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ijmrset@gmail.com



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Beyond the Nuances of Copyright Law: The Plagiarism Detecting Software and Academic Research

Dr. S. Aarthi Priya, Dr. K. Gowri

Assistant Professors, Department of Legal Studies, Government Law College, Trichy, Tamil Nadu, India

ABSTRACT: Intellectual Property Laws are based on the jural postulate that there must be balance between public interests and private interests. The author of a work is granted copyright protection for a limited period of time during which the public are barred from accessing and using the work without due authorization of the copyright owner. Albeit the exclusion by the Law, it creates certain pathways for limited public access. Copyright Law strives for knowledge dissemination to the public in tandem with monetary rewards to the creators of the copyrighted work. Therefore, the Law provides for certain provisions termed as Fair Use, wherein any public can access the work legally for the purposes specifically defined under the Act. The fair balance contemplated by Act is elusive in the real world, leading to over access of the work at the cost of the author's economic returns or under access of the public wherein the knowledge is monopolized. With the advent of the Internet, the access of copyrighted works became rampant leading to digital tools to curb unauthorized access. The balance now has shifted towards the copyright owners ushering in limited access to copyrighted works even for fair dealings. The software is programmed to deny access even for educational purposes thereby leading to stagnation of knowledge.

This paper attempts to analyse the copyright law and the international conventions that safeguard the digital protection measures used by the authors in juxtaposition with fair use. The implications of plagiarism detecting tools on further research and their consonance with the Copyright Law will be dealt succinctly.

KEYWORDS: Fair use, Idea Expression Dichotomy, Plagiarism, Plagiarism Detection Software

I. INTRODUCTION

Copyright is an exclusive right granted to the creator of any original literary, dramatic, musical and artistic work. It grants a bundle of rights to the creator including the right to copy, right to reproduce the work, right to communicate to the public, right distribute, right to translate and right to adapt the work irrespective of the medium. Since the adoption of the Statute of Anne, the mother of modern copyright law, the reproduction right has been at the heart of copyright law for more than three hundred years¹. The Act has not conferred absolute right to the copyright holders. The Act aims to reward the copyright holders in tandem with dissemination of knowledge. As knowledge is based on the existing knowledge and hindering access to information will stagnate the research and development. Thus, the Act has created provisions which allows access to the copyrighted work without the authorization of the copyright holder. These provisions are termed as the Fair Use provisions or Fair Dealing provisions respectively². Other than Fair dealing provisions there are certain provisions that limits the monopoly granted to the copyright owner. These provisions are in consonance with the principle of balancing the public interest with private interests.

IDEA EXPRESSION DICHOTOMY

Significantly, the Copyright Law protects the expression alone and not the ideas per se. Ideas are abstract entities and they are not brought under Copyright protection. Only when the ideas are manifested in a tangible medium, such as

¹ Fareed Ahmad Rafiqi & Iftikhar Hussian Bhat, "Copyright Protection in Digital Environment: Emerging Issues," 2 *International Journal of Humanities and Social Science Invention* 6 (2013)

² In US Law it is termed as Fair Use and in India it stated as Fair Dealing in the Copyright Act, 1957



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paper, wall, board then they are granted copyright protection. Copyrighting of ideas will stagnate further creativity and hamper research, paving way for monopoly. Additionally, ideas are naturally occurring concepts in the human mind and they cannot be granted protection. According to, Locke's Labour theory, property rights are granted to the product that results out of the labour of man³. Any literary, musical, artistic work are born out of the intellectual labour of man and when expressed in a tangible medium they transform into concrete entities that are eligible for copyright protection. An idea is the formulation of thought on a particular subject whereas an expression is the medium in which the idea is transmitted to others in an understandable manner. This principle is the grundnorm of the Copyright Law. It was propounded in the case of Baker v. Sheldon⁴, wherein the court analysed the work to be copyrighted and separated certain elements as Idea and others as expression. In this case, the dispute was regarding the book in which the plaintiff had explained a system of bookkeeping and annexed the forms that can be used. The Defendant commercialized the forms with the columns and headings arranged differently, but it achieved the same result. The court was of the opinion, the system of book-keeping and the forms are the idea and the sentences used for describing are brought under the ambit of book-keeping. Similarly, in the case of Nichols v. Universal Pictures Corp⁵ case the US Circuit Court of Appeals, clearly distinguished the elements that forms an idea and elements that are expressions in a play. The court reiterated the balance to be maintained while bestowing copyright on a play, so that creativity will thrive without legal fetters.

