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OBJECTIVITY OF DOCTRINE OF ORIGINALITY: ARE TWEETS COPYRIGHTABLE

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ABSTRACT

The competing claims of copyright owners and copyright users are one of the major components of the balance drawn by copyright law. The question of originality, the threshold standard of qualification for copyright protection, is at the core of copyright. Twitter is part of the new wave of internet communication. It is unique because messages sent via Twitter are limited to 140 characters. Many of these messages are about mundane details of daily life, but some are creative, even literary, and may qualify for copyright protection. The problem, then, is necessarily whether a Tweet can qualify for copyright protection. Thus with the aim to resolve the grey area as to whether Tweets fulfill the originality standard, the project will discuss the Doctrine of originality: Its backdrop and the evolving journey with emphasis to the Internet era. Further, the new challenge imposed upon the originality is- Is there any standard fixed for testing the originality or it differs from case to case. The standard to test the originality will be discussed in the light of Twitter, as to whether the Tweets fall under the originality criteria or is attacked by the de minimus rule. Twitter tweet is one such issue which has raised the objectivity of originality. The originality bottom line has been drawn way back; today it needs to be refined in terms of technological change. This article first recounts the origin and development of the originality standard by exploring through various jurisdictions. It then analyzes the character of tweets through the legal lens of subject matter of copyright. Finally, the article attempts to evaluate whether tweets fall under the category of copyrightability.

Keywords: Copyright, Originality, Unauthorized user, Infringement, Tweet.

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INTRODUCTION

Intellectual property law can be considered as the most rapidly evolving body of law in existence today and excluding the law of patents, the law of copyrights can be considered the fastest evolving branch of it. While 60 years ago it was advocating towards the protection of literary, dramatic, musical and artistic works (authorial works), today it has expanded its reach towards films, broadcasts, published editions, computer programmers and etc. It will continue to evolve as long as human beings continue to create and should evolve for the sake of creativity itself. However, it can be observed that the most important requirement of copyright protection, the one which many commentators like to refer to as the sine qua non of copyright protection haven't done so. The requirement of originality is inseparable from copyright protection, which the world agrees but they cannot agree on the threshold on which it should be judged.

Protection of Intellectual property plays a very crucial role in shaping the human society due to increasing awareness/ knowledge about their rights tangible and intangible. The law of copyrights is one of the oldest component of intellectual property law and grants umbrella protection to "expressions of ideas" (Idea-Expression dichotomy), created by authors. It encompasses a vast economic and cultural field extending to arts, education, information, entertainment, broadcasting and the media.[3] Unlike with regard to other intellectual property law rights such as patents and trademarks, under copyright law, protection arises automatically upon the creation of the work (in jurisdictions with an unregistered copyright regime).[4]

The underlying rationale of obtaining the property right of copyright is to protect the author's investment in the production of the work against unfair competition and especially against a competitor's free ride and his parasitical undercutting of the author's expenses by unauthorized copying.[5] Breyer expands on this notion and gives four justifications defending the monopoly granted through copyright; namely

a. A natural right to property in one's work, allowing authors to control the use of, and treatment given to their work;
b. To reward for investment in creation and publication;
c. To stimulate creativity which is socially, as well as personally beneficial;
d. To disseminate ideas in the public interest.[6]

[3] Catherine Colston, Modern Intellectual Property Law (3rd ed. Cavendish Pub, New Y0rk, 2010)
[4] Rahmatian Andreas, 0riginality In UK Copyright Law: The 0ld Skill And Labour Doctrine Under Pressure IRIPCL (2013)
[5] Stephen Breyer, The Uneasy Case For Copyright: A Study of Copyright In Books, Photographs And Computer Programs 84 Harvard Law Review 281 (1970)
[6] Kamar Int. Inc vs. Russ Berrie & Co., 657 F. 2d 1059, 1061 (9th Cir. 1981)

Different jurisdictions have different criteria requirements to be fulfilled for the work to fall under the subject matter of copyright. But there stands one requirement which is common in all jurisdictions that is the requirement of "originality". Many commentators refer to it as the sine qua non of Copyright. However, the requirement is common to all jurisdictions, but the threshold of the requirement (originality) is not similar. Different approaches have been laid down by various courts. However, it needs to be declared that the requirement applies generally to literary, dramatic, musical and artistic works (works of authorship).

