
ORIGINALITY IN COPYRIGHT LAW: A STUDY OF JUDICIAL RESPONSES

Ekta Saini, Jamia Hamdard

Dr Shariqa Mehmood, Jamia Hamdard

ABSTRACT

The idea of something being original is really important when it comes to copyright law. It is the reason why some things get protected and others do not. Even though it is so important the word "originality" is not clearly defined in the Copyright Act of 1957.¹ This means that it is up to the courts to decide what it means.

This article looks at how the idea of originality has changed over time in India and how it compares to what other countries are doing. It talks about how courts used to think that if someone put a lot of work into something it should be protected, even if it was not very creative. It also talks about how this way of thinking has changed and now courts are looking for some level of creativity in the things they protect.

For a time courts followed the "sweat of the brow" idea, which meant that they looked at how much work someone put into something rather than how creative it was. This meant that even things that were not very innovative, like lists of facts could get protected. While this helped the people who made these things it also meant that people had access to information.

Over time things have. Now courts are looking for a little bit of creativity in the things they protect. This is called the "modicum of creativity" test. Indian courts have started to use this test in cases like *Eastern Book Company v. D.B. Modak*.² They are trying to find a balance between protecting the work that people put into something and making sure that it is also creative.

The article also looks at the problems that come from having two ways of thinking about originality.

1. One way is to protect the work that people put into something, which helps the people who make things.
2. The other way is to protect things that are really creative which helps to make sure that new and innovative things are made.

¹ Copyright Act 1957.

² *Eastern Book Company v DB Modak* (2008) 1 SCC 1 (India).

The article also talks about some of the challenges that are happening now like how to deal with technology how to protect lists of information and how to handle things that are made by artificial intelligence. These things make it even harder to decide what is original and what is not.

By comparing what is happening in countries the article concludes that India is slowly starting to use the creativity-centric standard. Because there is no clear definition of originality in the law it is still not clear what is protected and what is not. This means that the government needs to make the law clearer so that it is fair, for both the people who make things and the public.

INTRODUCTION

The idea of being original is really important when it comes to copyright law. It helps figure out if a work can be protected by law. This means that only things that people create using their minds and effort can get this protection. What it means to be original is not always easy to understand and has changed over time.³

At its heart being means that something has to come from the person who made it and not be copied from something else that already exists. This is different from patent law, where something has to be completely new. With copyright law something can still be considered original even if it is similar to things as long as it was made independently and shows the creators own thinking.⁴ This shows how special copyright protection is because it cares about how something's expressed, not just the idea itself.

One of the problems with understanding what it means to be original is that there is no clear definition in the law. In India the law that deals with copyrights, which was made in 1957 lists what kinds of works can be protected. It does not say what it means to be original.⁵ This means that it is up to the courts to decide, which has led to standards being used over time. Sometimes this causes confusion and inconsistency in court decisions. It has also led to a debate between two ways of thinking about originality: one that focuses on the work that goes into creating something and another that focuses on how creative something is.

In the past courts used to think that if someone put a lot of effort into making something it could be protected, even if it was a collection of facts. This way of thinking encouraged people

³ Lionel Bently and Brad Sherman, *Intellectual Property Law* (5th edn, OUP 2018).

⁴ University of London Press Ltd. v. University Tutorial Press Ltd.

⁵ Copyright Act 1957.

to work but it also meant that sometimes people could control information that should be available to everyone.⁶

Over time there has been a shift towards thinking that something needs to have at least a little bit of creativity to be considered original. This means that the focus is on the quality of what's expressed, not just how much work went into it. This change has been influenced by what other countries, like the United States and the United Kingdom have done.⁷

Courts in India have played a role in shaping what it means to be original through important court cases. These decisions try to balance protecting the people who create things with making sure that the public has access to information. The courts are moving towards a thoughtful approach that considers skill, judgment and creativity but they have not yet found a way to be completely consistent.

The question of what it means to be original has become more complicated in today's digital world. With much content available online and the ease of copying and artificial intelligence creating works there are new questions about who creates something and what it means to be original. It is also hard to tell the difference between being inspired by something and copying it.

So originality is not about deciding what can be copyrighted but also about encouraging innovation, creativity and access, to information. This article will look closely at what courts have said about originality, the ways of thinking about it and the challenges of the digital age and will also consider how other countries deal with these issues.

PURPOSE OF COPYRIGHT PROTECTION

Copyright protection is a part of intellectual property law. It helps creators by protecting their work and promoting the sharing of knowledge and culture. The main goal of copyright law is to recognise and protect the effort and creative work of authors, artists and other creators.⁸ By giving creators rights over their work copyright law helps them control how their work is used, copied and shared. This gives them recognition and a chance to earn money.

