

Treating “Idea” as a Key Element of Copyrightable Work: Practices, Problems and Alternative Solutions

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In recent years, there is some kind of judicial logic treating “idea” as a key element of copyrightable work adopted by several courts of China in their judicial decisions, including the Supreme People’s Court. According to this logic, a copyrightable work should contains some idea, those do not express any idea shall not be protected by copyright law. This kind of judicial logic is naturally derived from the notion that the copyrighted work is essentially an expression of the author’s idea, which is influenced by the literature theory, and is raised to solve specific issues such as the copyrightability of the tile of a work, short expression, factual works, and functional works. However, as a general principle of copyright law, this logic may not be uncontroversial. Firstly, it may face some critics of how to deal with the relationship between the idea element and the other elements of a copyrightable work such as originality and intellectual creation. Secondly, the meaning of “idea” depends on which type of work we are taking about; this means that the concept of “idea” is so ambiguous and diverse in copyright law that the concept of idea could be hollowing-out. Thirdly, treating “idea” as a key element of copyrightable work as well as something that does not protected by copyright law seems weird, besides, it is impossible to coordinate the meanings of these two kinds of ideas, apparently they are not defined from the same perspective and they would overlap but not of the same scope. In fact, the copyright law has provided several alternative methods to solve the specific problems mentioned above, such as the originality requirement and the “idea/expression dichotomy”. Compared with the practice of treating “idea” as a key element of copyrightable work, these methods reflect better the policy measure characteristics of copyright law. For these reasons, it is not sensible to hold this kind of logic in China.