

## **Copyright and Related Rights Law**

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**WEEK - 01**

**LECTURE - 02**

### **Idea-Expression and Meaning of 'Literary' in Literary Work**

Welcome back to this course on copyright and related rights law. In today's session, we are going to discuss whether qualitative considerations play a role in determining whether literary works can exist. What we will also see in this process is whether Idea and expression and their distinction have any particular role towards such determination. Ask yourself, when you consider literary works, does the term literary pose any qualitative significance for you? When we think of literary works, A most often quoted type of literary work is a book. In this image as well, you can see a rack from a library featuring many books by many authors. When we think about such literary works, we are thinking about authors whose books we have read and we have enjoyed.

Let us consider the famous author Ramachandra Guha. In reading this author's work, there is a distinct pleasure that we derive from the author's insights on historical accounts. Therefore, our ordinary understanding of literary work seems to be connecting us with the pleasure of reading. Is there a pleasure of reading similar to the reading of literary works such as the ones authored by authors like Ramachandra Guha, when we consider source code of a computer program? what is the source code? You can see on the screen.

Source code represents alphanumeric expression which is a kind of command or an instruction which is given to the computer by the human operator to achieve a particular solution. Or in other words to make the computer perform a particular task. Clearly, we can make a distinction between works such as the ones authored by famous authors like Ramachandra Guha and a source code. Even more so when we consider binary code. Binary code is different from source code in that binary code is machine readable language.

A conversion really of the commands that are entered as an input by the human operator

by the computer. The same question plays in our mind as to what is the literary pleasure component that is present in binary code just as in source code. Let us revisit the provision from the US Copyright Act, which we have considered in the previous session. This provision defines literary works as works other than audiovisual works expressed in words, numbers or other verbal or numerical symbols or indicia. When we look at this definition, if we split it into its two components, the first component tells us in what manner a literary work is composed.

And the other tells us that the work itself is separate from the material object which is carrying it. So the book is different from the content. But what this definition does not tell us is that a qualification for an expression to be considered as a literary work is that there must be some kind of a pleasure of reading. In other words, the satisfaction of some kind of a literary quality. Because there is no such qualification specifically mentioned within this particular provision, can we not say that a binary code is an expression in numbers? A source code is expression in words, numbers and other such symbols.

And therefore through an objective application of the first component which talks about how literary composition happens, can we not say that a source code and a binary code is in fact a literary work? Let us ask, would any expression that contains words or numbers or such symbols be considered a literary work? After all, the only requirement seems to be that expression must be in words or in numbers or such other symbols. To aid our understanding, let us approach this in two dimensions. The first dimension looks to see whether we can make a distinction between protectable expression and unprotectable expression. And then look at the question of quality. Let us consider the example of news.

How do we understand news? If news is understood as information on an event, consider the following information. You can see on the screen. Nalsar University is going to organize a national seminar on the 6th of October 2025. The seminar is on the subject of intellectual property law. Eminent speakers will be in attendance.

Would you say that this expression is a literary work? Let us apply this provision which does not seek any requirement of qualitative consideration being satisfied. We can say that this is an expression in words and therefore this is a literary work. In other words, news items which are carried on newspapers, those individual articles, are in fact literary works in themselves. Each article is a literary work. An important question that arises is whether protection accorded by copyright through such literary work consideration would extend to the underlying event in terms of that particular information? This important consideration was seen by the Bombay High Court in a case that came before it, *Indian Express versus Jagmohan Mundhar*. The court explained, that there could be no copyright on events that actually took place, stating that ideas and information surrounding such events are considered common property and not subject to copyright

protection. The underlying events themselves could not be copyrighted as they are part of public phenomena. You will then see that we are now appreciating that expression is what copyright protects and not the underlying fact which is expressed. In other words, this given fact that Nalsar is organizing a national seminar on a particular date, on a particular subject can be expressed in many different ways.

And this distinction of expression is what copyright is aimed at protecting and not the underlying information itself. As the court explains, Ideas and information are considered common property. Let us consider another case, a very important case decided by the Indian Supreme Court, RG Anand versus Delux Films. The court had stated that there can be no copyright in an idea, themes, plots or historical or legendary facts. And violation of the copyright in such cases is confined to the form, manner, arrangement and expression of the idea by the author of the copyrighted work.

Let us now always remember that there is a clear distinction between an idea and an expression. The expression of the idea is what copyright is aimed at protecting. When we discussed content in a book, we understand that the content is presented in a particular form and that form is what copyright is aimed at protecting. How do we understand expression then? We understand that something which is simply a figment of our imagination, simply an idea, it would have to be expressed in a particular form. Something that is simply a fact and is capable of being represented in different forms of expressions.

Those expressions would be subject matters. And therefore, in context to the category of subject matter that we are considering, which is literary work: where the expression of the idea in a person's mind or the fact which has occurred the expression of it through words or numbers or other symbols - That is what would constitute literary work. In fact, this understanding of idea and expression is surely something which you will be able to attach to other subject matter categories of copyright as well: be it an open list consideration which we had discussed under the French IP code which talks about works of mind which are created or be it a closed list system such as the one in India where independent subject matters in terms of compartments have been identified they would need to be expressions in order for copyright to extend to them. In other words, for the subject matter itself to exist, the first step that is whether subject matter exists, we are looking at the expression and therefore we are considering The question of whether an event such as a national seminar being conducted by NALSAR can be represented in different expressions. As you can see on the screen, the first statement reads NALSAR University is going to organize a national seminar on October 6, 2025.