⁶ Feist Publications v. Rural Telephone Service Co

⁷ Eastern Book Company v. D.B. Modak

⁸ P Narayanan, *Intellectual Property Law* (Eastern Law House 2017).

One of the aims of copyright protection is to encourage creativity and innovation. Knowing that their work will be protected encourages people to invest time, skill and resources into creating things. Without this protection creators might not want to make work because others could copy or use it without permission. So copyright law helps create an environment where creativity can thrive.⁹ At the time copyright protection is not meant to give creators complete control over knowledge or ideas. It tries to balance the rights of creators with the needs of the public. Creators get rights for a limited time but the ideas, facts and concepts behind their work remain available to everyone.

This balance makes sure that copyright law does not stop the flow of information or hinder further innovation. By protecting the way ideas are expressed not the ideas themselves copyright law allows creativity to build on what already exists.¹⁰ Another important goal of copyright protection is to promote growth and the sharing of knowledge. By encouraging the creation and publication of books, art and scientific works copyright helps make society richer.

It allows for a range of cultural expressions and makes it easier to access intellectual resources.

Over time as copyright protection ends these works become available for anyone to use and develop further. Also copyright law helps ensure fairness in the use of works. It provides remedies against unauthorised copying, plagiarism and infringement protecting the integrity of creative works. This is especially important in the age, where copying and sharing are easier than ever. Effective copyright protection helps make sure creators get the benefits of their work.¹¹

In today's world the purpose of copyright protection has expanded to deal with challenges like digital content distribution and emerging technologies such as artificial intelligence. These developments require an approach to copyright law that keeps its core goals while adapting to changes.¹²

In short copyright protection serves two purposes: it rewards creators for their work and ensures that society benefits from the sharing of knowledge and culture. By balancing rights and public

⁹ W R Cornish, D Llewelyn and T Aplin, *Intellectual Property: Patents, Copyright, Trade Marks and Allied Rights* (9th edn, Sweet & Maxwell 2019).

¹⁰ R.G. Anand v. Deluxe Films

¹¹ Copyright Act 1957.

¹² World Intellectual Property Organization, 'Understanding Copyright and Related Rights' <https://www.wipo.int> accessed 10 April 2026.

interest copyright law plays a vital role, in fostering creativity, innovation and human knowledge.

THE CORE LEGAL ISSUE

The main problem with copyright law is that it does not clearly say what makes something original. This means that judges have to decide what is original and what is not. Because of this it is not clear what a work needs to be considered original and judges have been making decisions.¹³

There are two ways that judges decide what is original. The first way is called the labour-based approach. This means that if someone puts a lot of time and effort into creating something it can be considered original even if it is not very creative. For example if someone makes a list of facts it can be considered original if they put a lot of work into making the list.¹⁴

The other way is called the creativity-based approach. This means that something is only original if it shows some level of creativity. This approach is often called the "modicum of creativity" test. It means that just putting in a lot of time and effort is not enough; the work has to show some level of thought.¹⁵

The problem is that these two approaches do not always agree. If we only use the labour-based approach it could mean that people can own facts and information that should be available to everyone. On the hand if we only use the creativity-based approach it could mean that some works are not protected, even if they took a lot of time and effort to create.

In India this problem is more complicated because the Copyright Act of 1957 does not say what makes something original. This means that judges have to decide and they have not always been consistent. They have been trying to find a balance between the two approaches. It is not easy.¹⁶

New technology has also made this problem worse. It is now easy to copy and change things and computers can even create content on their own. This raises questions about who owns

¹³ Copyright Act 1957.

¹⁴ University of London Press Ltd. v. University Tutorial Press Ltd.

¹⁵ Feist Publications v. Rural Telephone Service Co

¹⁶ Eastern Book Company v. D.B. Modak

these works and what level of human creativity is needed for them to be protected.

The main issue is that we need to find a way to decide what is original that balances the rights of creators with the need for access to knowledge. Because the law is not clear and because technology and creativity are always changing this is a difficult problem to solve.

The concept of originality in copyright law is very important. Originality in copyright law is what decides whether a work is protected or not. Originality in copyright law is not clearly defined, which causes a lot of problems.

We need to find a way to define originality in copyright law that works for everyone. This will help to protect the rights of creators and ensure that the public has access to knowledge. Originality in copyright law is an issue that needs to be solved.

The issue of originality in copyright law is not going away. It will continue to be a problem until we find a way to clearly define what makes something original. This is why it is so important to keep working on a solution to this problem. Originality in copyright law is a part of protecting the rights of creators and ensuring that the public has access to knowledge.¹⁷

The concept of originality in copyright law is very important. We need to find a way to define originality in copyright law that balances the rights of creators with the need for access to knowledge. This will help to protect the rights of creators and ensure that the public has access to knowledge. Originality, in copyright law is an issue that needs to be solved.