With the advancement of technology, we welcomed the wave of Social Networking Sites (SNS) connected with the Internet. A social networking site is a web-based service where a user can create a profile and build a personal network that connects him or she to other users.[7] Six Degrees.com was the first SNS followed by My Space, Facebook, Twitter, and LinkedIn and so on. No doubt these SNS connected the global world but at that the same time posed threat upon the exclusive rights of the content holder because of its inherent feature i.e. "sharing on click" The growth of the internet and social networking sites has given rise to new legal precedent.[8]

DOCTRINE OF ORIGINALITY: Sine Qua Non of a Copyright

Originality as a requisite for copyright protection has been statutorily acknowledged in all of the jurisdictions. Creative works were only awarded protection. Section 1(1)(a) of the Copyright, Designs and Patents Act 1988 of the United Kingdom, states that "Copyright is a property right which subsists in, original literary, dramatic or musical works"[9], Section 14 (1) of the Copyright Act 1994 of New Zealand states that Copyright is a property right that exists in original works 0f literary, dramatic, musical, or artistic works; sound recordings, films, communication works and typographical arrangements",[10] Section 102(a) of the Copyright Act of 1976 of the United States provides that "Copyright protection subsists, in accordance with

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[7] Danah M. B0yd & Nicole B. Ellison, Social Network Sites. Definition, History, and Scholarship, 13 J. C0MPUTER-MEDIATED C0MM. 1 (0ct. 2007), http://jcmc.indiana.edu/ vol13/issue/boyd.ellison.html (defining social network sites as web-based services at that allow individuals to"(1) construct a public or semi-public profile within a bound system, (2) articulate a list of other users with whom they share a connection, and (3) View and traverse their list of connections and those made by others within the system").

[8] Cooper Seth, My States: Balancing Liberty and Safety in Social Netw0rking INSIDE ALEC, (2008).

[9] Copyright designs an patents act 9 (Sec. 1(1)(a)) (UK)

[10] Government, New Zealand "Copyright act 1994 (sec. 14)

this title, in original works of authorship".[11] Therefore, legislations have statutorily imposed the requirement of originality for a protectable work.

In the case of University of London v University Tutorial Press (1916)[12] Peterson J stated;

"The word 'original' does not in this connection mean that the work must be the expression of original or inventive thought. Copyright Act is not concerned with the originality of ideas, but with the original expression of thought … But the Act does not require that the expression must be in an original or novel form, but that the work must not be copied from another work – that it should originate from the author."

Originality test is one such test which has been imposed way back in 1839 in Gray vs. Russell case.[13] In this case Justice Story held:

"There is no foundation in law for the argument, that because the same sources of information are open to all persons, and by the exercise of their own industry and talents and skill, they could, from all these sources, have produced a similar work, one party may at second hand, without any exercise of industry, talents, or skill, borrow from another all the materials, which have been accumulated and combined together by him. Take the case of a map of a county, or of a state, or an empire; it is plain, that in proportion to the accuracy of every such map, must be its similarity to, or even its identity with, every other. Now, suppose a person has bestowed his time and skill and attention, and made a large series of topographical surveys in order to perfect such a map, and has thereby produced one far excelling every existing map of the same sort. It is clear, that notwithstanding this production, he cannot surpass the right of any other person to use the same means by similar surveys and labors to accomplish the same end. But it is just as clear, that he has no right, without any such surveys and labors, to sit down and copy the whole of the map already produced by the skill and labors of the first party".

QUANTUM OF ORIGINALITY IN COPYRIGHT

An exploration into the justifications for originality illustrates that the purpose originality serves in copyright depends on the eyes from which the observer wishes to see it. From a natural rights perspective, originality, at least in theory, ought to protect the personality of the authors as expressed in their works.[14] As a result works that do not reflect the author's personality (e.g.