The seminar is on the subject of intellectual property law. Eminent speakers will be in attendance. The second sentence reads, a national seminar on intellectual property is

going to be held on October 6, 2025. Nalsar is going to organize this event, which will be attended by eminent speakers. You can see the distinction of expression.

Facts and events and ideas can be expressed in multitude of ways. What about the film script involving a crime investigation? What do you think? What is the expression here and what is the unprotectable component? You would realize that the investigation itself would constitute an underlying notion which can be expressed in different ways. And if the film script is based on a crime investigation that is real in nature, something that has happened in reality; then its depiction in the form of an expression as a film script will be a subject matter of copyright because it is an expression. But because this very same kind of investigation can be the core of an expression In different film scripts, all these film scripts will be considered for their own expression. And the crime investigation itself is not something the information of which that copyright will protect.

In stating so, we must also understand an important doctrine in copyright law, which is the doctrine of merger. The doctrine of merger considers that in certain situations, the idea and the expression might be so closely tied that such a multitude nature of expression would not be possible. In other words The idea is expressed only in a particular form or in a particular manner. And because diversity of expression is negated, the expression itself would not be something that could be considered as a protectable subject matter. An example that we can consider here is rules of a game such as chess.

The fact that the rules of a game as expressed would have to be expressed in not so distinct ways and the diversity of expression is cut. We can say that This kind of an expression would not be considered as protectable. In this line of understanding, let us then consider a very important case under copyright law, which is the University London Press versus University Tutorial Press. In this particular case, the court stated that the words literary work cover work which is expressed in print or writing irrespective of the question whether the quality or style is high. You can see that in determining whether a particular expression which has been made through words or numbers or such other things should be considered as a literary work - The qualitative consideration according to the court does not play a part.

Further, the court explains, the word literary seems to be used in a sense somewhat similar to the use of the word literature in political or electioneering literature and refers to written or printed matter. Papers sent by examiners are, in the judge's opinion, literary work within the meaning of the present act, which was the UK Act. Assuming that they are literary work, the question then is whether they are original. What the court here is saying is that expressions that are explaining elections or politics - Such kind of explanations can be distinguishable from the kind of literary merit that we were considering. With relation to this the court is explaining that qualitative considerations if kept aside - Expressions which could be in the nature of even question papers, not

authored by any famous author; but simply because they are expressions through words or numbers, can be considered as literary works.

If they are literary works, then the court says there is a second consideration that comes into place. That consideration is whether it is an original literary work. The application of original to literary work would then determine whether copyright can subsist in a literary work. What we then understand is that an expression could be a literary work but this is only the first step of consideration towards subsistence of copyright in that. The court explains further that the word original does not in this connection mean that the work must be the expression of original or inventive thought.

Copyright acts are not concerned with the originality of ideas but with the expression of thought and in the case of literary work with the expression of thought in print or writing. But the act does not require that the expression must be in an original or novel form. The work must not be copied from another work that it should originate from the author. In understanding this application of the term original to literary work, The court explains that original does not mean originality of the idea. As we had discussed, ideas are not the domain of copyright, but expressions.

And therefore the court says When it is said that an original literary work will have copyright in it, the idea and its originality is not what is in consideration. What is there in consideration? According to the court, the expression must originate from the claimant. If a person says that he has expressed that particular writing that particular literary work, then it has been done by that person independently, It can be traced to him. In other words, he has not copied it from anywhere. If we then understand this very important consideration arising from this judgment is that we can split the consideration of copyrightability in a subject matter such as literary work in two steps.

The first step is to simply apply objectively the criteria that has been set out to determine whether an expression can be considered as a category of subject matter. If in fact it can then it has to then undergo an assessment of whether it is original. If it can pass this then copyright will subsist in such a literary work. To re-emphasize original here means origination of the expression from the author. And importantly, this is not a question of quality.

I'm sure you are now able to answer this question. If this is not a question of quality, then what is it? What is it that originality is a consideration of? I am sure you are all answering that it means that the expression is not copied. Let us also consider the question, should a literary work be something no one has ever expressed? I am sure to this also you are saying no. This is not a question of novelty of expression. This is a question of whether you have independently made that expression or not.

Thus in both these terms on the novelty of the idea and the novelty of the expression, these are not requirements of copyright. Therefore, the use of the term new with respect to copyright can be confusing and should be avoided. What should rather be used is the term original. The term original has undergone an evolution of its own. and something that we will be looking at in much more detail in the coming sessions in this course.

But for now, keep in mind a very important basic qualification that a work must be independently made. In other words, not be copied from anywhere in order for it to be considered as original. We have seen that the definitions of literary work in the various copyright acts that we have discussed, all of them were silent on a qualitative considerations. The understanding posed by the University of London case has been carried forward in copyright law. And it is now a clear consideration as we have seen in terms of the illustrative examples that were provided within the provisions of these acts - tables, compilations, computer programs wherein these are the subject of copyright and being considered as literary works, we can say that quality, literary quality is irrelevant.

But what these definitions also don't tell us is whether quantity is relevant. This is something which is an important consideration. In the next session we will see whether in fact quantitative considerations are relevant where qualitative considerations are not. Thank you for joining me. See you all in the next session.