EARLY JUDICIAL APPROACH: “SWEAT OF THE BROW” DOCTRINE

The early days of copyright law were shaped by the "sweat of the brow" idea. This meant that a work was considered original if the person who made it put in a lot of time and effort. It did not matter if the work was creative or new that the person who made it did not copy it from someone else.¹⁸

The focus was on how the person worked not on how creative they were. This way of thinking came about when courts wanted to help authors by giving them protection for their work. The

¹⁷ Lionel Bently and Brad Sherman, *Intellectual Property Law* (5th edn, OUP 2018).

¹⁸ *University of London Press Ltd v University Tutorial Press Ltd* [1916] 2 Ch 601 (KB).

courts thought that if people put a lot of time and effort into making something they should be rewarded.¹⁹

Even things like lists and collections of information could be protected by copyright long as the person who made them put in a lot of work. The courts did not care if the work was clever or interesting that the person who made it used skill and effort.²⁰

This made it easy for people to say their work was original because the courts did not expect much. The "sweat of the brow" idea was important in the days of copyright law especially in countries that use common law. It helped people who worked hard creating things feel safe because they knew their work would not be taken by someone

This idea helped people invest time and money in making things because they knew they would be protected. This way of thinking was not perfect. Some people thought it was not fair to protect things that were not really creative like lists of facts. Facts themselves cannot be copyrighted, so it did not seem right to give people rights over collections of facts just because they worked hard.²¹

This could limit access to information. Hinder the sharing of knowledge. Another problem was that this idea blurred the line between copyright law and other laws that protect property. By focusing on hard work the courts forgot that the main point of copyright law is to protect creative expression, not just effort.

Over time courts started to realize that originality should be about more than hard work. They thought it should also involve some level of creativity. This led to the development of standards like the "modicum of creativity" test.²²

The "sweat of the brow" doctrine played a role in the early development of copyright law. It showed that hard work and effort are important. It also highlighted the need, for a more balanced approach. Its limitations taught us that creativity should be a part of what makes something and this shaped the way we think about copyright law today.

¹⁹ William Cornish, David Llewelyn and Tanya Aplin, *Intellectual Property: Patents, Copyright, Trade Marks and Allied Rights* (9th edn, Sweet & Maxwell 2019).

²⁰ *Ladbroke (Football) Ltd v William Hill (Football) Ltd* [1964] 1 WLR 273 (HL).

²¹ *Feist Publications Inc v Rural Telephone Service Co* 499 US 340 (1991).

²² *Eastern Book Company v DB Modak* (2008) 1 SCC 1 (India).

SHIFT TOWARDS CREATIVITY STANDARD

The way copyright law has changed is really interesting. It used to be about how much work someone put into something. Now it is more about how creative something's. This change shows that people think just putting in a lot of time or money should not be enough to get copyright protection. The work has to have some kind of creativity to it.²³

The old way of thinking was called the "sweat of the brow" idea. Courts used to care about how much labor, skill and time the author put in.. Over time people started to criticize this way of thinking because it protected works that were not really original. So courts started to use a standard that says a work has to have at least a little bit of creativity.²⁴

This change means we are moving away from looking at how much work was done and towards looking at the quality of the work. It is about protecting how ideas are expressed, not the work that goes into making them. Because of this things that just collect facts without adding anything are less likely to be protected. This helps keep information available to everyone, which is good for learning and innovation.²⁵

Another important thing about this change is that it is happening in countries, not just one. The United States and the United Kingdom have been leaders in shaping what we think about originality today. The idea of needing a bit of creativity is a global trend that helps make sure copyright laws are similar everywhere.

In India courts have also started to move from just looking at how much work was done. They say there needs to be a balance between skill, judgment and creativity. Just putting in effort is not enough anymore. The work has to show some creativity to be considered original.²⁶

This change to a creativity standard also helps prevent one person or company from controlling all the facts and information. By needing an element the law makes sure copyright does not cover just basic data or ideas. This protects the interest and encourages authors to really create something new.

This change is not without problems. It can be hard to decide what is creative enough. This

²³ *Feist Publications Inc v Rural Telephone Service Co* 499 US 340 (1991).

²⁴ *University of London Press Ltd v University Tutorial Press Ltd* [1916] 2 Ch 601 (KB)

²⁵ Lionel Bently and Brad Sherman, *Intellectual Property Law* (5th edn, OUP 2018).

