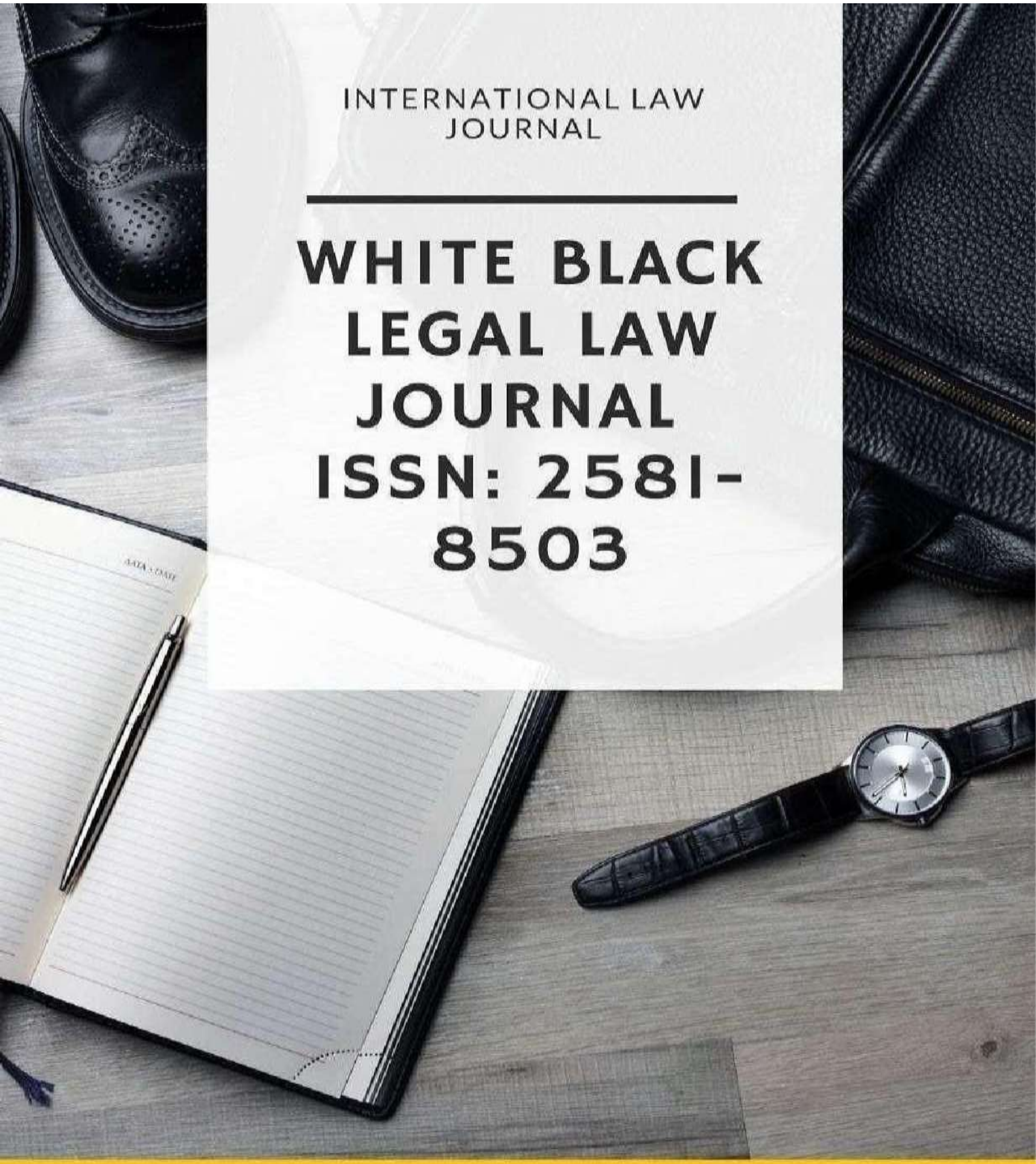

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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

RELEVANCE OF IDEA-EXPRESSION DICHOTOMY IN COMPUTER SOFTWARE

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INTELLECTUAL PROPERTY LAW SEMESTER – IX

Introduction

The term dichotomy refers to a distinction. The distinction between the idea and the expressionis addressed by dichotomy. The idea-expression dichotomy is a theory that distinguishes between an idea and its expression.

