Legal Issues in ‘Corporate-Commercial IP (Regulatory & Litigation)’

Issue: Whether compilations qualify for protection as original literary works?

Relevant Legal Provisions

- ***Section 2 (o) of the Copyright Act, 1957***

2. Interpretation—

In this Act, unless the context otherwise requires,—

(o) "literary work" includes computer programmes, tables and compilations including computer databases;

- ***Section 13(1)(a) The Copyright Act, 1957***

13. 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, that is to say,-

(a) original literary, dramatic, musical and artistic works;

(b) cinematograph films; and

(c) sound recording.

Relevant Judicial Decisions

- ***Burlington Home Shopping Pvt. Ltd. vs. Rajnish Chibber, 1995(15) PTC 278(Del)***

"(4) The questions which arise for consideration are ***whether a database consisting of compilation of mailing addresses of customers can be subject matter of a copyright*** *and whether the defendant can be said to have committed infringement of the plaintiff's copyright."*

"11. ...(1) A compilation which may be derived from a common source falls within the ambit of literary work. (2)A work of compilation of a nature similar to that of another will not by itself constitute an infringement of the copyright of another person's work written on the same pattern. (3)The question whether an impugned work is a colourable imitation of another persons' work is always a question of fact and has to be determined from the circumstances in each case. (4)The determining factor in finding whether another person's copyright has been infringed is to see whether the impugned work is a slavish imitation and copy of another person's work or it bears the impress of the author's own labours and exertions. The aforesaid principles are by no means exhaustive."

(12) From the above statement of the authorities and the trend of judicial opinion ***it is clear that a compilation of addresses developed by any one by devoting time, money labour and skill though the sources may be commonly situated amounts to a 'literary work' wherein the author has a copyright****."* (emphasis supplied)

Relevant Judicial Decisions

- ***Eastern Book Company and Ors. vs. D.B. Modak and Ors., AIR 2008 SC 809***

"30*. ... the proposition that the work that has been originated from an author and is more than a mere copy of the original work, would be sufficient to generate copyright. This approach is consistent with the "sweat of the brow" standards of originality. The creation of the work which has resulted from little bit of skill, labour and capital are sufficient for a copyright in derivative work of an author. Decisions propounded a theory that an author deserves to have his or her efforts in producing a work, rewarded. The work of an author need not be in an original form or novel form, but it should not be copied from another's work, that is, it should originate from the author. The originality requirement in derivative work is that it should originate from the author by application of substantial degree of skill,- industry or experience. Precondition to copyright is that work must be produced independently and not copied from another person. Where a compilation is produced from the original work, the compilation is more than simply a re-arranged copyright of original, which is often referred to as skill, judgment and or labour or Capital. The copyright has nothing to do with originality or literary merit. Copyrighted material is that what is created by the author by his skill, labour and investment of capital, maybe it is derivative work.* ***The courts have only to evaluate whether derivative work is not the end-product of skill,labour and capital which is trivial or negligible but substantial. The courts need not go into evaluation of literary merit of derivative work or creativity aspect of the same."*** (emphasis supplied)

Relevant Judicial Decisions

- ***Eastern Book Company and Ors. vs. D.B. Modak and Ors., AIR 2008 SC 809***

*"**38**. ... the copy-edited judgments would not satisfy the copyright merely by establishing amount of skill, labour and capital put... **original or innovative thoughts are necessary to establish copyright in the author's work**... The Copyright Act is not concerned with the original idea but with the expression of thought. Copyright has nothing to do with originality or literary merit. Copyrighted material is that what is created by the author by his own skill, labour and investment of capital, maybe it is a derivative work which gives a flavour of creativity. The copyright work which comes into being should be original in the sense that by virtue of selection, co-ordination or arrangement of pre-existing data contained in the work, a work somewhat different in character is produced by the author... We make it clear that the decision of ours would be confined to the judgments of the courts which are in the public domain as by virtue of Section 52 of the Act there claim copyright in a compilation, **the author must produce the material with exercise of his skill and judgment 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**. The derivative work produced by the author must have some distinguishable features and flavour to raw text of the judgments delivered by the court. The trivial variation or inputs put in the judgment would not satisfy the test of copyright of an author."*(emphasis supplied)

Relevant Judicial Decisions

❖ ***Reckeweg and Co. Gmbh. and Ors. Vs. Adven Biotech Pvt. Ltd., 2008(38)PTC 308(Del)***

"24. *The claim of copyright on the curative element compilation comes next. The plaintiffs allege that the exhibition of the curative element compilation on the products by the defendants and also in their brochure violates their copyright in their brochure and literature. These curative element compilations employ certain medical and common terminology to convey what problems the medicines would cure. Again,* ***the plaintiffs have failed to demonstrate how they have employed any skill, judgment and labour in describing the curative elements, let alone any creativity.*** *There are certain ways in which such curative elements can be described and the present one is fairly common, employing standard terminology. In the absence of any additional averment as to the uniqueness of such description or intellectual creativity… no copyright can subsist in the curative element compilation."*

