
ORIGINALITY IN COPYRIGHT LAW: AN ANALYSIS OF INDIAN JUDICIAL APPROACH

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ABSTRACT

Originality is one of the most important requirements for obtaining copyright protection. Only works that are original are protected under copyright law. However, the Indian Copyright Act, 1957 does not clearly define what originality means. Because of this, Indian courts have played an important role in explaining and developing the concept of originality through their decisions. This research paper studies how Indian courts understand originality and how their approach has changed over time. In the early years, courts mainly focused on the effort put in by the author. If a person spent time, labour, and skill in creating a work, it was treated as original, and creativity was not given much importance. As a result, even works that involved copying or a simple arrangement of existing material were protected. This approach helped authors but also created problems, as it allowed copyright over works that did not show real creative thinking. Over time, courts realised that granting protection to such works could harm public interest, since copyright should protect creativity rather than routine or mechanical work. Consequently, the judicial approach gradually shifted, and courts began to look for some level of creative choice in a work. Originality started to mean more than mere hard work; it began to include independent thinking and personal input by the author. This paper explains how courts now try to balance effort and creativity. A work is considered original when the author uses skill and judgment in a meaningful way — the work should not be copied, and it should not be produced automatically without thought. Although very high creativity is not required, some personal contribution by the author is necessary. This shift helps ensure that copyright law supports innovation and fair competition. The paper also discusses the importance of originality in today's digital world, where easy access to technology has made copying and reproducing content very simple, and many works are created by rearranging existing material. In such situations, determining whether a work is original becomes difficult, and courts must carefully examine whether the author has added something new or simply repeated existing content. Through a detailed study of judicial reasoning, this paper shows that the Indian approach to originality has become more balanced and practical, aiming to protect genuine creative efforts while ensuring that facts and information remain free for public use. The paper concludes that

although Indian courts have improved their understanding of originality, clearer and more consistent application is still needed. A proper interpretation of originality is necessary to protect authors, encourage creativity, and maintain fairness in copyright law.

Keywords: Originality, Copyright Law, Indian Judiciary, Creativity, Skill and Judgment, Authorship.

Introduction

Copyright law plays an important role in safeguarding the rights of creators and in promoting creativity and innovation. It offers authors, artists, musicians, filmmakers, and other creators protection under the law by granting them exclusive rights over their work, including the right to reproduce, distribute, publish, and communicate their work to the public.¹

Not all works, however, are granted copyright protection. Originality is one of the essential conditions for copyright, and only original works may be protected under copyright law.² The significance of originality lies in the fact that the purpose of copyright law is to protect the expression of creativity, as opposed to ideas, facts, and information.³ Ideas and facts belong to the commons and should be freely accessible to all. Copyright protection is offered to an author only where the ideas are articulated in a unique manner.⁴

In India, copyright law is governed by the Copyright Act, 1957.⁵ Although the Act mandates originality, it does not define the term. This gap in the statute has led to the concept being developed through judicial interpretation in the absence of a statutory definition.

Historical Background

Indian courts have considered originality in numerous cases and have, over time, developed principles to determine whether a work is original. At the outset, courts relied heavily on the “sweat of the brow” doctrine, an English-law import.⁶ This doctrine held that a work could qualify as original where the author had expended labour, effort, and skill in creating it.

Over time, however, the judiciary recognised that this standard could result in over-protection

¹N.S. Gopalakrishnan & T.G. Agitha, *Principles of Intellectual Property* 87–89 (Eastern Book Company 2017).

²P. Narayanan, *Intellectual Property Law* 59–61 (4th ed. Eastern Law House 2017).

³R.G. Anand v. Delux Films, (1978) 4 SCC 118 (India).

⁴V.K. Ahuja, *Law of Copyright and Neighbouring Rights* 102–104 (3d ed. LexisNexis 2016).

⁵Copyright Act, 1957, § 13 (India).

⁶Lionel Bently & Brad Sherman, *Intellectual Property Law* 89–92 (4th ed. Oxford Univ. Press 2014).

of works involving no real creativity. Consequently, the trend among courts began to shift toward a more moderate approach requiring some element of skill and judgment, in addition to labour and effort.⁷ This paper examines how the Indian judiciary has understood the concept of originality and how its approach has evolved over the years. It also considers the difficulties in applying the originality standard in the contemporary digital environment.⁸

Literature Review

1. Melville B. Nimmer and David Nimmer⁹ explain that originality in copyright law requires independent creation and a minimal level of creativity. According to the authors, copyright protection does not depend on novelty but on the author's intellectual contribution. Their work provides a doctrinal foundation for understanding how courts interpret originality, useful for analysing how Indian courts determine originality in copyright cases.