Copyright refers to a creator's ownership rights over their creations. Computer programmes, databases, ads, maps, and technical drawings, as well as books, music, paintings, sculptures, and movies, are all protected by copyright. The goal of copyright is to provide the creator of the work exclusive rights to their production.[1] Yet, this does not exclude others from taking a different methodology to get the same result. The basic concept of copyright is that an idea does not have copyright. Copyright protects just the expression of an idea. This indicates that copyright is bestowed on a concept expressed in a fixed form, i.e. it existing in the material form into which the ideas have been translated. Protection is granted based on an idea's focus rather than the idea itself.

The main reason for not safeguarding ideas but rather their expression is to ensure the free flowof ideas. The value of copyrighting ideas is enormous. If copyrights are granted to the notion itself, innovation would cease. This is why the capacity to replicate ideas is so crucial to the basics of copyright law.

The duality of concept and expression has long been a subject of controversy in copyright law. According to the philosophy, anybody is free to construct their own expression based on any thinking or idea. When a concept and its realisation are intertwined, the idea of merging applies.In the case of

[1] WIPO, what is copyright? <https://www.wipo.int/copyright/en/> [2] 4 HLC 815 [3] 3 ALL ER 503

Jeffrey's v. Boosey[2] in 1854, the court stated that an abstract concept is not protected, but the material form in which thoughts are changed is. In the 1937 case of **Donoghue v. Allied Newspapers Ltd.**[3], the court noted that just expressing ideas or telling a narrative does not make the storyteller the copyright owner; rather, the copyright owner of thework is the person who authored the story using his skill and expertise.

The Law in India

In India, copyright law is governed by the Copyright Act of 1957. Section 13 of the Act coversthe extent of copyright existence by specifying the works in which copyright exists. Section 14(a) defines copyright in literary, dramatic, musical, and artistic works, as well as the exclusiverights accorded to the work's creator. The Act explains copyrighted work assignments and licencing in detail.[2] The Act also goes into considerable depth about infringement problems inSection 51, as well as exceptions in Section 52.

The Act, however, does not address the gap between ideas and expression. **R.G. Anand v. Deluxe Films**[3] appears to be the only Supreme Court decision that appears to have given the idea-expression distinction any weight. The claimed breach of a play's script in the instance resulted from its conversion into a cinematograph film. The main premise of the play was provincialism, and the narrative included characters from two different provinces (Punjab and Tamil Nadu). The film maintained the same concept, except that the gender of the individual from the aforementioned provinces was reversed. The Court originally compared the two worksin broad terms and determined that the film's premise was more comprehensive, addressing both provincialism and dowry. The Court decided that copyright cannot be claimed over a concept (provincialism in this case), and that the differences between the two works were significant enough to infer that no colorable replica of his play's screenplay existed. These decisions resulted to the judgement that no proof of infringement existed. After the Supreme Court determined this case, the norms established there have become part of the law and are still valid.

[2] Sections 18-19 & 31, Copyright Act, 1957
[3] R. G. Anand v. Deluxe Films, AIR 1978 SC 1614

The Honourable Delhi High Court fully explored the idea-expression dichotomy in the matter of **Chancellor Masters and Students of the University of Oxford v. Narendra Publishing House and Ors.**[4] The Hon'ble Delhi High Court relied on the idea-expression dichotomy, among other factors, to reach the decision that the act of publishing a manual that incorporatedindependently devised answers to the concerns posed in the plaintiff's textbook was not an infringement of the plaintiff's copyright. **Mattel Inc. v. Mr. Jayant Agarwalla**[5], whichconcerned the well-known board game "Scrabble," and **Barbara Taylor Bradford v. SaharaMedia Entertainment Ltd.**[6], which concerned the transformation of the book "A Woman of Substance" into the television programme "Karishma - The Miracle of Destiny," are two otherHigh Court rulings on this subject.