Later, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs), in Article 9(2), states that "Copyright protection shall extend to expressions and not to ideas, procedures, methods of operation or mathematical concepts as such."

MERGER DOCTRINE:

This doctrine gains prominence when there may just be one way to express an idea. The idea its expression is merged and it cannot be determined where the idea ends and the expression starts. Therefore, the expression is pushed out of the copyrightable ambit as granting protection would lead to monopolizing the expression in juxtaposition with the idea. For example, an algorithm to convert non binary numbers into decimal numbers or to print information can be expressed in only one way, then it cannot be copyrighted. The public interest aspect garners more weightage and therefore it is not protected. The exclusive protection to granted to one person will stifle dissemination of information and discourage ruminating of original works in the future.

The above legal position is followed in India as well. In the case of R.G. Anand v. Deluxe Films⁶, the Supreme Court applied this doctrine and held that the script of the play, that was later adapted into a cinematograph film is not an infringement. The Court dissected the work i.e.; the play and concluded that the theme here was the idea and the scenes were the expression. Since similarities existed in the theme rather than the scenes, there is no infringement. Thus, it was held that copyright cannot be held over an idea. The Delhi High court in Chancellor Masters and Scholars of the University of Oxford v. Narendra Publishing House and Ors case reiterated that the Copyright Law does not protect expressions which are closely interlinked with ideas. It held that publishing of a guidebook which contained independently solved solutions to mathematical problems from plaintiff's textbook is not infringement. The court concluded that the mathematical problems are basically ideas that are expressed through a language. Language is a restricted medium and certain questions can be expressed only in a particular manner. Then those expressions cannot be copyrighted as it will indirectly copyright the idea itself. Only if the mathematical problem can be expressed in myriad ways, then it can be brought under the Copyright protection.

However, the premise on which the merger doctrine is based implies that only a handful of ways to express certain ideas merged with their expressions is thought-provoking⁷. in the case of Herbert Rosenthal Jewellery v.

³ John Locke, "Two Treatise of Government" (1690)

⁴ (1879) 101 U.S. 99.

⁵ 45 F.2d 119 (1930)

⁶ AIR 1978 SC 1614

⁷ Edward Samuels, "The idea-expression dichotomy in copyright law" 56 *Tennessee Law Review* 277 (1988-1989).



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Kalpakistan⁸, issue before the Court was the alleged infringement of the plaintiff's copyright over a "jewelled bee pin."⁹ In this case, the Court found that when it came to an idea like that of a jewelled bee pin, its expression is inextricably tangled with the idea itself. In this case, the idea of a jewelled bee pin with specificities regarding the types and placement of jewels, is bound to merge with its expression as the idea contains the specifics regarding its expression itself¹⁰.

The same approach is applied when Copyright is granted to Computer Programs. The courts follow the three-step test whereby, the computer program is dissected and certain essential elements that are imperative to write a program are identified and later excluded from the scope of copyright exclusivity¹¹. The second step termed as the filtration process leaves behind the "golden nuggets" of copyrightable expression, thereby excluding idea or expression fused with the idea from copyright¹². Thus Idea- Expression Dichotomy is an important doctrine that determines the copyrightability and infringement of the expression.

FAIR DEALING

Fair dealing is a doctrine that is sacrosanct in the Law of Copyright, followed across the globe. This doctrine gains significance as it favours the public interest, thereby mediating the public and private interest objectives of the Copyright Act. Fair dealing doctrine allows for the unauthorized access of the work for specific purposes with the aim to foster creativity and to deter stagnation of knowledge with the few individuals. It fosters creativity by allowing free flow of knowledge unhindered by fetters. Section 52 of the Indian Copyright Act, 1957 enumerates the list of acts that can be done by any user without taking authorization or paying royalty from the copyright owner. In US, this doctrine is termed as Fair Use and considered to be broader than the UK doctrine of Fair Dealing as it provides the factors that should be used for determining whether an act falls under Fair Use rather than the specific circumstances.