[11] Copyright act 1976 SEC. 102(a)
[12] University of London vs. University Tutorial press (1916)2 Ch 601

[13] 10 F. Cas. 1035 (G.C.D. Mass. 1839) N0. 5728
[14] Bently, Lionel and Sherman, Brad Intellectual Property Law (4th ed. 0xford univ. press UK, (2014)

Works of labour or investment, objective features of works) will not warrant protection.[15] However if seen from a reward perspective, where a certain effort has been made in creating a work, the creator may be said to deserve some protection which seems to be a justification which encompasses individuals who exercise labour to gain protection as well.[16]

Looking at the purpose of originality from a utilitarian perspective, originality can be customary to sit at a higher level to protect works for the incentives provided by copyright.[17] This view will protect works of investment but may not protect trivial or insubstantial works. The common understanding of originality is that the work should originate from the author. In other words, the work need not be original in the sense that it must involve any original or inventive thought. In other words, there is no necessity that the work is "novel" as expected in patents. What copyright protects is the expression of an idea and all that is expected is that expression is not copied from another work.[18]

As already mentioned that the jurisdiction have their discretion in setting the benchmark while testing the originality. Some jurisdictions grant copyright when the work meet the minimal level of originality, while others crave for the higher level of originality i.e. not just independently created but also involve some amount of creativity.

The United Kingdom and New Zealand (Skill, labour and judgment test)

Both in the UK and New Zealand, for the protection of literary, dramatic, musical and artistic works (authorial works) they must satisfy the originality threshold. Considering United Kingdom, however, originality was not required under the very first Copyrights statute, The Statute of Ann 1701 and was first seen in the Sculpture Copyright Act of 1814.[19]

In the United Kingdom, the threshold of originality for many years was considered as spending a level of skill labour and judgment. In Ladbroke (Football) Ltd. v. William Hill (Football) Ltd, where it considered the originality of football betting coupons, Lord Reid stated that the skill, labour and judgment criteria is what is used in the United Kingdom to determine originality.[20] The same standard is followed in New Zealand as well. In the case of University of Waikato v Benchmarking Services Limited (2004).[21] The New Zealand Court of Appeal held that the

[15] Id.
[16] Id.
[17] J. Wiley, Copyright at The School of Patent (1991) 58 U Chi L. Rev 119.
[18] Hariani, Krishna and Hariani, Anirudh "ANALYZING 'ORIGINALITY' IN C0PYRIGHT LAW: TRANSCENDING JURISDICTI0NAL DISPARITY" (2011) 51.
[19] Liu, Dr Deming "0f 0riginality: 0riginality in English copyright law: past and present" [2014] European Intellectual Property Review.
[20] Ladbroke v William Hill, All ER 465, 469 (1964).
[21] University 0f Waikato v benchmarking Services Limited 8 NZBLC 101, 561 (CA)(2004)

determining fact of originality is whether sufficient time, skill, labour or judgment have been expended in producing the work.[22]

In the case the court reiterated its own decision in Wham-OMFG Co. v Linclon Industries Ltd (1984) where they said;

"The originality that is required by the Act relates to the manner in which the claimant to the copyright has expressed thought or ideas. The Act does not require that the work be novel in form but that it should originate from the author and not be copied from another work."[23]

However, in the case of CCH Canadian Ltd v Law Society of Upper Canada (2004) the Supreme Court of Canada attempted to define the three elements.

"*For a work to be 'original' within the meaning of the Copyrights Act, it must be more than a mere copy of another work. At the same time it need not be creative, in the sense of being novel or unique. What is required to attract copyright protection in the expression of an idea is an exercise of skill and judgement. By skill, I mean the use of one's knowledge, developed aptitude or practical ability in producing the work. By judgement I mean the use of one's capacity to discernment or ability to form an opinion or evaluation by comparing different possible options in producing the work. The exercise of skill and judgement required to produce the work must not be so trivial that it could be characterised as a purely mechanical exercise. For example, any skill and judgement that might be involved in simply changing the font of a work to produce 'another' work would be too trivial to merit copyright protection as an original work*"

The United States (minimum degree of creativity test)

Before the case of Feist v Rural Telephone Service Company, the United States Courts held that originality had two distinct elements; namely; "independent creation" and "a subjective element".[24] The first element was very straight forward. It meant that for a work to be original, in the sense, an author must create it independently of other pre-existing works. However according to Russ Verstegg, the courts couldn't determine specifically, what the second element is.