²⁶ *Eastern Book Company v DB Modak* (2008) 1 SCC 1 (India).

might lead to decisions in court. With these challenges the new way of thinking about creativity is a better and more fair approach to copyright law.²⁷

In the end the move to a creativity standard is a deal for copyright law. It changes how we think about what's original by focusing on the creative contribution, not just the work. It also brings law more in line with what other countries are doing and finds a good balance between protecting creators and keeping information available, to the public.

INDIAN LEGAL FRAMEWORK ON ORIGINALITY IN COPYRIGHT LAW

The Indian legal framework governing originality in copyright law is primarily based on the Copyright Act, 1957. This Act provides the basis for protecting artistic, musical and dramatic works. Although the Act lists the categories of works for protection and outlines the rights of authors it does not clearly define "originality." As a result courts have had to interpret the meaning and scope of originality in India.²⁸

The Copyright Act protects original" works making originality a key requirement. However without guidance from the law Indian courts have developed the concept through various judicial decisions. Initially Indian courts followed the law approach, which emphasized the effort and skill involved in creating a work. This approach was influenced by law and reflected the idea that even works with minimal creativity could be protected if sufficient effort was involved.²⁹

Over time Indian courts began to rethink this approach. They recognized that protecting works solely based on effort could lead to overprotection and limit access to information. As a result courts have started to consider both the effort invested and the presence of input when determining originality.³⁰

Landmark judicial decisions have helped shape the concept of originality. Courts have clarified that originality does not require a work to be new or unique. It must involve independent creation and the application of skill and judgment. Importantly recent interpretations have emphasized that there must be at some level of creativity in the work. This development aligns

²⁷ *Infopaq International A/S v Danske Dagblades Forening* (C-5/08) [2009] ECR I-6569.

²⁸ Copyright Act 1957 (India).

²⁹ *University of London Press Ltd v University Tutorial Press Ltd* [1916] 2 Ch 601 (KB).

³⁰ *Ladbroke (Football) Ltd v William Hill (Football) Ltd* [1964] 1 WLR 273 (HL).

copyright law with international standards particularly those in the United States.³¹

Despite this progress the Indian legal framework still relies heavily on interpretation rather than clear legislation. This reliance has led to inconsistencies as different courts may apply varying standards when assessing originality. The lack of legislation creates uncertainty for authors, creators and legal practitioners especially in complex cases involving compilations, databases and digital content.

The rapid advancement of technology has added challenges to the Indian copyright regime. Issues such as reproduction, online dissemination and artificial intelligence-generated works challenge traditional notions of originality and authorship. These developments highlight the need for an adaptable and clearly defined legal framework that can address emerging concerns while balancing creator's rights and public interest.³²

The Indian legal framework on originality relies on interpretation due to the absence of a statutory definition. While courts have played a role in evolving the concept challenges of inconsistency and ambiguity remain. There is a growing need for legislation to ensure a more uniform and predictable application of the principle of originality, in India.

LANDMARK JUDICIAL INTERPRETATIONS ON ORIGINALITY

The way courts interpret the law has played a role in shaping what we mean by originality in copyright law. This is especially true in places like India where the laws do not give guidance. Over time courts have made decisions that have helped define what originality means. They have moved from just looking at how much work someone put into something to also considering how creative it is.

1. One of the important cases is *University of London Press Ltd. V. University Tutorial Press Ltd.* From 1916.³³ In this case the court said that for something to be considered original it just has to be made by the person who claims to have created it and not be a copy of something. The court also said that if someone uses skill and judgment to make something that is enough to make it original. This case started the idea that even things

³¹ *Eastern Book Company v DB Modak* (2008) 1 SCC 1 (India).

³² Nandan Kamath, *Law Relating to Computers, Internet and E-Commerce* (6th edn, LexisNexis 2018).

³³ *University of London Press Ltd v University Tutorial Press Ltd* [1916] 2 Ch 601 (KB).

that are not very creative can still be protected by copyright if they took a lot of work to make.

2. In India the case of *R.G. Anand v. Deluxe Films*³⁴ from 1978 was a deal. The Supreme Court said that copyright only protects the way an idea is expressed not the idea itself. The court also said that just because two things look similar it does not mean that one is a copy of the other. There has to be a lot of copying for it to be considered infringement. This decision helped clarify that what makes something original is how it is expressed, not the idea behind it.
3. The case of *Eastern Book Company v. D.B. Modak*³⁵ from 2008 was a change in how Indian courts think about copyright. The Supreme Court moved away from considering how much work went into something and started looking at whether it was also creative. The court said that just putting in a lot of effort is not enough to make something original; it has to have some level of creativity. This decision brought law more in line with what other countries do and it introduced a new test that considers both skill and creativity.
4. *Civic Chandran v. Ammini Amma*³⁶- The Court emphasized that originality lies in independent creation and not novelty. Even derivative works may be original if they involve sufficient skill, labour, and judgment.
5. *Super Cassettes Industries Ltd. v. Hamar Television Network Pvt. Ltd.*³⁷- The Delhi High Court highlighted that copyright subsists in creative expression, not mere ideas or formats. The Court reinforced that originality must involve intellectual creation and not just mechanical reproduction.
6. *India TV Independent News Service Pvt. Ltd. v. Yashraj Films Pvt. Ltd.*³⁸- The Court examined originality in audiovisual content and reiterated that expression must show minimal creativity. It also discussed the distinction between idea and expression, which is central to originality.