TRIPS following Berne Convention, provides that the limitations and exceptions to exclusive rights such as the Copyright, be confined to certain special cases, do not conflict with a normal exploitation of the work, and do not unreasonably prejudice the legitimate interests of the right holder¹³. The US position is aligned with these guidelines offering flexibility and protection of the legitimate interests of the copyright owners in tandem¹⁴. The US courts apply the four factors to determine the fairness of the act, namely, Character and Purpose of the Use, Nature of the Copyrighted work, Amount and Substantiality used and Effect on the Potential Market. The US Supreme Court summed up the guiding principle by pointing out that:

".. The more precise guide can be stated than Joseph McDonald's clever paraphrase of the Golden Rule: Take not from others to such an extent and in such a manner that you would be resentful if they so took from you. This equitable rule of reason permits courts to avoid rigid application of the copyright statute when, on occasion, it would stifle the very creativity which that law is designed to foster¹⁵."

Thus, common law principles are entrenched in the defence of Fair Use and Fair Dealing. In India, The Chancellor, Masters & Scholars of the University of Oxford and Ors. Vs. Rameshwari Photocopy Services and Ors.¹⁶ Case gained prominence as the courts had to interpret the scope of Fair dealing in educational activities. Section 52(1)(i) of the Indian Copyright Act, states that a work can be reproduced by teachers or pupils in the course of instruction. In this case, photocopying of textbooks by the defendants to create course packs for the students were challenged by the Copyright

⁸ 446 F. 2d 738 (9th Cir. 1977).

⁹ Id at 739

¹⁰ Supra note 7 at 278

¹¹ The Abstraction Filtration and Comparison Test as stated in Computer Associates Int'l, Inc. v. Altai, Inc., 982 F. 2d 693, 710 (2d Cir. 1992).

¹² Michael Risch, "Abstraction, Filtration, And Comparison in Patent Law", *1 Journal of Law and Innovation* 44(2019)

¹³ Article 13 of TRIPS provides limitations for granting exceptions to the Intellectual Property Rights.

¹⁴ Nimmer David, "Fairest of Them All" and Other Fairy Tales of Fair Use, 66 Law and Contemporary Problems, 287 (2003)

¹⁵ Harper & Row, 471 U.S. at 550 n.3

¹⁶ CS(OS) No. 2349/2012



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owners. The court granted a liberal interpretation and held that ‘course of instruction’ is not limited to classroom instruction alone and spans over any academic activity during the semester that aims to impart and transfer knowledge to students. The court analysed whether photocopying of books will affect the commercial interests of the copyright owners and concluded that if not for photocopying the students would copy manually, making no difference in the sale of books. The defendant had photocopied had small number of books that are significant in course of instruction, including syllabus preparation and exam coaching. Thus, the court has reiterated that for educational purpose photocopying is allowed. Access to information and using of the work for stimulating intellectual activity has been considered legal. Fair use, thus becomes essential to the equitable, balanced, and proper administration of copyright law.

II. COPYRIGHT LAW IN THE DIGITAL ERA

With the advent of the Digital era, information became ubiquitous leading to uninhibited access, at the cost of the copyright holder’s rights as granted by the statute. Therefore, Technology Protection Measures (TPM) came into the foray to protect the rights granted under the Copyright Act. This was succeeded by circumvention tools that could break the hurdles created by the Technology Protection Measures and disseminate the work irrespective of its purpose. In the midst of countering the effects of the circumvention tools, two treaties were adopted at the WIPO Diplomatic Conference 1996. The WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT) respectively, were adopted. Article 11 of the WCT mandates that,

“Contracting parties shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by authors in connection with the exercise of their rights under this Treaty or the Berne Convention and that restrict acts, in respect of their works, which are not authorized by the authors concerned or permitted by law.”

Similarly, the WPPT also mandates for take adequate measures against circumvention of technological measures employed by performers and phonogram producers, while disseminating their work.¹⁷

TECHNOLOGY PROTECTION MEASURES IN ACADEMIC ACTIVITY

The cornerstone of academia is publication of research papers and articles in reputed journals and books. The academic regulatory body mandates that the Professor, research scholar and students publish these research papers. The purpose is manifold, knowledge dissemination transcending the physical classroom activity, stimulating intellectual creativity that may lead to ground-breaking inventions, pioneering theories and doctrines. Publication of research papers by Faculty members and students in research papers garners academic reputation and is bereft of huge revenue generation. Copying is rampant in academic publishing and the conundrum is whether it attracts Infringement provisions or Fair Use provisions.