In Feist v Rural Telephone Service Company, the United States Supreme Court held that "Feist had not infringed Rural's Copyright because the latter's alphabetized white page directory

[22] Finch, Ian (ed) James and wells intellectual pr0perty law in New Zealand (Thomson Reuters, New Zealand, 2007).

[23] Wham-0MFG C0 v Linclon Industries Ltd, 1 NZLR 641 (CA) (1984).

[24] Yu, Peter K Intellectual property and information wealth: Issues and practices in the digital age (Greenwood Publishing Group, New Delhi, 2006).

lacked originality necessary to be copyrightable.[25] For a work to be original under the meaning of the Copyrights Act, it must be (1) Independently created and (2) must exhibit a modicum of creativity".[26] In making the judgment, the court in Feist rejected the "sweat of the brow" doctrine.

In the Feist case, the Court concluded that the 'subjective element' present in the originality is a "modicum of creativity".

US commentators agree that having a low standard of creativity is best for the development of copyright law and it will be better if US courts omit the word "creativity" completely when deciding on eligibility of protection under copyright. Russ states that when the Copyrights 0ffice proposed "creativity" to be included as a factor for copyright protection, they did not recommend a definition. The Chairman of the American Patent Law Association stated that that it is a retrogressive step to try to introduce the element of creativeness in addition to originality as a test. The term "0riginality" has a judicial history. By adding the term "creative" (will create confusion) similar to adding the same in patent law.

INDIA (The middle path)

In India, copyright can subsist only in "0riginal" literary, dramatic, musical and artistic works. The Act does not define "0riginal" or "0riginality" and what these concepts entail has been the subject-matter of judicial interpretations in India and various other jurisdictions.[27]

The Copyright Act 1957 does not ask for originality of ideas, but in expression of thought. However the degree of originality required in a work is of more than trivial or minimal level.[28] The word "0riginal" does not mean that the work must be the expression of original or inventive thought. The 0riginality which is required relates to the expression of the thought but the Act does not require that the expression must be in an original or novel form, but that the work not be copied from another work that should originate from the author.

As early as 1924 while interpreting Sec 2 of the Imperial Copyright Act 1914, in the Privy Council case of Macmillan Company v. J.K. Cooper[29] Lord Atkinson held that labour, skill and capital expended must be sufficient to import to the product, some quality which

[25] Feist Publications, Inc, v Rural Telephone Service Co, 499 US 340 (1991)
[26] Id.
[27] The COPYRIGHT ACT, 1857 Sec. 13
[28] Eastrn Book Co. vs. Navin J. Desai (2002)25 PTC 641 (D.B)
[29] Macmillan Co. vs. J.K. Cooper, AIR 1924 P.C. 75

differentiates the product from raw material.[30] In Rupendra Kashyap v Jiwan Publishing House, the court held that the word 'original' in Sec 13 of the Copyright Act 1957 did not imply any originality of ideas but merely meant that the work in question should not be copied from other work and should originate from the author being the product of his labour and skill.[31] Thus the term 'Original' in reference to a work means that the work has independently been created by the author and has not been copied from someone else's works.

The Supreme Court of India reviewed the concept of originality in detail in Eastern Book Company and Others v D B Modak and Another.[32] Prior to this case the Indian courts, implicitly, followed the English approach to originality. The appellants in this case were the publishers of Supreme Court Cases (SCC), a series of law reports which contains all the Supreme Court's judgments. The appellants alleged that the respondents, who had created software packages that contained Supreme Court judgments, had copied the contents of their publication verbatim.

The Supreme Court interestingly diverted from its standard practice of following the English sweat of the brow doctrine and adopted the view that "Novelty or invention or innovative idea is not the requirement for protection of copyright but it does require minimal degree of creativity." Applying the "creativity" standard, the court held that mere copy-editing of the judgment would not merit copyright protection as this involves labour and nothing else. However, since some creativity is involved in the production of headnotes, footnotes, editorial notes, etc., these would qualify for copyright protection and the respondents were not allowed to copy them.

