

Intellectual property law

Law



The concept of “ originality” in copyright is a contested issue Originality in copyright is one of the most important concepts of copyright law in that it serves to distinguish original work from copies. A major criterion for copyright registration and protection is proof that the material seeking copyright protection is original in nature. However, neither common law nor statute defines what amounts to original work, and thus notions of originality often create legal and aesthetic difficulties. As authors and artists in the literary, arts and music world attempt to be creative and original, their techniques and ideas are informed by established industry standards and ideas and achieving originality is a mammoth task. This research paper seeks to identify the practical difficulties created by the requirement of originality in copyright protection. In doing so, this research paper focuses on the concept of originality and its definitional and conceptual paradoxes. This paper also analyses the legal aspects of originality in terms of the originality requirement for copyright protection and the originality aspects of copyright infringement. Outline: Part I: Introduction: This part of the paper defines the conceptual problems posed by the originality concepts of copyright law. The difficulty arises because in a typical case, a defendant argues that the work is not satisfy the criterion of originality since it is not original and cannot be protected despite the resources used to product it. Therefore a court must determine whether the work is original enough to accord it copyright protection. 1 The Copyright, Designs and Patents Act 1988 as amended only requires that the work be original and does not specifically define what constitutes originality. 2 EU Directives have been implemented regulating a number of aspects in copyright protection. 3 For the purpose of this paper, three EU Directives will be examined: Directive on the Legal Protection of <https://assignbuster.com/intellectual-property-law/>

Databases⁴; the Directive on the Legal Protection of Computer Programs⁵; and the Directive on the Term of Protection of Copyright. ⁶ We look at how the EU deals with concepts of originality in these directives reflects a common theme: the work is a reflection of the author's own intellectual creation and consider whether or not this is a suitable criterion for removing the practical difficulties for requiring originality in the protection of copyrighted material.

Part II: Concepts of Originality in Copyright Protection: This part of the paper examines concepts of originality and in particular factual and conceptual definitions of creativity, "uniqueness" and "novelty" factor into the requirement of originality in copyright protection. This conceptualization of creativity is juxtaposed against the requirement that the copyright material is original in the sense that it does not copy the work of another. ⁷

Part III: Originality in UK Copyright Law. This part of the paper examines the definitional difficulties associated with originality by looking at emerging concepts in the common law and the Copyright, Designs and Patents Act 1988. Cases discussed are: *University of London Press, Ltd. v University Tutorial Press, Ltd.* [1916] 2 Ch. 601 (originality means thought expression). *Express Newspaper Plc v News (UK) Ltd.* [1990] FSR 359 defines originality as it appears in the 1988 statute as not implying originality in inventive terms and that it would be sufficient if the work produced something in an intrinsically new way as a result of one's own labour. *Newspaper Licensing Agency, Ltd. v Marks & Spencer, Plc* [2001] UKHL 38: demonstrates the development of a more complicated definition of originality. The court ruled that both labour and originality in the artist's skill was necessary, and reproduction could be original if it uses labour and original skill in the expression of an original work. (see also *Designers Guild*, <https://assignbuster.com/intellectual-property-law/>

Ltd. v Russell Williams (Textiles), Ltd. [2001] 1 All ER 700). Part IV: This part of the paper examines the collective theme emerging in the EU Directives Council Directive 96/9 1996, Council Directive 93/98, 1993, and Council Directive 91/250, 1991 relative to intellectual creation. For example, Article 1(3) of Council Directive 91/250, 1991 requires that computer programs are protected as original work if it represents the author's intellectual creation and nothing else shall be used to ascertain its right to copyright protection.

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