³⁴ *RG Anand v Deluxe Films* (1978) 4 SCC 118 (India).

³⁵ *Eastern Book Company v DB Modak* (2008) 1 SCC 1 (India).

³⁶ *Civic Chandran v Ammini Amma* 1996 PTC 16 (Ker).

³⁷ *Super Cassettes Industries Ltd v Hamar Television Network Pvt Ltd* 2011 (47) PTC 49 (Del).

³⁸ *India TV Independent News Service Pvt Ltd v Yashraj Films Pvt Ltd* 2012 (50) PTC 433 (Del).

7. Tech Plus Media Private Ltd. v. Jyoti Janda³⁹- This case dealt with databases and compilations. The Court held that mere collection of data is not original, unless there is creative selection or arrangement, aligning with global standards post-Feist.
8. Shyam Telelink Ltd. v. Union of India⁴⁰- the Court reiterated that copyright protects original expression, not factual information. It emphasized that originality must reflect authorial input beyond mere effort.
9. Camlin Private Limited v. National Pencil Industries⁴¹- the Court examined originality in artistic works and held that minor variations or trivial changes do not satisfy the originality requirement unless they demonstrate independent creative effort.
10. Ferani Hotels Pvt. Ltd. v. State of Maharashtra⁴²- Although primarily a constitutional case, it touched upon intellectual property and reinforced that originality is tied to creative authorship, not mere investment.
11. Tips Industries Ltd. v. Wynk Music Ltd.⁴³- While mainly about licensing, the Court reiterated that copyright protection depends on original works embodying creativity, especially in digital and streaming contexts.
12. UTV Software Communication Ltd. v. 1337X.⁴⁴- In the context of digital piracy, the Court indirectly reinforced the importance of protecting original creative works in the digital environment and acknowledged evolving challenges in determining originality online.

These important cases show how the idea of originality has changed over time. At first courts focused on how work someone put into something but now they also consider how creative it is. The courts have made it clear that something does not have to be very creative to be considered original; it just has to have some level of contribution.

With these changes there are still some challenges. How the courts apply the standard of

³⁹ *Tech Plus Media Private Ltd v Jyoti Janda* 2014 (58) PTC 169 (Del).

⁴⁰ *Shyam Telelink Ltd v Union of India* (2010) 10 SCC 165 (India).

⁴¹ *Camlin Pvt Ltd v National Pencil Industries* 1988 PTC 1 (Del).

⁴² *Ferani Hotels Pvt Ltd v State of Maharashtra* (2014) 11 SCC 769 (India).

⁴³ *Tips Industries Ltd v Wynk Music Ltd* 2019 SCC OnLine Bom 1326.

⁴⁴ *UTV Software Communication Ltd v 1337X.to* 2019 SCC OnLine Del 8002.

originality can vary depending on what kind of work it's the specific facts of the case. This has led to some decisions especially when it comes to things like compilations and digital content.

The way courts have interpreted the law has helped define what we mean by originality in copyright law. The courts have moved from a focus on how much work someone puts into something to a more nuanced view that considers both skill and creativity. However the fact that we still rely much on what the courts say highlights the need, for clearer laws to ensure that everyone knows what to expect.

JUSTIFICATION FOR COPYRIGHT

The idea that something is original because of the hard work that goes into it has been around for a time. This way of thinking is often called the "sweat of the brow" idea. It says that the effort, skill and money an author puts into creating something should be protected, not the creativity that goes into it. People who support this idea say it helps to encourage people to be productive keeps investments safe and gives creators protection.⁴⁵

One of the reasons people like this idea is that it recognizes the hard work and resources that authors put into their work. Some things, like collections of information, databases and reference books take a lot of time skill and money to make. Even if they are not very creative they still show a lot of economic effort. Giving copyright protection to these things makes sure that the people who create them get the benefits of their work and are protected from people copying their work without permission.⁴⁶

This idea also encourages people to work and be diligent. By protecting things that are made by collecting organising and presenting information the law encourages people and organizations to take on big projects that require a lot of work. If they did not have this protection there would be no reason to invest in making databases or collections of information because others could just copy them without doing the same amount of work. So this way of thinking supports the creation of resources that help society.⁴⁷

The idea that hard work should be protected also gives creators protection. Unlike the idea that

⁴⁵ *University of London Press Ltd v University Tutorial Press Ltd* [1916] 2 Ch 601 (KB).