The Supreme Court appears to have adopted a middle path and relied on the judgment in *CCH Canadian Ltd v Law Society of Upper Canada*, where the Supreme Court of Canada took the view that the sweat of the brow approach was a rather low standard to establish originality as it shifted the balance of copyright protection mainly in favour of the owner as against public interest, and the modicum of creativity standard was too high as "creativity" implied that the creation must be "novel" or "non-obvious" and these concepts are mostly synonymous with patents and not copyright.[33]

The Supreme Court clearly sought to establish a balance between the right of authors to exploit

[30] Quoted in Nag Book House vs. State 0f WB, AIR 1982 Cal245, at 249
[31] Rupendra Kashyap vs. Jiwan Pub. House, AIR 1996 PTC 439, Del
[32] *Supra* note 30.
[33] CCH Canadian Ltd vs. Law Society of Upper Canada (2004) 1 SCR 339

their work and reap benefits and at the same time ensure the right of the public to freely access copyrighted works. By departing from the sweat of the brow doctrine, the courts discarded both the low threshold and the higher threshold in favour of a middle-of-the-road approach. This would mean that each case would be scrutinized on its individual merits to establish originality as per the current approach.

TWITTER Vis a Vis COPYRIGHT: Challenging the originality threshold

Every time a new technology comes along that aide's communication, copyright inevitably becomes an issue with it, at least to some degree.[34] From piano rolls to radios to televisions to the Web, every great technology has shifted the copyright landscape and has had its course altered, at least in some way, by those protections. Twitter is no different in that regard, whether it is just a fad or the beginnings of something larger, twitter as a technology raises copyright questions that are not easy to answer.

Twitter is a web-based real-time, short-messaging service that allows users to exchange information with other users via short notes or "Tweets."[35] They must be under 140 characters in length and generally answer one question: "What are you doing?"[36] Twitter users' answers vary, as some users' Tweets are akin to stream of consciousness, while others Tweet facts, share stories, or just keep tabs on each other.[37]

Tweets are messages which fall under literary content of copyright, hence attracting the copyright law. Tweets pose a unique challenge to the application of copyright law. Under Twitter's copyright policy, twitter users own their Tweets, and therefore, users, not Twitter, would have the right to sue for copyright infringement.[38] Each Tweet, however, must satisfy the elements of copyright-ability: a Tweet must be original, it must qualify as a work of authorship as contemplated by the Act, and it must be fixed in a tangible medium of expression.[39] In the era of internet, where the inherent feature of every social media is to share, and on the other hand the objective of Copyright law is to check the unauthorized communication to the public of the work, there arises an issue as to "Are Tweets Copyright

[34] Jonathan Bailey, Copyright And Twitter The Blog Herald (2008) https://www.blogherald.com/features/copyright-and-twitter/
[35] About twitter, http://twitter.com/about
[36] Id.
[37] Id.
[38] Twitter terms of service, TWITTER, http://twitter.com/tos
[39] 17 U.S.C. Sec. 102(a)

protected?"

The copyright law is applicable on those works only which fall under the subject matter of the copyright act. Now the debatable question which arises is first test whether the literary content of twitter reaches the "0riginality" threshold set down by different jurisdictions. There has been mixed views regarding "tweets" meeting the originality threshold. Those who claim tweets are non-copyrightable, support their view on the following points:

1. Since a tweet, exclusive of embedded media, can be only 140 characters, its size is an impediment. Short phrases, titles, etc., are usually not protected under copyright law because most of them fail to reach the level of originality required for copyright protection. They are generally seen as lacking in originality and creativity.
2. Another factor that may work against tweets getting copyright protection is that the content of most tweets cannot be protected under copyright law, for instance, "Had some yummy pasta" is neither original nor creative and is therefore not copyrightable.
3. The concept of *scènes à faire* also serves as an impediment. According to this, certain works cannot be given copyright protection since the elements used to describe a scene are necessary and that scene cannot be described but through those elements. It is likely that if a group of people witness an incident and then tweet about it, they will more or less come up with the same description.