2. William Patry¹⁰ discusses the policy considerations behind the originality requirement in copyright law. He argues that copyright protection should not be granted solely on the basis of labour or effort, and that a work must contain some creative expression by the author. His analysis helps explain the shift from the “sweat of the brow” doctrine to modern creativity-based standards.

3. Paul Goldstein and P. Bernt Hugenholtz¹¹ examine the concept of originality in international copyright law. They explain that originality functions as a threshold requirement that prevents protection of mere facts or information. Their comparative approach helps in understanding how different jurisdictions interpret originality, a perspective useful when evaluating the Indian judicial approach.

4. Lionel Bently and Brad Sherman¹² provide a historical explanation of originality in copyright law, describing how early copyright jurisprudence relied heavily on the “sweat of the brow” doctrine focused on labour and effort. The authors also discuss criticism of this doctrine and the gradual shift toward creativity-based standards, helping to explain the

⁷Eastern Book Co. v. D.B. Modak, (2008) 1 SCC 1 (India).

⁸Jane C. Ginsburg, The Concept of Authorship in Comparative Copyright Law, 52 DePaul L. Rev. 1063 (2003).

⁹1 Melville B. Nimmer & David Nimmer, Nimmer on Copyright § 2.01 (Matthew Bender rev. ed. 2023).

¹⁰William F. Patry, Patry on Copyright (Thomson Reuters 2022).

¹¹Paul Goldstein & P. Bernt Hugenholtz, International Copyright: Principles, Law, and Practice (3d ed. 2019).

¹²Lionel Bently & Brad Sherman, Intellectual Property Law (5th ed. 2018).

historical evolution of originality.

5. P. Narayanan ¹³ provides a detailed explanation of copyright law in India and the judicial interpretation of originality. He highlights how Indian courts initially followed English precedents in determining originality, and discusses several Indian cases that shaped copyright jurisprudence, making this work particularly relevant to the Indian legal perspective on originality.

6. V.K. Ahuja ¹⁴ explains the concept of originality under the Copyright Act, 1957 and its interpretation through judicial decisions. He emphasises that originality requires independent creation and intellectual effort by the author, and discusses how courts balance authors' rights with public access to information.

7. Ananth Padmanabhan ¹⁵ analyses the role of originality as a threshold requirement for copyright protection. He explains that copyright protects the expression of ideas rather than the ideas themselves, and examines how courts assess originality in cases involving compilations and derivative works.

8. Jane C. Ginsburg ¹⁶ examines how copyright law protects works that contain informational content. She argues that originality must involve creative selection, arrangement, or presentation of material, highlighting the challenges involved in protecting factual compilations.

9. Pamela Samuelson ¹⁷ provides a detailed discussion of the originality requirement in copyright law, explaining how courts determine whether a work contains sufficient creativity to qualify for protection, and examining the influence of important judicial decisions on the development of originality standards.

10. Julie E. Cohen ¹⁸ explores the relationship between copyright law, creativity, and cultural development. She argues that copyright law should encourage creativity while avoiding restrictions on cultural exchange, and highlights the challenges posed by digital technologies

¹³P. Narayanan, *Copyright and Industrial Designs* (4th ed. 2017).

¹⁴V.K. Ahuja, *Law Relating to Intellectual Property Rights* (3d ed. 2017).

¹⁵Ananth Padmanabhan, *Intellectual Property Rights: Infringement and Remedies* (2012).

¹⁶Jane C. Ginsburg, *Creation and Commercial Value: Copyright Protection of Works of Information*, 90 Colum. L. Rev. 1865 (1990).

¹⁷Pamela Samuelson, *Originality in Copyright Law*, 45 J. Copyright Soc'y U.S.A. 245 (1998).

¹⁸Julie E. Cohen, *Creativity and Culture in Copyright Theory*, 40 U.C. Davis L. Rev. 1151 (2007).

in determining originality.

11. Shamnad Basheer ¹⁹ analyses the landmark Indian case of *Eastern Book Company v. D.B. Modak*, explaining how the Supreme Court rejected the “sweat of the brow” doctrine and adopted the “skill and judgment” test, and highlighting the significance of this judgment for Indian copyright law.