Copyright on Computer Software

Throughout the 1970s and 1980s, there was much debate on whether computer software shouldbe secured under the copyright system, the patent system, or a sui generis system. As a result, it has become a widely accepted notion that computer programmes are protected by copyrightand software-related ideas are covered by the patent system.

Source code is used to create a computer programme. Since they are conveyed in words, numbers, or other verbal or numerical symbols or indicia, these source codes are literary work.Because source code may be included in physical media, copyright protection can be extendedto software programs. The World Intellectual Property Organization expressly classified computer programme as a literary work under copyright law in the WIPO Copyright Treaty (WCT) 1996 Article 4 stated as "Computer programmes are protected as literary works withinthe meaning of Article 2 of the Berne Convention. Such safeguards apply to computer programmes, regardless of their mode or style of expression."[7] The exclusive rights granted tothe owner of a literary work by copyright law will be available to computer programmes as well. These rights include the right to reproduce, modify, publish, perform, and display. However, according to WTC Article 7, the inventor of a computer programme cannot exercisethe "exclusive right of allowing commercial rental to the public of the originals or copies" if

[4] 2008 (38) PTC 385 (Del)
[5] 2008 (38) PTC 416 (Del)
[6] 2004 (28) PTC 474 (Cal)
[7] Article 4, WTC, 20/12/1996<https://wipolex.wipo.int/en/text/295166 >

"the programme itself is not the essential goal of the rental."[8]

Idea-expression dichotomy in computer software and related problems

There is no standard for computer programmes that allows us to distinguish between the copyrightable expression of an idea and the concept itself. To determine whether parts of a source code are eligible for copyright protection, we must employ the idea-expression dichotomy. From the Whelan case to the recent Oracle and Google case, courts have struggledto define the protectable features of computer programmes. The US Supreme Court addressedthe idea-expression dichotomy in computer software in the case **Whelan v. Jaslow**[9] in early 1986. Jaslow attempted to create a computer programme for Jaslow Dental Lab that would handle customer management, billing, and accounting, among other things. He later engaged Strohl System to create the software. Elaine Whelan, its half-owner, created it in 1979. Sthrol retained ownership and branded it as Dentalab, which could be licenced to other companies inexchange for a 10% commission to Jaslow. Subsequently, in 1979, Whelan left Strohl to start his own company, acquiring the rights to the programme. In 1982, Jaslow also founded Dentcom, which created a programme called Dentlab that performed a similar purpose to Dentalab. It was new and superior to Dentalab. On June 30, 1983, Jaslow's company filed a suit in federal court, alleging that Dentlab violated Whelan's copyright in the Dentalab programme. The court determined that Dentlab and Dentalab's structures and overall organisation were identical. Jaslow filed an appeal with the United States Court of Appeals forthe Third Circuit. In this case, the court established a test to distinguish between the protectableand non-protectable parts of the software. It claimed that everything necessary to the function of the work will be the work's idea, and everything that is not necessary for the function will be the idea's expression. The objective of Dentalab in this case was to facilitate commercial operations, and the structure of the software was not required for that function.

There are a lot of software available that performs the same function, but the manner in whichthe programme manages and governs the computer, i.e., the Dentalab's intricate structure, is anexpression of an idea. The modified version was deemed to be almost identical by the court, and Dentalab SSO was granted protection. Due to the stringent security this decision stated thatcreativity was inhibited because anything other than the program's main goal was shielded.