0n the other hand, those who are in support of protection to tweet claim that granting such protection might be difficult but not impossible. Though there is a limit to the post but nowhere is it concluded that originality is tested solely on the size of the content. If the author can give creativity even in a small content why should protection not be granted? The question raise here is – "Are tweets copyrightable?" Rather it should be – "Is this tweet copyrightable?" The protection is not being sought for all the posts on the twitter, instead only for those which display some sort of creativity. It is said that the tweet is attacked by the "de minimis rule".[40] The supporters lay down the solution laying that all the tweet messages of a user should be taken as a whole and not individually so as to bring them out from the purview of insufficient content. The other contention laid by the supporters is that if Haiku[41] can be protected then why not Twitter? Or it can be said that, represent the tweet in the form of a Haiku to grant protection.

There have been instances where the twitter according to their terms of service has deleted the

[40] Legal maxim "De minimis non curat lex" meaning law doesn't govern trifles.
[41] Japanese poem of 17 syllables followed as 5/7/7 format.

posts on the ground that they are infringing copyright. Some are as followed:

a. There was one prestigious publishing company who decided to withdraw the book entitled “Les Perles des tweets et du net” which was a compilation of “tweets”. The compilation was done without the authorization from the author, moreover with no acknowledgment of the author’s name. The company to avoid any potential judgment against themselves, they decided to withdraw the book from the market.[42]
b. Olga Lexell, a freelance writer based in Los Angeles, found one of her tweeted jokes to have been posted by others without due credit being given to her. She argued that writing jokes is her bread and butter. Twitter deleted the infringing tweets after she filed a takedown request.[43]
c. 0n the Indian front, Vasuki Sunkavalli, Miss India Universe 2011, was accused of copying tweets belonging to writer and journalist Sadanand Dhume. Though the matter was settled amicably, the question of copyrightability of tweets was once again brought to the fore.[44]

Tweets that qualify as independently created must also contain a modicum of creativity.[45] Although the threshold requirement of creativity is very low,[46] not all Tweets will meet standard. The work must possess some creative spark, 'no matter how crude, humble or obvious' it might be."[47] Rabid poet's Tweet "Moon Writings"[48] contains a unique expression of words that form a poem, which satisfies the creative element.[49] 0n the 0ther hand, adamisacson's Tweet "Hi. I'm in a staff meeting. . ." does not meet this standard. This Tweet consists of shared public expressions which are too trivial to satisfy the creativity standard.[50] Mager's Tweet,

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[42] Anna Guix, Social media and copyright: who owns the content? Legal today (2014) http://www.legaltoday.com/gestion-del-despacho/nuevas-tecnologias/articulos/social-media-and-copyright-who-owns-the-content

[43] Manisha Singh and Raashi Jain, Tweet twitter tweeted: Can copyright protect tweets? India Business Law Journal (2015)

[44] Id.

[45] See Feist Publication Inc. v. Rural Tel. Serv. Co., 499 U.S. 340, 345 (1991); In re Trade-Mark Cases, 100 U.S. 82, 94(1879)

[46] Feist, 499 U.S. at 361; see Bleistein v. Donaldson Lithographing Co., 188 U.S. 239, 250 (1903). It was suggested by Justice Oliver Wendell Holmes that very nearly any creative effort will suffice since, & the [work] is the personal reaction of an individual upon nature. Personality always contains something unique. It expresses its singularity even in handwriting, and a very m0dest grade 0f art has in it s0mething irreducible, which is 0ne man’s alone. That something he may copyright”

[47] Feist, 499 U.S. at 345 (quoting 1 NIMMER & NIMMER, supra note 62, § 1.08 [C][1]).