⁴⁶ *Ladbroke (Football) Ltd v William Hill (Football) Ltd* [1964] 1 WLR 273 (HL).

⁴⁷ William Cornish, David Llewelyn and Tanya Aplin, *Intellectual Property: Patents, Copyright, Trade Marks and Allied Rights* (9th edn, Sweet & Maxwell 2019).

something has to be creative to be protected this way of thinking makes sure that more kinds of things can be protected by copyright. This is especially important in areas where creativity's not as important as hard work and accuracy like reporting on legal cases collecting scientific data and making statistical collections.

Also people who support this idea say it is easier to apply and gives certain results. It is often easier to measure the work, skill and effort that goes into making something than to decide if it is creative or not which can be very subjective. By looking at things like how time, money and effort are put into something courts can make more consistent and predictable decisions.⁴⁸

This way of thinking also aligns with the reasons behind copyright law. It makes sure that people who invest in making things can get their money back and make a profit. This is especially important in industries where making content involves a lot of risk. By giving protection the law encourages people to keep investing in making and sharing knowledge.

While supporting the idea that hard work should be protected it is also important to be careful not to overprotect things. However the strength of this idea lies in its ability to protect things that are made with a lot of effort and to encourage intellectual investment. The labour-based standard of originality which is the idea that something's original because of the hard work that goes into it is an important concept that helps to promote productivity and creativity. The labour-based standard is a part of copyright law and it plays a vital role, in protecting the rights of creators.⁴⁹

CRITIQUE FOR COPYRIGHT

The idea of creativity being the standard for something to be considered original has become more popular in copyright law. This means that a work has to have some level of creativity to be protected. People who support this idea say it is a way to decide what should be protected because it lines up with the main goals of copyright law. It protects peoples expressions while making sure the public can still get to information.⁵⁰

One of the reasons for using the creativity standard is that it stops people from owning facts and information. Facts and ideas are for everyone. Should be free for anyone to use. If we only

⁴⁸ Lionel Bently and Brad Sherman, *Intellectual Property Law* (5th edn, OUP 2018).

⁴⁹ *Eastern Book Company v DB Modak* (2008) 1 SCC 1 (India).

⁵⁰ Lionel Bently and Brad Sherman, *Intellectual Property Law* (5th edn, OUP 2018).

looked at how work someone put into something it could let people claim ownership of facts and stop others from using them. By saying something has to be creative to be protected we make sure that only the way someone expresses themselves is protected, not the facts themselves.⁵¹

This standard also encourages people to be really creative. Copyright law is meant to get people to express themselves in original ways not just to reward effort. By saying something has to have some level of creativity we motivate people to make interesting things. This helps art, literature and knowledge move forward and creates a culture where people value being original.⁵²

The creativity standard is also more in line with what other countries doing. Many places, like the United States use the "modicum of creativity" test, which means something has to have at a little bit of creativity to be protected. This makes it easier for people to know what to expect when it comes to copyright law around the world which's especially important now that we are all connected and sharing things online.⁵³

Using the creativity standard also helps balance the rights of creators with the needs of the public. It protects the work of authors while making sure that copyright law does not go too far and stop people from accessing knowledge. This balance is crucial so that copyright law does not hurt competition, innovation or our ability to get to information.

Another good thing about this approach is that it reminds us of the difference, between copyright law and other types of intellectual property law. By focusing on creativity we stay true to what copyright laws meant to do: protect expressive works. This means we do not extend protection to areas that are better handled by laws.⁵⁴

It is true that figuring out what is creative can be subjective. Since we only need a minimal amount of creativity the bar is not set too high. This means a wide range of works can be protected while still keeping a standard that means something.

⁵¹ Lionel Bently and Brad Sherman, *Intellectual Property Law* (5th edn, OUP 2018).

⁵² William Cornish, David Llewelyn and Tanya Aplin, *Intellectual Property: Patents, Copyright, Trade Marks and Allied Rights* (9th edn, Sweet & Maxwell 2019).

⁵³ *Feist Publications Inc v Rural Telephone Service Co* 499 US 340 (1991).

⁵⁴ *Eastern Book Company v DB Modak* (2008) 1 SCC 1 (India).

CONTEMPORARY CHALLENGES IN DETERMINING ORIGINALITY

The idea of being original in copyright law's facing big problems these days.⁵⁵ This is mainly because technology is moving fast and people are creating content in new ways.⁵⁶ The old rules that were made before the internet do not work well with these ways of creating things.