12. Justin Hughes ²⁰ examines the philosophical foundations of intellectual property law, discussing how copyright law aims to protect the creative efforts of authors while ensuring access to knowledge. His analysis of creativity and authorship provides a theoretical perspective on originality.

13. Mark Lemley ²¹ discusses the relationship between intellectual property rights and the concept of free riding. He argues that copyright protection should prevent unfair copying but should not restrict the free use of ideas and information, supporting the case for a balanced originality standard.

14. Graeme Dinwoodie ²² analyses the concept of authorship in comparative copyright law, explaining how different legal systems interpret originality and authorship, and providing a comparative perspective useful for evaluating the Indian judicial approach.

15. Dev Gangjee ²³ discusses the role of creativity in determining originality in copyright law. He argues that originality should involve meaningful intellectual effort rather than purely mechanical labour, distinguishing creative expression from routine work in a manner that supports the modern judicial approach.

Research Questions

1. In what ways has the Indian judiciary understood and developed the concept of originality under the Copyright Act, 1957?

¹⁹Shamnad Basheer, *Eastern Book Company v. D.B. Modak: The Indian Supreme Court Rewrites the Originality Standard*, 1 NUJS L. Rev. 397 (2008).

²⁰Justin Hughes, *The Philosophy of Intellectual Property*, 77 Geo. L.J. 287 (1988).

²¹Mark A. Lemley, *Property, Intellectual Property, and Free Riding*, 83 Tex. L. Rev. 1031 (2005).

²²Graeme B. Dinwoodie, *The Concept of Authorship in Comparative Copyright Law*, 52 DePaul L. Rev. 1063 (2003).

²³Dev S. Gangjee, *Originality and Creativity in Copyright Law*, 38 Int'l Rev. Intell. Prop. & Competition L. 173 (2007).

2. What is the distinction between the classical “sweat of the brow” doctrine and the “skill and judgment” doctrine in determining originality?
3. Is the existing judicial practice in India effective in balancing the protection of authors' creative works against the need to keep ideas and information in the public domain?

Research Gap

Although there has been extensive judicial interpretation of originality in copyright law, no clear and consistent standard has been established in India regarding the threshold of originality, particularly in the context of modern digital material and technological advancement.

Research Problems

1. The concept of originality under the Copyright Act, 1957 is not well defined and remains open to interpretation, even though originality is mandatory for obtaining copyright.
2. Over the years, Indian courts have applied various criteria of originality, moving away from the labour-based “sweat of the brow” doctrine toward the “skill and judgment” doctrine laid down in *Eastern Book Company v. D.B. Modak*, resulting in continuing debate over the correct threshold of creativity.
3. The emergence of digital technology and the simplified reproduction of material have complicated the process of determining whether contemporary works involve genuine creative input or are mere repetitions of existing material.

Legal Analysis

Originality is the central pillar of copyright protection, as it defines whether a work is entitled to legal protection. Section 13 of the Copyright Act, 1957 extends protection to original literary, dramatic, musical, and artistic works.²⁴ Nonetheless, the Act does not define originality, and its interpretation has been left largely to judicial rulings.²⁵ Consequently, courts have played a critical role in setting the criteria that must be met for a work to be considered original.²⁶

²⁴Copyright Act, 1957, § 13 (India).

²⁵P. Narayanan, *Intellectual Property Law* 59–61 (4th ed. Eastern Law House 2017).

²⁶Lionel Bently & Brad Sherman, *Intellectual Property Law* 89–92 (4th ed. Oxford Univ. Press 2014).

Historically, originality was understood through the doctrine of “sweat of the brow,” which focused on the labour, effort, and skill invested by an author. Under this standard, even works involving the mere gathering of facts could obtain copyright protection, provided they were not copied from another source. While this doctrine encouraged the production of works, it also raised concerns, as it permitted copyright protection for works that did not reflect genuine creativity.²⁷

Modern copyright jurisprudence has gradually shifted toward recognising the value of intellectual creativity and independent judgment. Courts now consider whether the author exercised skill and judgment in creating the work, ensuring that copyright protection is assessed on a case-by-case basis and granted where the author has contributed something beyond mechanical labour.²⁸ The work must reflect some intellectual effort demonstrating the author's contribution.

