forms. This doctrine is used to safeguard various manifestations of the same underlying idea.<sup>4</sup>

When two authors conceive a similar idea for a book, it's the manner in which they transform that idea into a tangible form that sets them apart. In essence, when an idea is translated into a concrete expression, it becomes eligible for protection. Computer programs are also regarded as literary works. While broad ideas cannot be copyrighted when embodied in drawings, written content, or other manifestations involving human effort, they can be safeguarded, and legal actions can be taken against infringements. These legal cases revolve around the unauthorized replication of the specific way an idea is expressed rather than the idea itself. Preserving the free flow of ideas is the main justification for protecting expressions rather than ideas. Ideas are far too valuable to be subjected to copyright restrictions. Copyrighting ideas would stifle creativity and innovation. This is precisely why the freedom to replicate or draw inspiration from ideas is a fundamental aspect of copyright laws.

The idea-expression dichotomy is also of utmost significance in potential copyright infringement cases. A defendant can be held accountable for copyright infringement if they copy not only the underlying idea but also the precise, protected expression. This necessitates a thorough assessment of the resemblances between the two works to determine whether they extend to the expression or encompass shared, unprotectable ideas. In summary, the idea-expression dichotomy within copyright law serves as a crucial mechanism for preventing the stifling of creativity and innovation. It upholds the principle that while ideas are open to all, the unique and concrete forms in which these ideas are conveyed are eligible for copyright protection, promoting a balanced and dynamic environment for creative endeavors.<sup>5</sup>

## RESEARCH QUESTION

1. What is the current relevance and application of the idea-expression dichotomy in copyright law, and how does it impact the protection of creative works?
2. How do different jurisdictions interpret and apply the idea-expression dichotomy in copyright law?

## RESEARCH OBJECTIVE

- To analyze the present significance and utilization of the concept of distinguishing between ideas and their expression in the context of copyright law.
- To examine the implementation of the idea-expression dichotomy in copyright law across various jurisdictions.

## RESEARCH METHODOLOGY

The research for this study will utilize a combination of legal and analytical research methods. It will involve a review of primary sources such as legislation, statutes, and legal precedents. Additionally, secondary sources, including articles, journals, websites, and online references, will also be used.

## HISTORY

The idea-expression dichotomy first emerged in the landmark case of *Baker v. Selden*,<sup>6</sup> as ruled by the US Supreme Court. In this instance, the plaintiff possessed the copyright on a number of books that served as instructional guides on an accounting system, including particular forms that featured headers and ruled lines to help explain the system. Despite using distinct columns and titles, the plaintiff claimed that the defendant had violated their copyright by creating and marketing account books that arranged the accounting system in a comparable manner. Nonetheless, the US Supreme Court decided in the defendants' favor, highlighting a distinct distinction between the information contained in the books and the technique used to communicate the accounting system. While the content presentation in a book, the expression, could be copyrighted, it did not grant the plaintiff exclusive rights over the underlying method or idea.

<sup>4</sup>K.P. Abinava Sankar & Nikhil L.R. Chary, *The Idea - Expression Dichotomy: Indianizing An International Debate* 3 JICLT 129 (2008)

<sup>5</sup> IDEA expression dichotomy in copyright law Lakshmikumaran & Sridharan: Top Law Firm in India, <https://www.lakshmisri.com/newsroom/archives/idea-expression-dichotomy-in-copyright-law/> (last visited Feb 5, 2024)

<sup>6</sup> *Baker v. Selden*, 101 US 99 (1879)

Judge Learned Hand, particularly in the context of scripts and plays, once argued in the *Nichols v. Universal Pictures Corp.*<sup>7</sup> case that various levels of abstraction can be applied to a work, including plays, where fewer details are included. The broadest level of abstraction might only convey the most general idea of what the work is about, perhaps even just its title. However, beyond a certain point in this process of abstraction, the work is no longer eligible for protection. This distinction is crucial, as it prevents a playwright from controlling the use of their ideas, which are not protected beyond their specific expression. By introducing this doctrine, it encouraged authors and publishers to produce more creative works, thereby promoting and safeguarding creativity.

This legal precedent established a distinct boundary between an idea and its expression, primarily to prevent copyright owners from gaining an unjustifiable monopoly and engaging in anti-competitive practices. This philosophy supported and protected creativity by encouraging writers and publishers to produce more works. On the global stage, the TRIPS (Trade-Related Aspects of Intellectual Property Rights) convention, as outlined in Article 9(2), explicitly affirms that copyright protection cannot extend to ideas by themselves. Virtually all nations have incorporated this provision into their domestic legislation.<sup>8</sup>

## INTERNATIONAL FRAMEWORK

The idea-expression dichotomy is a central concept in copyright law across different jurisdictions. It serves as a fundamental principle to strike a balance between protecting creative works and encouraging free expression. Essentially, it means that copyright safeguards the specific way an idea is expressed rather than the idea itself. This distinction is crucial in preventing the inhibition of innovation and creativity while giving creators exclusive rights over their particular expressions.