PLAGARISM

Plagiarism is the act of using someone else’s work, ideas, or intellectual property without proper acknowledgment or authorization. The author fails to provide appropriate credit to the original creator and presents the work as his own, intentionally or unintentionally. There are several types of plagiarism, each with distinct characteristics. Here are the main types of plagiarism:

1. Direct Plagiarism: Copying someone else’s work word-for-word without any alterations and without proper citation.
2. Self-Plagiarism: The author reuses his own previously written work without acknowledging that it has been used before.

¹⁷ Article 18 of WPPT states that contracting Parties shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by performers or producers of phonograms in connection with the exercise of their rights under this Treaty and that restrict acts, in respect of their performances or phonograms, which are not authorized by the performers or the producers of phonograms concerned or permitted by law.



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3. Paraphrasing Plagiarism: Rewriting someone else's ideas or text in the author's own words without crediting the original source. While the wording may change, the structure and ideas remain the same.
4. Mosaic Plagiarism (Patch-writing): Mixing borrowed phrases, ideas, or sentences from different sources and blending them into the work without proper citation.
5. Accidental Plagiarism: Unintentionally using someone else's work or failing to cite sources correctly due to lack of knowledge or care.
6. Complete Plagiarism: Submitting someone else's entire work as the author's own work, whether it's a paper, an article, or another form of content.
7. Accurate Plagiarism (Misleading Citations): Citing sources in a misleading or false way, either by providing inaccurate citation information or citing a source that was not actually consulted.
8. Collusion: Working with others on a piece of work and then submitting it as an individual work.
9. Bibliographic Plagiarism: Improperly citing or failing to cite important sources in a bibliography, and thereby not properly attributing the work to the author.

PLAGIARISM DETECTION SOFTWARES

In today's interconnected world, content is shared at an unprecedented rate, making the need for plagiarism detection software more important than ever. Plagiarism Detection Software is a tool used to identify instances of copied or improperly cited content within a text. These tools scan documents for similarities against a vast database of academic papers, books, articles, websites, and other resources. The software flags areas where the content matches or closely resembles material found elsewhere, helping the user identify potential plagiarism.

These tools have become ubiquitous in myriad areas, especially in academia, publishing, journalism, and business, to ensure that content remains original, properly attributed, and free from any form of intellectual theft. There are many plagiarism detection tools available, each offering unique features. Below are some of the most well-known:

TURNITIN

Turnitin is one of the most widely used plagiarism detection software platforms, commonly used in academic settings to ensure that student papers are original and properly cited. It checks for similarities between the submitted text and a large database of academic papers, journals, books, and internet content. It then generates a Similarity Report that highlights areas of the submitted paper that are similar or identical to existing content in its database. This is expressed as a percentage that indicates how much of the paper matches sources. The report provides a detailed breakdown of matches, showing the percentage of similarity, the specific sources that match, and the exact text that is similar. Users can click on links to view the matching sources. The tool helps identify if a paper includes unoriginal content that needs proper citations. It's important to note that Turnitin itself does not determine if a paper is plagiarized, but simply highlights potential issues for further investigation.

URKUND

Urkund is another popular plagiarism detection software used by educational institutions and businesses to help detect unoriginal content in written documents. Urkund is a plagiarism detection tool that automatically scans documents for similarities with a vast database of published content. The software searches for matching text, whether it's a direct quote, paraphrased content, or similarities with common phrases and ideas. It then generates a similarity report highlighting matching sections.

DRILLBIT

Drillbit is a plagiarism detection software that helps educators, students, and content creators ensure that their work is original by scanning documents for similarities with a vast range of sources. Drillbit is a plagiarism detection tool designed to check documents for matches with a variety of online content sources, including websites, academic papers, and other published material. The tool looks for direct matches, paraphrasing, or slight rewording of phrases. It checks for both exact text copies and patterns that suggest the use of someone else's ideas without proper attribution. Drillbit provides a report outlining areas of concern.



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OTHER SOFTWARES

There are several plagiarism detection software options available, each with unique features and strengths. Here's a list of other popular plagiarism detection tools you might want to consider:

1. Grammarly Premium

The plagiarism detection tool checks for potential plagiarism against billions of web pages, journals, and academic papers.

