

Legal Issues in ‘Conflicts Between Inventiveness, Creativity & Expression’

Issue: Are Blueprints in Architectural Works Copyrightable?

Definitions

- ❖ Technically, blueprints have run obsolete in the architectural forum, however, the term carries on being used interchangeably to refer to floor plans, drawings, etc.
- ❖ **Blueprints** –
 - ❖ Creative manoeuvring of architectural works which are transcribed into a tangible form and serve as an efficient mode to enable architects to express their original thoughts and ideas.
- ❖ **Architectural Drawings** –
 - ❖ “An architectural drawing is a **drawn expression** of the Architect’s **original thoughts, expressed using technical signs, symbols, and graphical representations together** to form an instruction to build a structure...” [Emphasis supplied] [*as defined under the Practice and Procedure Manual: Artistic Works (2018), issued by the Copyright Office*]

2

Relevant Provisions

❖ Section 2(c), The Copyright Act, 1957 –

- “*“artistic work” means, ...a drawing (including a diagram, map, chart or plan), an engraving or a photograph whether or not any such work possesses artistic quality; a work of architecture; and any other work of artistic craftsmanship*” [Emphasis supplied]

❖ Section 13(1)(a), The Copyright Act, 1957 –

- “Works in which copyright subsists— (1) Subject to the provisions of this section and the other provisions of this Act, **copyright shall subsist throughout India in the following classes of works, ...—**
(a) **original literary, dramatic, musical and artistic works.**” [Emphasis supplied]

❖ Section 13(5), The Copyright Act, 1957 –

- “*...in the case of work of architecture, copyright shall subsist **only** in the artistic character and design and shall not extend to process or methods of construction.*” [Emphasis supplied]

Legal Issues Arising from the Statute

❖ Issues:

- i. Whether blueprints can stand its ground as ‘original’ artistic works encompassing creative character?
or,
 - ii. Are blueprints devoid of any ingenuity and are merely an indispensable technical element in building structures?
- ❖ Dichotomy of judicial decisions with respect to identifying blueprints as ‘original’ artistic works is largely triggered owing to its dilemma in proactively acknowledging them as original expressions of architects’ minds on the one hand, and at the other extreme, deeming them as mere technical elements possessing negligible degrees of creativity.

4

Relevant Judicial Decisions

❖ *Eastern Book Company and Ors. v. D.B. Modak and Anr.*, [AIR 2008 SC 809]

- *“to claim copyright in a derivative work, the author must produce the material with exercise of his skill and judgment with a flavour of creativity which may not be creativity in the sense that it is novel or non obvious, but at the same time it is not a product of merely labour and capital.”*
- Made a radical shift from the Doctrine of ‘Sweat of the Brow’ to the Doctrine of ‘Modicum of Creativity’.
- Doctrine of ‘Sweat of the Brow’ embodies that for any work to satisfy the standards of originality, a **minimum amount of skill and labour must be employed** thereby swinging the balance of copyright protection favourably in support of the author. [Emphasis supplied]
- Doctrine of ‘Modicum of Creativity’ embraced the **flavour of minimum requirement of creativity**. [Emphasis supplied]

Relevant Judicial Decisions (Contd.)

❖ ***Photoquip India Limited v. Delhi Photo Store*, [684 of 2014 in Suit 427 of 2014]**

- *“The definition of 'artistic work' has a very wide connotation as it is not circumscribed by any limitation of the work possessing any artistic quality. Even an abstract work, such as a few lines or curves arbitrarily drawn would qualify as an artistic work...The artistic work may or may not have visual appeal.”* [Emphasis supplied]

❖ ***Indiana Gratings Private Limited and Others. v. Anand Udyog Fabricators Private Limited and Others*, [009 (39) PTC 609 (Bom)]**

- 6
- *“Consequently, it is seen that the drawing, which may be in the form of a diagram, would be artistic work even if it may not appear to be having any artistic quality to layman.”* [Contd.] [Emphasis supplied]

Relevant Judicial Decisions (Contd.)

❖ *Indiana Gratings Private Limited and Others. v. Anand Udyog Fabricators Private Limited and Others, [Contd.]*

- *“A look at the various drawings of the Plaintiffs in this case would unmistakably show no appeal and only mechanical devices and machine parts to perform specified functions. The Plaintiffs' drawings are, therefore, not design they are contended to be. They are artistic works within the meaning of Section 2(c) of the Copyright Act, 1957 and their theft, copying, and subsequent use...constitute infringement under...the Copyright Act, 1957.”*

7 ❖ *Aap Ka Awas LLP v. The Registrar of Copyrights, [OA/08/2020/CR/NZ]*

- *“With respect to the originality issue, the Supreme Court has held that the term original under the Act does **not** imply original or novel form of ideas or inventive thought, **but the work...should originate from the author.**” [Contd.] [Emphasis supplied]*

Relevant Judicial Decisions (Contd.)

❖ *Aap Ka Awas LLP v. The Registrar of Copyrights* [Contd.]

- “*The Supreme Court after analyzing has arrived at a **balanced middle path** approach akin to Canadian court jurisprudence **with respect to the threshold of creativity to claim copyright protection**, departing from the sweat of the brow doctrine, at the same time avoiding both the low threshold as exists in English Courts and the higher threshold as that of US Courts, **which would mean that each case would be scrutinized on its individual merits to establish originality as per the current approach ...the impugned artistic work has a flavour of minimum amount of creativity and deserves copyright protection.**” [Emphasis supplied]*

8

|

Conclusion

- ❖ In contrast to the afore-discussed, dissenting viewpoints also exist, where –
 - blueprints in architectural works are termed as *unusual subject matter*;
 - entitled to thin copyright protection;
 - degree of creativity being comparatively lower.
- ❖ To promote the commercial and moral interests of architects in light of the degree of labour and skill deployed by them in creating blueprints, conferring copyright protection upon blueprints in architectural works appear to be the right direction to move forward.
- ❖ Facilitates overall development in the industrial sector.
- ❖ More direct judicial decisions clearing up the cloud of dubiety would further bolster the copyright protection conferred to blueprints in architectural works.

THANK YOU!
Questions?

Sanjukta Kaushik, Trainee Associate

10

© ALG India Law Offices LLP, 2021.

Disclaimer: Views, opinions, and interpretations are solely those of the presenters, not of the firm (ALG India Law Offices LLP) nor reflective thereof.

This presentation hosted at: https://www.algindia.com/wp-content/uploads/2021/09/LIS-GIP-37_Sanjukta-Kaushik_Are-Blueprints-in-Architectural-Works-Copyrightable.pdf