While the core concept remains the same, various jurisdictions may interpret and apply the idea-expression dichotomy with slight variations. In the United States, for instance, copyright law explicitly states that it doesn't protect ideas, processes, methods, concepts, or principles but focuses on safeguarding the concrete expression of those ideas. This interpretation is closely tied to the First Amendment, which upholds freedom of speech and expression.

On the other hand, the European Union takes a somewhat different approach. It recognizes that distinguishing between ideas and their expressions can sometimes be challenging. EU copyright law aims to protect the original expressions of authors while acknowledging cases where the idea and its expression are closely intertwined and cannot be easily separated. This approach ensures a balance by considering the principle of fair use, making sure that copyright doesn't unduly hinder the flow of information and ideas.

In essence, the idea-expression dichotomy is a vital concept in global copyright law. It maintains the delicate equilibrium between incentivizing creativity and preserving the public's ability to access and build upon existing ideas and expressions. This concept encourages a dynamic cultural and intellectual environment while providing creators with the necessary protection to promote innovation and artistic expression.

## INDIAN PERSPECTIVE

The Indian perspective on the idea-expression dichotomy in copyright law is explained within the Copyright Act of 1957. This law, however, doesn't explicitly define the concepts of "idea" and "expression" and doesn't provide clear guidance on distinguishing between them. Furthermore, the development of this principle within the Indian legal system has been limited, primarily due to the scarcity of relevant case law.

One of India's early and significant cases that dealt with the idea-expression dichotomy was *R.G. Anand v. Deluxe Films*.<sup>9</sup> The plaintiff in this case, a part-time playwright and producer of theatrical plays, claimed that the defendant, a filmmaker, had taken significant parts of his play and turned it into a movie. With characters from two distinct provinces (Tamil Nadu and Punjab), provincialism was the play's main topic. The same issue was covered in the film, except the actors from these provinces were cast in the opposite gender. The defendant said that the theme concept was shared by both works and was not an original or creative idea of the plaintiff, while the plaintiff filed a complaint alleging copyright infringement.

The *R.G. Anand v. Deluxe Films* case began with the court drawing a broad analogy between the play and the film, pointing out that the latter's topic included both provincialism and dowry customs. The notion in question was provincialism, and the court made it clear that an idea could not be given copyright protection. The court also determined that there was no unauthorized duplication of the play's script since the distinctions

<sup>7</sup> *Nichols v. Universal Pictures Corp.*, 45 F.2d 119, 1930)

<sup>8</sup> 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).

<sup>9</sup> *R.G. Anand v. Deluxe Films*, AIR 1978 SC 1613.

between the two works were significant enough. Since the Supreme Court decided this case, the tenets it established have been incorporated into the nation's legal system and are still relevant today.

The Kerala High Court's ruling in the *R. Madhavan v. S.K. Nair*<sup>10</sup> case was also impacted by this case. The court concluded that the plaintiff's manuscript and the movie did not have any significant similarities in terms of topic, settings, or circumstances. The main events, circumstances, and scenes in the movie were substantially and materially different from those in the plaintiff's writing.

However, there was an exception observed in a case in 2002 when the Delhi High Court addressed the idea-expression dichotomy in the *Anil Gupta v. Kunal Dasgupta* case<sup>11</sup>. In this case, The plaintiff had approached the defendant to work with her on her proposal for a reality matchmaking television program. The plaintiff filed a lawsuit for copyright infringement, saying the defendant had stolen his concept. The defendant argued that copyright law could only protect the concept's precise representation and not the idea itself. The court agreed that copyright cannot protect an idea on its own. The court did decide, however, that even if the disputed notion is only an idea, it may be entitled to copyright protection if it is new and inventive.

In a recent development, the 2008 decision in *Eastern Book Company and Ors. v. D.B. Modak*<sup>12</sup> by the Supreme Court gave the concept-expression dichotomy fresh significance. The court stressed that ideas' expression—rather than their originality—is the primary issue of copyright. In this case, which concerned the copyright protection of "copy-edited" decisions, it was decided that court-issued judgments that are in the public domain are not eligible for copyright claims.

There are other notable instances in various High Court judgments that touch on this issue. For instance, the *Mattel Inc. v. Mr. Jayant Agarwalla*<sup>13</sup> case pertained to the popular "Scrabble" board game, and in the case of *Bradford v. Sahara Media Entertainment Ltd*<sup>14</sup>., involving the adaptation of the book "A Woman of Substance" into the TV show "Karishma - The Miracle of Destiny."