*"****27.*** *…in plain compilations,* ***the author may not claim any copyright in the individual entries, but claim on the list itself****. However, here the alphanumeric series, the sequence, the description, the formulation and the literature are all subject of claims; at least arguments were addressed in that regard. The court has rejected them all in the preceding paragraphs. Therefore, merely considering the overall effect would be falling back to the 'sweat of the brow' standard, in this case, which recognized that what is worth copying is copyrightable. That era has passed; the Supreme Court has mandated a different standard, the scale of which is to be determined on a case sensitive basis, i.e some modicum of creativity."* (emphasis supplied)

Relevant Judicial Decisions

❖ ***Emergent Genetics India Pvt. Ltd. vs. Shailendra Shivam and Ors., 2011(47) PTC 494(Del)***

*"26… **Indian law has recognized that compilation of databases is entitled to copyright protection. However, that would not end the debate. The law mandates that the work claiming protection ought to be original. Copyright law does not also grant the author of a literary work protection on ideas and facts**."*

*"**28.** From the above discussion, it is apparent that **mere labour (sweat of the brow) or investment of manpower and resources, is not a substitute for originality**. Sequences obtained from nature (e.g., the sequence for a gene) cannot per se, be original. The microbiologist or scientist involved in gene sequencing "discovers" facts. There is No. independent creation of a "work", essential for matching the originality requirement. Such a scientist merely copies - from nature-genetic sequence that contains codes for proteins. Therefore there is No. minimum creativity. So long as a researcher constructs a DNA sequence based on a sequence discovered in nature, there is No. independent creation, No. minimum creativity and thus No. originality … **If the process - despite its novelty and industrial application, and other attributes of patentability - is denied patent protection, it is inconceivable that the observation and compilation of the consequence of that process, which is a natural consequence, can receive an extremely wide protection as a "literary" work.**"* (emphasis supplied)

Relevant Judicial Decisions

❖ ***Tech Plus Media Private Ltd. vs. Jyoti Janda, 2014(60) PTC 121(Del)***

*"**18.** I repeatedly enquired from the senior counsel for the plaintiff as to **how, in a collection of the names and addresses of the visitors to the news portal of the plaintiff or their comments, the plaintiff can claim copyright within the meaning of Section 14 of the Act and how the same can be called literary, dramatic or musical work or even a computer programme. It is not the plea of the plaintiff that it has got written from anyone a computer programme for maintaining such contents or for shifting the same into various categories etc**."*

*"**30.** I therefore find the plaintiff to have not pleaded the material propositions of fact essential to succeed in an action for infringement of copyright and thus pronounce judgment forthwith against the plaintiff dismissing the suit..."* (emphasis supplied)

Relevant Judicial Decisions

❖ ***Navigators Logistics Ltd. vs. Kashif Qureshi and Ors., 2018(76) PTC 564(Del)***

*"**26.** The list does not fall in the definition of artistic work or dramatic work or musical work, as defined in Section 2(c),(h) & (p) respectively. Literary work is defined in Section 2(o) as including computer programmes, tables and compilations including computer databases. The definition of literary work is inclusive and the inclusion contains compilations."*

***"27.** The question which thus arises is, **whether all compilations are literary work in which copyright can subsist**."*

*"**28.** As practicing Advocate, the list/compilation of my clients and their phone numbers was generated by my smart phone by entering the list of contacts in my phone. **I never considered the same as a literary work or myself as the author of the said list/compilation**."* (emphasis supplied)

Conclusion

- The term "literary work," defined under Section 2(o) of the Copyright Act, 1957, expressly includes compilations, yet Section 13(1)(a) requires that such works be "original" to qualify for copyright protection. Indian courts have grappled with whether compilations meet this originality threshold by virtue of labour and skill alone, or whether a minimal degree of creativity is indispensable.

- Earlier decisions such as ***Burlington*** reflected a more generous approach, recognizing copyright in compilations where substantial effort and investment of skill were demonstrated, even without creative input. However, subsequent jurisprudence beginning with ***Eastern Book Company v. D.B. Modak*** and followed in ***Tech Plus Media*** and ***Navigators Logistics*** has firmly endorsed the *"skill and judgement"* standard, rejecting protection for mere mechanical compilations such as databases and customer lists.

- Thus, judicial interpretation of originality in relation to compilations reveals a shift from the *"sweat of the brow"* doctrine to a more restrictive creativity-based threshold. While compilations are undoubtedly literary works under the Act, whether protection is granted depends on demonstrating an element of creative selection, arrangement, or judgment, rather than mere industrious collection of facts.

THANK YOU!

Questions?

Adyanshi Kashyap
Associate

This presentation hosted at: https://www.algindia.com/wp-content/uploads/2025/09/LIS-GIP_Adyanshi-Kashyap_September-15-2025.pdf