[48] Posting of Rabid Poet to TWITTER (Sept. 21, 2009, 9:53 AM), https://twitter.com/RabidPoet

[49] Becker v. Loews, Inc., 133 F.2d 889, 891 (7th Cir. 1943) (“A poem consists of words, expressing conceptions of words or lines of thoughts; but copyright in the poem gives no monopoly in the separate words, or in the Ideas, conception, or facts expressed or described by the words. A copyright extends only to the arrangement of the words”)

[50] 9 See Alberto-Culver Co. v. Andrea Dumon, Inc., 466 F.2d 705, 710 (7th Cir. 1972) (noting words and phrases are not copyrightable); see also John Muller & C0. v. N.Y. Arrows Soccer Team, Inc., 802 F.2d 989, 990 (8th Cir. 1986) (finding that a soccer teams logo consisting of “four lines that form arrows and the word & arrows” lacked

"wine chocolate scotch," falls in the grey area. Its list of assorted words could be compared to the alphabetized telephone white pages in Feist Publications, Inc. v. Rural Telephone Service Co. which the Court found lacked the creative spark.[51]

Alternatively, if the words were looked at as a whole, the modicum of creativity requirement could be met in the arrangement of the words.[52] Additionally, this Tweet meets the low originality threshold discussed in Alfred Bell & C0. v. Catalda Fine Arts, Inc., where the court decided the defendants would have been fine if they had made their own handmade versions of a work, but could not simply copy plaintiffs work.[53] Clearly, there is no definitive answer as to whether all Tweets meet the level of originality required. Nevertheless, it is possible for some Tweets to qualify as original.

Moreover, if the protection is granted to the tweets they will not only protect the unauthorized re-tweet but would also put a check on the commercial activity in the form of "Framed tweet". It is an unethical activity undertaken by the infringer whereby they frame the tweets of renowned and public figures and then sell it off with the aim to earn profit.[54] Eventually, looking at the whole discussion, it is clear that due to absence of any settled definition of originality and creativity, there is always a room for the issues like the above to arise. The courts have tested the originality subjected to the facts of the case.

CONCLUSION

Copyright is a minimal protection; it prevents against no more than actual copying. As a minimal protection, the originality standards required for copyright protection should be minimal as well. That objective is best served by a standard of copyright originality that recognizes the narrowness and the nearly universal nature of copyright protection for written material under the 1976 Act.

The choices are limited and essentially require an election between objective and subjective

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the level of creativity needed for copyrightability).

[51] Feist Publications, Inc. v. Rural Tel. Serv. Co., 499 U.S. 340, 351-52, 363-64 (1991) (holding that alphabetized telephone white pages lacked the creative spark required by the Copyright Act and the Constitution, and, therefore, were not entitled to copyright protection despite the hard work that went into compiling the facts contained in the directory).

[52] 2 17 U.S.C. § 101 (2006) (defining a copyrightable compilation as "a work formed by the collection and assembling of preexisting materials or of data that are selected, coordinated, or arranged in such a way that the resulting work as a whole constitutes an original work of authorship"). The right thus secured by the copyright Act is not a right to the use of certain words, because they are the common property of the human race, nor is it the right to ideas alone, since in the absence of means of communicating them they are of value to no one but the author. But the right is to that arrangement of words which the author has selected to express his ideas.

[53] 23 Alfred Bell & Co. v. Catalda Fine Arts, Inc., 191 F.2d 99, 104-05 (2d Cir. 1951)

[54] TWITTERLOGICAL: The misunderstanding of Ownership http://canyoucopyrightatweet.com/

standards. The objective standard identifies those portions of the work that have originated with the author and, while according copyright protection to the work, carefully limits copyright protection to the additions made by the creator. Where there is a slavish copying, as with a purely mechanical reproduction, the copyist has added nothing; the work does not originate with him and he is entitled accordingly to no protection

A subjective standard, as applied by the Second Circuit, is not only statutorily and constitutionally unwarranted, it is effectively unmanageable. It complicates what should be a simple standard of review. The judiciary is not qualified, as Justice Holmes so aptly noted, to make judgments about a work's literary or artistic merit. For the court to impose its own subjective judgment not only on the reproduction but on the underlying work as well is to twice violate that basic premise. As originality standards move from being erratic as a consequence of subject matter assessments to being unpredictable because of judicial assessments of the creator's skill, the consistency of standards required by a national copyright statute will necessarily diminish.

Realising it’s a high time, the space at which the technology is developing and on the other hand the related laws (copyright) which is not so in par with the change need to be more dynamic than it is today. Twitter tweet is one such issue which has raised the objectivity of originality. The originality bottom line has been drawn way back, today it needs to be refined in terms of technological change.

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