A further issue in this legal analysis concerns the distinction between ideas and expression. Copyright law does not protect an idea but only the expression of an idea.²⁹ This principle prevents the monopolisation of knowledge and ensures that facts, themes, and general concepts remain available to society. Courts must therefore scrutinise closely whether a work is genuinely original or merely a repetition of existing material. The contemporary understanding of originality seeks to balance two competing interests: on the one hand, copyright law must protect authors and their intellectual contributions; on the other, it must not withhold information, ideas, and knowledge from the public. Originality must therefore be interpreted in a balanced manner that upholds fairness while promoting innovation.³⁰

Case Laws and Statutory Provisions

The concept of originality in Indian copyright law has been developed primarily through judicial decisions.³¹ One of the most important principles established by the courts is the distinction between ideas and their expression. In the leading case of *R.G. Anand v. Delux Films*,³² the Supreme Court held that copyright law protects the expression of an idea and not

²⁷Melville B. Nimmer & David Nimmer, Nimmer on Copyright § 2.01 (LexisNexis 2023).

²⁸*Eastern Book Co. v. D.B. Modak*, (2008) 1 SCC 1 (India).

²⁹*R.G. Anand v. Delux Films*, (1978) 4 SCC 118 (India).

³⁰Justin Hughes, *The Philosophy of Intellectual Property*, 77 Geo. L.J. 287 (1988).

³¹P. Narayanan, *Intellectual Property Law* 59–61 (4th ed. Eastern Law House 2017).

³²*R.G. Anand v. Delux Films*, (1978) 4 SCC 118 (India).

the idea itself. Even where two works are based on a similar theme, the Court held that copyright infringement arises only where the expression of that idea is copied in a substantial form.

The other landmark decision is *Eastern Book Company v. D.B. Modak*,³³ which was pivotal in shaping the meaning of originality. The case concerned whether edited judgments published in law reports were copyrightable. The Supreme Court discarded the “sweat of the brow” doctrine and adopted the “skill and judgment” standard, holding that originality requires the exercise of skill and judgment involving some intellectual labour, and not merely mechanical effort. The Court clarified that the threshold of creativity required is not high — even a modest degree of intellectual effort may suffice to meet the requirement of originality. This approach ensures that authors receive protection for their work while preventing copyright from extending to purely mechanical or routine labour. This position finds further support in statutory provisions: Section 13 of the Copyright Act, 1957³⁴ provides that copyright subsists in original works, while the remainder of the Act sets out the rights of authors and the remedies available in cases of infringement. These statutory provisions, read together with judicial interpretation, form the foundation of the law of originality in Indian copyright jurisprudence.

Conclusion

Originality remains one of the most essential conditions for copyright protection. A work that lacks originality cannot be granted legal protection under copyright law. In India, originality has evolved largely through judicial interpretation, as the Copyright Act, 1957 does not provide an extensive definition of the term. Courts have therefore played an instrumental role in shaping the understanding of originality through a series of landmark rulings.

In earlier years, originality was understood through the “sweat of the brow” doctrine, which relied on labour. Under this approach, a work could be considered original provided the author had invested substantial time, effort, and skill in creating it. This approach was later criticised, however, as it permitted copyright protection for works that did not reflect genuine creativity.

The decision in *Eastern Book Company v. D.B. Modak* marked a significant turning point in the judicial treatment of originality in India. The Supreme Court introduced the “skill and

³³*Eastern Book Co. v. D.B. Modak*, (2008) 1 SCC 1 (India).

³⁴Copyright Act, 1957, § 13 (India).

judgment” standard, which focuses on intellectual contribution rather than labour alone. Under this standard, a work must reflect some degree of creativity and personal decision-making by the author in order to be considered original.

The concept of originality faces new challenges in the digital era. The proliferation of technology has made it easier to copy and reproduce content, making it more difficult to determine whether a given work is original. Courts must therefore examine with care whether an author has made a genuine intellectual contribution.³⁵

On the whole, the Indian judiciary has moved toward a more pragmatic and balanced approach — one that seeks to safeguard the rights of authors without restricting public access to knowledge, by recognising both labour and creativity while maintaining the distinction between ideas and expression. The fairness and creative incentive that copyright law seeks to promote will continue to depend on a coherent and consistent understanding of originality.

³⁵Justin Hughes, *The Philosophy of Intellectual Property*, 77 Geo. L.J. 287 (1988).

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