One of the problems is that it is so easy to copy and share things on the internet.⁵⁷ This has made it hard to tell what is a work and what is just a copy. With forms of media like books and music it was harder to make copies. Now with digital things you can make a copy in just a second and it does not cost much. This is making it hard to know if someone is using something without permission.

Another issue is with things like databases and collections of information.⁵⁸ These things take a lot of work to put together. They might not be creative enough to be considered original. It is hard to decide if the way the information is selected and arranged is creative enough. The courts have to balance protecting the people who made these things with making sure that facts and information are available to everyone.

The use of intelligence is also making things more complicated. Things made by intelligence are challenging the old ideas about who made something and what it means to be creative. If a machine makes something can it be considered original? Who should get credit for it? The person who made the machine the person who used it or the machine itself? The current laws about copyright are based on people being creative so they do not work well with intelligence.

It is also getting harder to tell the difference between getting inspiration from something and copying it. A lot of works are based on ideas or styles that already exist. It is hard to know when taking inspiration from something becomes copying it without permission. In things like writing, music and movies it is common to see similarities between works. Not all similarities are against the law. This makes it hard for creators and lawyers to know what is allowed.

The fact that digital content can be shared around the world is also a problem. Something made

⁵⁵ Lionel Bently, Brad Sherman, Dev Gangjee and Phillip Johnson, *Intellectual Property Law* (5th edn, OUP 2018).

⁵⁶ World Intellectual Property Organization, *WIPO Technology Trends 2019: Artificial Intelligence* (WIPO 2019).

⁵⁷ Paul Goldstein and P Bernt Hugenholtz, *International Copyright: Principles, Law, and Practice* (3rd edn, OUP 2019).

⁵⁸ *Feist Publications, Inc. v. Rural Telephone Service Co.* 499 US 340 (1991).

in one country can be. Used in another which can cause problems because different countries have different rules about what is original.⁵⁹ Some places focus on how creative something's while others might still consider how much work went into making it. This can lead to confusion and legal problems when there are disagreements between countries.

Also there is so much content being made and shared on the internet now. It is hard to enforce the laws, about copyright because it is hard to find and stop people who are using things without permission. The current laws and ways of dealing with these problems might not be enough to handle how big the problem is.

IMPACT ON COPYRIGHT PROTECTION

The idea of something being original has an effect on how well copyright protection works. This is because originality is the requirement for something to be protected by copyright. It decides if a work can be protected by law and how rights the person who created it has. Over time the way we think about originality has changed. We used to think about how much work went into something. Now we care more about how creative it is. This change has had an impact on how copyright law is used in real life.⁶⁰

One of the ways that originality affects things is by deciding how much protection authors get. If we say something is original just because it took a lot of work then a lot of things will be protected. This means authors will get rewarded for the time and money they put in. It also means some things might get protected even if they are not very creative. On the hand if we say something is only original if it is really creative then only some things will be protected. This means only things that show a lot of creativity will be protected and that will make copyright more valuable.

Originality is also very important for encouraging ideas and creativity. It helps decide what kinds of things will be protected by law. If we have a balance then only things that show a lot of thought and effort will be protected. This means people will be free to use information and facts without worrying about copyright. This balance is necessary for creating a world where new ideas can be built on ones without too many restrictions.

⁵⁹ Berne Convention for the Protection of Literary and Artistic Works.

⁶⁰ Feist Publications, Inc. v. Rural Telephone Service Co. 499 US 340 (1991).

Another big effect of originality is on how information the public can access. If it is too easy for something to be considered original then people might try to control facts and information. This would limit what the public can use. If we make it harder for something to be considered original then more information will be available. This helps education, research and new ideas.

So deciding what is original has an impact on how much information is available, to the public.

The idea of originality is also important when people argue about copying and copyright infringement. Courts have to decide if something is original before they can say if it was copied.

They also have to think about how similar two thinkers. If we have an idea of what makes something original then it will be easier to solve these arguments.

Now because of technology the idea of originality is even more important. We can. Share digital content easily and artificial intelligence is creating new kinds of works. This means we need to be flexible and consistent when we apply the idea of originality.

COMPARATIVE PERSPECTIVE ON ORIGINALITY IN COPYRIGHT LAW

Originality in copyright law is not the same everywhere, it changes based on how laws developed in different places, what judges decide, and what each country wants to focus on with policy.⁶¹ The basic idea is that a work has to come from the author themselves, but what counts as original can be pretty different. Looking at the United States, the United Kingdom, and India, you see some parts lining up and others pulling apart in their ways of handling it.