[8] Article 7 (2) (i), WTC, 20/12/1996<https://wipolex.wipo.int/en/text/295166 >
[9] 479 U.S. 1031 (1987)

The petitioner in the well-known case **Apple Computer, Inc. v. Microsoft Corp.**[10] raised theissue of copyright infringement. The facts of the case are that in 1983, Apple released its first commercial computer that used a Graphical User Interface (GUI) based on Xerox's innovation.

Microsoft and Apple had an agreement in place to licence specific GUI elements in 1985 as they prepared to introduce Windows 1.0.

Permission was granted for Apple to use Microsoft products. Apple filed the lawsuit, alleging that the "look and feel" of Windows 2.0 was stolen from its own graphical user interface. Only179 of the items in the list had a licence, although there were 189 products that resembled Apple's Macintosh. Xerox sued Apple for using their Macintosh GUI. Apple was granted victory by the district court. The lower courts judgement was upheld by the appellate court afterMicrosoft's appeal. The court ruled that the vast majority of Windows were within the scope ofthe agreement, but the rest were not. According to the court, "Apple cannot get patentlike protection for the concept of a graphical user interface or the concept of a desktop metaphor [under copyright law]...". Apple lost the claim in the Microsoft litigation, except for a few features. The biggest weakness in this case is that Xerox was not a party to the litigation and that its GUI was the foundation for Apple and Microsoft.

The well-known ongoing case **of Google LLC v. Oracle America, Inc. (previously: Oracle Am., Inc. v. Google Inc.)**[11], dubbed "the case of the decade" in the IT sector, is about copyrightin computer software. Sun Microsystems produced Java a very successful operating system programme. Google intended to create Android using the Java programming language. They attempted but failed to reach an accord. Google duplicated Java API declaration code on the grounds that declaration codes are not copyrightable. Eventually, due to the limitations of mobile phones in comparison to desktops, Google developed their API without using any Javaimplementation code and instead replicated a section of the declaration code. Oracle bought Sun in 2010, and sued Google for copyright infringement. The district court utilised, but not intheir original form, the Altai Test and the Lotus Test and decided that the lines of code used arenot copyrightable, but the arrangement is. It attempted to link the Charles Dickens Book to anAPI for reasoning and found Oracle to be correct. After that, Google filed an

[10] 61 USLW 2434
[11] 750 F.3d 1339, 1348 (Fed. Cir. 2014)

appeal in 2014, and the appellate court overturned the lower court's verdict, citing Google's use of the "Fair Use" concept to secure exemption from copyright protection. The case was remanded to the second district court, which ruled in 2016 that Google did not breach Oracle's copyright since the 37 packets of API copied were covered by fair use. In 2018, the Second Appellate Court decided in favour of Oracle, which filed an appeal in 2017. According to the court, Google's claim of fair use does not fulfil any of the copyright protection's fair use conditions. The courtalso pointed out that the Google API declaration code was lifted from Java and used for the same purpose. As a result, Google was not granted a fair use exception. Google sought an appeal with the Supreme Court in 2019 to have lower court verdicts reconsidered, but the Supreme Court refused the petition.

Conclusion

As seen by the preceding study, the line separating an expression from the underlying conceptis thin and complex. When it comes to computer applications, the situation gets much more complicated. In previous decisions, the courts attempted to reduce confusion and uncertainty by establishing criteria and tests. Tech businesses should get into agreements or obtain softwarelicences in advance. Licensing agreements are extremely helpful in preventing copyright infringement in computer applications. It is imperative that the IT sector and WIPO re-evaluatethe copyright protection afforded to computer software, since it is becoming increasingly difficult to combine the literal and technical components under one umbrella. A separate legislation for computer software, comparable to the integrated circuits law in India, is requiredto deal entirely with the protection of computer programmes. To create this, a group of expertsand WIPO must collaborate to create a treaty or convention that meets the needs of today's software business. When a court strives to address a specific factual situation, it appears that more complex problems occur swiftly, and the judiciary looks to be straining to apply the criteria formed in prior legal challenges in future legal concerns.