In essence, these cases illustrate the importance of courts being vigilant when distinguishing between the replication of an idea or plot and the expression of the author's work. Courts must also exercise care when defining the boundaries between an idea and where its expression begins.

## COMPARATIVE STUDY BETWEEN UK, USA AND INDIAN LAWS

The legal systems of the United States and the United Kingdom diverge significantly. One of the main reasons that contribute to the vigorous dispute over the application of US and UK laws in copyright issues in Indian jurisdiction is the overall resemblance between the Indian legal system and English law. The Constitution is the source of US copyright laws, whilst UK rules are derived from the codification of common law concepts that have been developed by the legal system. It is crucial to acknowledge that it might be challenging to distinguish between a concept and an expression.

On the other hand, British courts have maintained that ideas can still be copyrighted and protected when their level makes it impossible to distinguish them from their own expression. American courts have established guidelines for removing ideas from copyright protection through their decisions. That in and of itself outlines their relevance in determining the degree to which possibility lies in demarcating the idea from its expression. The American courts have been accurate in developing methods of analyzing a computer program and dividing it into steps for establishing the copyrightable element which is given only to expression and not to ideas.<sup>15</sup>

Therefore, authors have more latitude under the American system to use the concepts and information that are available to them. The Supreme Court referenced many English and American case laws in the *R.G. Anand* case. By failing to bring up and discuss the distinctions between English and American law on the matter, the court of law made a mistake. At some point, the Supreme Court will need to investigate, evaluate, and make a serious effort to reconcile the idea-expression contradiction by issuing a judicial declaration on the subject of the differences between English and American law.

Indian courts have always upheld English law and taken a conservative stance on copyright legislation in general. India's conservative approach is more geared at defending the interests of society as a whole at the

<sup>10</sup> *R. Madhavan v. S.K. Nair* AIR 1988 Ker. 39.

<sup>11</sup> *Anil Gupta v. Kunal Dasgupta*, IA 8883/2001 in Suit no.1970 of 2001.

<sup>12</sup> *Eastern Book Company and Ors. v. D.B. Modak*, AIR 2008 SC 809.

<sup>13</sup> *Mattel Inc. v. Mr. Jayant Agarwalla*, 2008 (38) PTC 416 (Del).

<sup>14</sup> *Bradford v. Sahara Media Entertainment Ltd*, 2004 (28) PTC 474 (Cal).

<sup>15</sup> The doctrine of idea – expression dichotomy in India: An insight on protection of unexpressed ideas in literary works LawBhoomi, <https://lawbhoomi.com/the-doctrine-of-idea-expression-dichotomy-in-india-an-insight-on-protection-of-unexpressed-ideas-in-literary-works/> (last visited Feb 5, 2024)

expense of the innovator. The case where someone is discouraged from coming up with ideas would have a greater impact on society's interests than the case when someone comes up with a creative concept that is then protected for a set amount of time. This has been the main justification for Indian courts' preference for the conventional over the liberal interpretation of copyright rules in general.<sup>16</sup>

## EXCEPTION TO THE RULE

- The Doctrine of Merger

The core principle of Copyright law emphasizes that facts and ideas cannot be copyrighted; only the original and creative way of expressing these ideas and facts receives legal protection. However, in cases where the idea and its expression are so intertwined that they cannot be separated, the courts employ the Doctrine of Merger. According to this theory, copyright protection cannot be provided if the idea and expression are intertwined and indistinguishable since doing so would inhibit innovation, which is contrary to the main goal of copyright legislation.

According to the notion of merging, there are some ideas that have almost only one method to represent them, making the idea and its expression nearly identical. In such situations, the expression is not eligible for copyright protection.

In the *Herbert Rosenthal Jewellery Corporation v. Kalpakian* case<sup>17</sup>, the court ruled that a bee-shaped jewel pin was an idea open to everyone to replicate, as its expression could only be achieved in very limited ways. Therefore, this particular form of expression could not be copyrighted.

In the *Mathel, Inc. and Ors. Vs. Jayant Agarwalla and others* case, the Delhi High Court clarified the doctrine of merger as follows: "In the realm of copyright law, the doctrine of merger posits that when the idea and expression are so closely intertwined that they cannot be distinguished, it is not possible to separate the two. In other words, the expression and the idea should be so interconnected that they are inseparable. Applying this doctrine, courts have refused to grant copyright protection to the expression of an idea that can only be conveyed in a very limited manner, as doing so would create a monopoly over the idea itself."

- The problem with the 'Merger' Doctrine in India

After looking through a number of copyright infringement cases in the film industry, especially the ones where Bollywood adaptations of Hollywood works are compared to the former, it is clear that it is not always easy to convince an Indian judge that a certain piece of cinema has been plagiarized. To establish such infringement, it's essential to describe the concept in the original film with a high degree of specificity and detail rather than at a very abstract level.