1. United States: Creativity-Centric Approach

In the US, everything about originality ties back to creativity, that is the main thing. They say a work needs to be made on its own, without copying, and it has to have just a little bit of creativity, like that modicum of creativity thing.⁶²

This got set up clearly in *Feist Publications v. Rural Telephone Service Co.*, a big Supreme Court case. The court there said putting in effort or work alone does not get you copyright, like with that phone book full of just facts, they turned it down because there was no real creative

⁶¹ Lionel Bently, Brad Sherman, Dev Gangjee and Phillip Johnson, *Intellectual Property Law* (5th edn, OUP 2018).

⁶² *Feist Publications, Inc. v. Rural Telephone Service Co.* 499 US 340 (1991).

choice in picking or setting it up.

So, the two main parts they stress are making it independently and having that small amount of creativity, even if it is not much. The US does not go for the sweat of the brow idea at all, where just hard work counts. Facts and data are out there for everyone, you can't lock them up with copyright, only the way you express them originally, maybe how you arrange or show them, that gets protected.

This setup helps with people getting information freely, and it pushes for new ideas and competition, plus it draws a line on what is protected and what is not. But some say it leaves out protection for things that take a lot of work, like databases, kind of under protected I guess.

2. United Kingdom: From Labour to Creativity

The UK used to base originality on skill, labour, and judgment, which was basically the sweat of the brow approach, so if you put in enough effort, even without much creativity, it could count as original.⁶³

Like in *University of London Press Ltd. v. University Tutorial Press Ltd.*, the court said it does not need to be totally new, just from the author and showing some skill and work. Things have changed a lot though, especially from EU influences. Now courts talk about the work needing to show the authors own intellectual creation, like their free and creative choices.

You see this in *Infopaq International A/S v. Danske Dagblades Forening*, where the European court said originality means expressing those personal choices. So the UK now shifts from just labour to needing some creativity, and it lines up better with what others do internationally.⁶⁴

Still, you can spot bits of the old labour focus, especially with compilations or databases, it lingers there maybe.

3. India: A Hybrid and Evolving Approach

India kind of mixes it up, taking from both US and UK styles. At first, courts went with the British skill, labour, and judgment, protecting things even if creativity was low.

⁶³ *University of London Press Ltd v University Tutorial Press Ltd* [1916] 2 Ch 601 (KB).

⁶⁴ *Infopaq International A/S v Danske Dagblades Forening* Case C-5/08, [2009] ECR I-6569.

But it has changed over time. The big shift was in *Eastern Book Company v. D.B. Modak* from the Supreme Court, they said no to pure sweat of the brow, and went for a balance of skill, judgment, plus a bit of creativity.⁶⁵

They decided labour by itself is not enough, you need some intellectual effort that leads to creative expression. So India recognizes the work and skill but does not put all on that, it wants minimum creativity, though not as tough as the US demands.

This way tries to protect authors while letting people access info, and it fits with global ideas somewhat. It helps with labour heavy stuff like legal reports or databases, without letting facts get monopolized, but since there is no clear law defining originality, decisions can vary, it feels inconsistent sometimes.

Looking across these, there is a move worldwide to make creativity central to originality. The US sticks hard to that creativity model, the UK is catching up after starting different. India keeps it balanced, flexible, mixing labour and creativity to fit its needs.

Differences like this make cross border copyright tricky, especially online now. If standards got more the same, it would help with certainty, fairness, protecting works better everywhere, I think it seems that way at least.

CONCLUSION

The idea of originality is very important in copyright law. It helps decide if a work can be protected and what rights the creator gets. This article shows that originality is not a fixed idea. It changes over time based on what judges think. There is no definition of originality in the Indian law so courts have to define it. They have been doing this for a time. Courts play a role in deciding what is original. A time ago originality was thought of as being based on how much work and effort was put into something. This was called the "sweat of the brow" doctrine. It protected a lot of things. It also raised concerns about protecting too much. Courts started to think that originality should be about creativity, not hard work. They said that there needs to be some level of thought. This way they balanced protecting creators with making sure the public has access to information. In India the courts try to balance work and creativity. Some important court decisions helped shape this idea. Sometimes it can be confusing especially with

⁶⁵ *Eastern Book Company v D.B. Modak* (2008) 1 SCC 1.

things like databases and digital works. Other countries like the United States and the United Kingdom also think creativity is important. Even though there are still differences there is a trend towards thinking that only works with creative thought should be protected. New challenges like copying, AI-generated works and the line between inspiration and copying make originality more complicated. These issues show that old laws may not work well and that a new approach is needed. The idea of originality affects not creators' rights but also how we access knowledge and culture. If the standard is too easy it might limit what is available to the public. If it is too hard it might discourage people from being creative. So finding a balance, between protecting creators and helping the public is crucial.