2. Plagscan

Plagscan is a plagiarism detection software used by both businesses and educational institutions. It offers detailed reports and integrates with many Learning Management Systems (LMS) like Moodle and Blackboard.

3. Quetext

Quetext offers both free and Pro versions for plagiarism detection.. It has a Deep Search technology to find both exact and paraphrased matches and provides a detailed plagiarism report.

4. DupliChecker

DupliChecker is a free plagiarism checker that's great for quick checks of smaller documents. It also offers a paid version for more extensive features and larger documents.

5. Copyscape

Copyscape is a popular plagiarism detection tool primarily for web content, checking for copied material online. It provides detailed reports.

6. Plagiarism Checker X

Plagiarism Checker X is a desktop-based plagiarism checking tool that scans content against web-based sources and academic papers. It also offers side-by-side comparison of original and plagiarized content.

7. Scribbr

Scribbr is an online plagiarism detection tool that is particularly popular among students and researchers. It is powered by Turnitin's technology, so it provides highly accurate results.

8. Small SEO Tools

Small SEO Tools is a free plagiarism checker that can be used for a variety of content types, including web pages, blogs, and articles.

9. Viper

Viper is plagiarism detection software that compares documents against a wide range of online sources. It is available as a free version with limited features and a premium version for full access.

10. Plagiarismdetector.net

Plagiarismdetector.net is an online plagiarism checker that offers both free and paid versions for plagiarism detection. The tool checks for duplicated content in both academic and web-based sources.

III. IMPLICATIONS OF TECHNOLOGY PROTECTION MEASURES IN ACADEMIC RESEARCH

Academic research is imperative for the innovation and inventions to manifest in the society. Academic research contributes to knowledge dissemination and furthers deeper understanding of theories and concepts. Academic research is predominantly carried out by Professors, scholars, students to meet the criterion set by the academic regulatory bodies. They do not receive any commercial remuneration out of the work published in academic journals, books. Commercialization happens only when a publishing company publishes the book enmasse. Academic journals are not pioneering research rather they are incremental research. Therefore, similarities are bound to occur in any research output. Also, the research is based on the existing topics, theories and ideas. This leads to using of the same words and terms that are the only way of expressing the ideas, doctrines and concepts.

Technically, a work that express its idea using the works, sentences that are fused with the idea do not get copyright protection. As discussed above, Merger Doctrine is applied and those sentences are bereft of Copyright protection. In the same manner, Copyright does not protect the ideas and only expressions are protected. So, expressing the same ideas in different ways allowed by the particular language is well within the bounds of the Law of Copyright. Importantly, the work created and published in journals and books is for educational and research purposes and therefore it does not attract the provisions of the infringement under the Copyright Law.



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With regard to academic publication, the academic integrity is protected by identifying plagiarism. As discussed above, plagiarism is using some other author's work and not giving acknowledgement. Plagiarism infringes upon the Moral rights of the author. Moral rights of the author include the right of paternity and the right of integrity. Right of attribution requires that when the work is used in another work, the author be acknowledged. The right to paternity is essentially the right of an author to claim authorship of his work and have it attributed to him. Thus, in academic publication the Moral rights are attracted rather than the Economic rights granted under the Copyright Law.

Albeit, the clear stance of the Law, the Plagiarism Detection Software detects paraphrasing which is not barred by Law. The way of expressions is only protected and the expressions are required to be original. Even if the credits are given, those sentences are also included to determine the percentage of similarity. When specific sentences are the only way of expressing the idea, Copyright does not exist. Still, Plagiarism software detect those sentences to determine the Originality report. Thus, the reports prepared by the Software is way outside the contours of Copyright Law. The plagiarism report is not aligned with the nuances of the Copyright Law. The biggest drawback is that technology does not understand the purpose or the underlying doctrines of the Copyright Law. Relying on this report for publishing research articles demotivates the intellectual creativity.

IV. CONCLUSION

The problem arises with the complete reliance of the report by the Plagiarism detection software which are not aligned with the nuances of the Copyright Law. Therefore, the panacea is generating technical devices that are able to distinguish between the different purposes of the report and the nature of the work. Until then the reliance on these software report must be clearly limited so as to encourage academic creativity. The report of the Plagiarism detection software must be analysed in tandem with the opinion of the Copyright Law experts. The aim of the Copyright Law is to allow unfettered transmission of knowledge and it must not be diluted.

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