For instance, consider the case of 'Raabta' facing a copyright infringement lawsuit from the creators of the Telugu film 'Magadheera.' In this case, the Telugu writer, SP Chary, has alleged that the storyline of 'Magadheera' was lifted from his own work, 'Chanderi.' Both films revolve around a love story where the protagonists reunite in a subsequent life. They also share similarities in how they visually present the two distinct "births" or generational settings, with the previous one often set in a royal, medieval context. Additionally, both films feature a prominent antagonist competing for the affections of the female lead.

An argument can be made that the fundamental concept of reincarnation is a highly general and abstract idea that can be conveyed in numerous distinct ways, each of which might qualify for copyright protection. The current expression, despite being more elaborate than the initial idea of reincarnation, could still be considered an "abstract idea" that merges with the expression based on the way courts categorize it.

In the Indian legal context, courts have regarded even a specific storyline as an abstract idea that blends with the expression as part of the idea-expression distinction. It remains unclear at what point the level of detail in the storyline can elevate it from the "abstract" idea category to a wholly distinct element. If this change is limited to the movie's final cut, Indian judges have virtually reached the same decision as their international counterparts.<sup>18</sup>

<sup>17</sup> *Herbert Rosenthal Jewelry Corporation v. Kalpakian*, 446 F.2d 738(1971).

<sup>18</sup> Idea vs. expression - what is protected under copyright law? Video Game Lawyer | Zachary C. Strebeck | Attorney at Law, <https://strebecklaw.com/idea-expression/> (last visited Feb 5, 2024)

- The doctrine of Scenes a Faire

In some circumstances, one may think of circumstances in which articulating an idea necessitates particular components that are so essential to the concept that the concept itself cannot exist without them or their specific mode of representation. Courts label these indispensable elements or features as non-copyrightable, as protecting them would essentially amount to safeguarding the idea. These indispensable elements are known as "Scenes a Faire." A classic example is a gunshot in an action scene or sequence.

The U.S. case of *Thomas Walker v. Time Life Films Inc.*<sup>19</sup>, heard by the Second Circuit Court, provides insights into what constitutes "scenes a faire." In this case, Thomas Walker, a former police officer who had served in South Bronx, authored a book called "Fort Apache" based on his experiences, depicting various crimes in South Bronx. The defendant's company engaged another writer to create a screenplay for a film titled "Fort Apache-The Bronx," which also revolved around crimes in South Bronx. Walker sued for copyright infringement, but the court decided that realistic works depicting the life of South Bronx police officers would inevitably include features such as drunks, prostitutes, rats, and abandoned automobiles. Accordingly, the "scenes a faire" concept determined that these similarities were not protected. In essence, "scenes a faire" does not grant copyright protection to well recognized, generic concepts that fall within a particular genre.

The Indian case of *NRI Film Production Associates v. Twentieth Century Fox Film Corporation*<sup>20</sup> has also addressed this theory.

## CONCLUSION AND SUGGESTIONS

The idea-expression dichotomy has been a challenging concept to define and apply effectively. Many critics have noted that an idea is inherently connected to a specific expression, making the notion of an idealess expression in copyright terms nonsensical, regardless of the type of work involved. For example, it has been over five years since actor Abhishek Bachchan started using the tagline "What An Idea Sir Ji" to advertise the "Idea" cellular services. However, in the context of copyright law, it would be more apt to say, "What An Expression Sir Ji."

When examining the application of this doctrine within the Indian legal framework, it's evident that the idea-expression dichotomy is still in its early stages. From the landmark *R.G. Anand* case to subsequent rulings, Indian courts have frequently referenced judicial decisions from the United States and the United Kingdom. It's clear that the courts have made significant efforts to incorporate this doctrine into Indian copyright law, to some degree achieving its integration as a fundamental aspect.

It is clear from the rulings in the *R.G. Anand* and *Anil Gupta* instances that English law has a more significant effect on Indian jurisprudence than American law. It is critical to carefully consider the advantages and disadvantages of both legal systems and identify a middle ground between English and American legal philosophy, especially for the Supreme Court. The court should investigate what elements qualify for protection in a movie plot and how the significance of these elements will be determined. As mentioned previously, the idea-expression dichotomy presents a challenging continuum in India.

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<sup>19</sup> *Walker v. Time Life Films, Inc.*, 615 F. Supp. 430 (S.D.N.Y. 1985)

<sup>20</sup> *NRI Film Production Associates v. Twentieth Century Fox Film Corporation* AIR 2003 Kant 148, 2003 (5) KarLJ 98