

PUBLICATION & ACCESS TO **'LEGAL PLEADINGS'**: A COPYRIGHT CONCERN



Supreme Court in the case of **Chief Information Commissioner v. High Court of Gujarat (MANU/SC/0275/2020)** held that legal pleadings and court records cannot be accessed via Right to Information Act, and can be accessed only through rules laid down by respective High Courts or Supreme Court as the case may be.

Legal Pleadings are a valuable source of information for young lawyers and law students but the same is not easily available to them in our current judicial setup.



VIDHI Report on **'Open Courts in the Digital Age: A Prescription for an Open Data Policy'** explains that access to judicial pleadings play important part in 'Open Court Policy' and therefore, these documents be available to the public.

However, issue of copyright over legal pleadings is a major constraint in making the same publicly available.



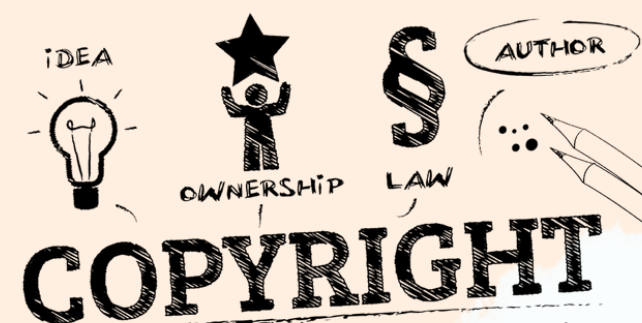
Manupatra recently conducted an online poll on the issue -

Considering 'Pleadings' are 'Original Literary Work', should they be Copyrightable? If yes, who should hold rights over their publication?

And the results are*:

- 41% were of the opinion that 'Pleadings' should not be considered as Copyrightable
- 44% considered that Lawyers should hold copyright over 'Legal Pleadings'
- 5% considered that copyright should be vested in Parties to the case
- 9% considered that copyright should be vested in Courts respectively

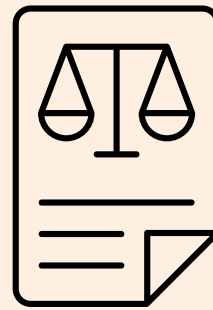
*the numbers are approximate



The two major views that arose in this poll were:



a) Copyright should vest with the lawyer preparing the pleadings



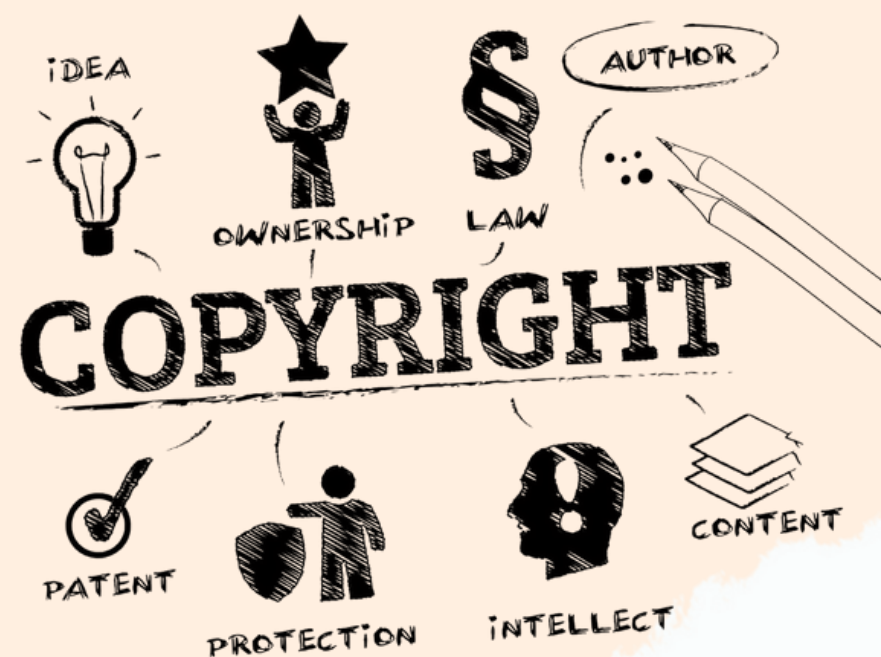
b) Legal Pleadings should not be copyrightable



Copyright of Lawyers

Vesting of copyright with lawyers would signify that 'Legal Pleadings' is an **original literary work**. However, it can be noted that a major portion of those pleadings consists of facts which are not copyrightable.

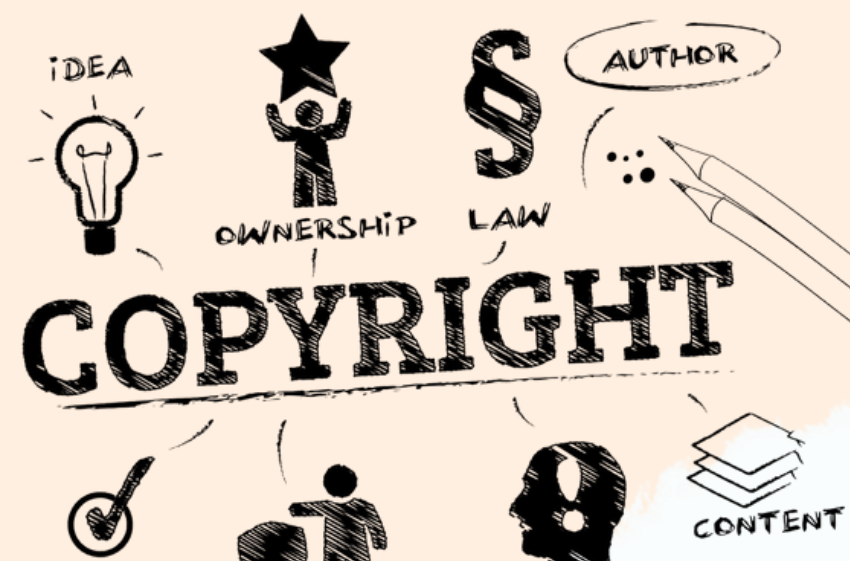
So in this case, it is pertinent to note to what extent the facts are not being mechanically reproduced by the lawyer, as expressing them differently and in a distinguishable manner would allow it to cross the idea-expression threshold, thus making it copyrightable.



No Copyright

This perspective takes into account the doctrine of **Fair Use** and Section 52(1)(d) of Copyright Act which allows reproduction of work without consent of copyright owner, if it is for the purpose of a judicial proceeding or a report of a judicial proceeding.

However, the same can be allowed only if the term 'reproduction' is considered to include 'publication' as well, as that would allow publication of pleadings without any accompanying work by the person publishing it.



The current legal position regarding copyright of Legal Pleadings is very unclear in current context. However to allow seamless publication and reproduction of Pleadings, an amendment in the existing laws by the parliament or directions/guidelines by the Supreme Court will clear the web of uncertainties that exists

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