

## **A REVIEW OF IDEA-EXPRESSION DICHOTOMY AND MORAL RIGHTS IN MOVIES**

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### **ABSTRACT**

*This paper examines the role of copyright law in promoting creativity and analyses the copyrightability of movies within the framework of the 'Idea-Expression Dichotomy' in the Copyright law of India and other jurisdictions. By critically examining relevant judicial precedents, the study focuses on a specific category of creative works to shed light on the evolving landscape of cinematography and the existing copyright laws governing original works. The paper delves into the exceptions to the Idea-Expression Dichotomy and explores the tests employed to differentiate between ideas and expressions in movies. Additionally, it investigates the intersection of moral rights with the dichotomy, considering the implications of Artificial Intelligence (AI) in relation to this concept. Through a comprehensive analysis, this research contributes to a deeper understanding of the copyright protection afforded to movies and provides insights into the intricate balance between idea and expression within the context of evolving technology and moral rights.*

**Keywords:** Idea Expression Dichotomy, Moral Rights, Movies, Artificial Intelligence, Copyright Law

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## INTRODUCTION

*"Everything that comes from the hands of man, over which he has exercised his mind and given it form, seems to us to have an inalienable right to respect."*

-Jean-Jacques Rousseau

This quote highlights the idea that creative works are imbued with a certain level of inherent value, simply because they are the product of human thought and effort. This perspective challenges us to consider the moral implications of denying creators the right to control and profit from their creative works, while also balancing the need for users to have access to creative works for the greater good of society. In the current context this quote suggests that the courts must carefully consider the value and importance of creative expression when interpreting copyright law.

The advent of movies as a popular form of entertainment has given rise to many legal issues, one of which is the copyrightability of movies. In copyright law, the 'idea-expression' dichotomy is the basic principle that differentiates between the ideas behind a work and the expression of those ideas. This dichotomy raises important questions about the extent to which movies, as complex works of art that incorporate many different elements, are copyrightable.

The principle helps determine what types of works are eligible for copyright protection. *Baker v. Selden*<sup>1</sup> is often considered the first case to touch upon this principle. It is known to balance the need to encourage innovation and creativity and prevent monopolies on ideas.

In this paper, the term "original work" is synonymous with India's copyright law, namely the "Copyright Act, 1957" (Act). It utilises the term 'original literary, dramatic, musical, and artistic works' and forms the class of works upon which copyright exists, among others. Before the technological era, copyright was focused on original works excluding technology but presently IP rights are evolving at a considerable pace.

The concept that 'ideas' are not protected under copyright law is rooted in the belief that ideas are eternal and cannot be restricted. Plato's theory of forms suggests that ideas are universal constructs that can be freely used. Other philosophers, such as Descartes and Thomas Jefferson, have also argued that ideas cannot be owned as property. The Court in *Donoghue v. Allied Newspapers*<sup>2</sup> held that copyright protection is only granted when an idea is reduced to writing or some tangible form.

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<sup>1</sup> (1879) 101 U.S. 99

<sup>2</sup> (1937) 3 Ch. D. 503

This paper explores the copyrightability of movies in light of the idea-expression dichotomy and seeks to provide a comprehensive analysis of the copyrightability of movies in relation to the idea-expression dichotomy, offering insights into the challenges and opportunities that arise from this complex area of copyright law.

## **LITERATURE REVIEW**

### **1. Idea-Expression in Musical Analysis and the Role of the Intended Audience in Music Copyright Infringement<sup>3</sup>**

- The author emphasizes in the paper the need of ‘Intended Audience Test’ by highlighting that relying only on expert analysis may not be sufficient to establish similarities in ‘Artistic Work’ and that there’s need of additional for a conclusive finding.
- This paper makes the reader introspect through its analysis of the ‘Hinshaw Case’ by considering theoretical impropriety.
- The paper establishes that musicians can build on past/ existent ideas as long as the expression is original in its entirety and not borrowed.

### **2. Evolution of Copyright law – the Indian Journey<sup>4</sup>**

- Hon’ble J. Pratibha Singh has discussed the overlap of the principles of the idea-expression dichotomy and the Patents and Designs act by delving into Original and Derivative works.
- The paper highlights the issues determining whether intermediaries and search engines can be directed to remove infringing content globally by examining several legislation including the Safe Harbour protocols.
- The paper underlines the concept of ‘Dynamic Injunction’ in the realm of Copyright and specifically as a remedy to the Idea-Expression Dichotomy.

### **3. Discussing the Copyrightability of Computer Programs vis-a-vis the Idea-Expression Dichotomy<sup>5</sup>**

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<sup>3</sup> Grinvalsky, Paul M. (1992) "Idea-Expression in Musical Analysis and the Role of the Intended Audience in Music Copyright Infringement," California Western Law Review: Vol. 28 : No. 2 , Article 8.

<sup>4</sup>Singh, Justice Prathiba M. (2020) "Evolution of Copyright Law: The Indian Journey," Indian Journal of Law and Technology: Vol. 16: Iss. 2, Article 3.

<sup>5</sup> Isabel Roy, Discussing the Copyrightability of Computer Programs vis-a-vis the Idea-Expression Dichotomy, 10 e-IJLSR (2021).

- The author in this paper has examined the copyrightability of computer programs, exploring judicial opinion and cases which have shaped the understanding of this subject matter.
- The paper establishes general acceptance of computer programs as copyrightable creations as ‘literary works’.
- The paper has outlined challenges and controversies surrounding the distinguishing of protectable elements within programs globally and domestically in India by rejecting the Abstraction-Filtration Comparison test.

### **DEMYSTIFYING THE IDEA-EXPRESSION DICHOTOMY**

It is crucial to understand that this protection covers the tangible expression of ideas, not the ideas themselves. This means that copyright protection is granted to the physical manifestation of abstract ideas, rather than the ideas in their abstract form.

The Idea-Expression Dichotomy refers to the separation between an idea and its expression. Although an idea is conceptual and not physical, its manifestation through expression gives it a concrete structure that can be safeguarded by copyright regulations. If an idea were to be copyrighted along with its expression, no one else would be able to create their own expressions based on that same idea, which would defeat the purpose of promoting creativity and rewarding innovation through copyright protection

Regarding the issue at hand, there are no explicit legal rules or provisions in place, and the legal system's principles and precedents are solely based on previous cases. Lindley, L.J. in the case of *Hollinrake vs. Truswell*,<sup>6</sup> observed :

*“Copyright .... does not extend to ideas, or schemes, or systems, or methods; it is confined to their expression; and if their expression is not copied the copyright is not infringed.”*

In India, this legal system based on previous cases was initially established through a significant copyright case that set a precedent that is *R.G. Anand v. Delux Films & Ors.*,<sup>7</sup> the Supreme Court held that, *“copyright protection extends only to the expression of an idea and not to the idea itself”*. The case involved allegations of copyright infringement of a script and story for a film. The court found that although the basic idea of the story was similar, the expression of the idea was different, and thus there was no copyright infringement.

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<sup>6</sup> (1894) 3 Ch 420

<sup>7</sup> AIR (1978) SC, 1613

Additionally, the same legal principle has been reaffirmed in subsequent cases like in, **XYZ Films LLC v. UTV Motion Pictures.**,<sup>8</sup>The case involved allegations of copyright infringement of a script for a film. The court found that although the basic idea of the story was similar, the expression of the idea was different, and thus there was no copyright infringement. The decision affirmed the idea-expression dichotomy in Indian copyright law and established that mere similarities in ideas are not sufficient to establish infringement.

**Mansoor Haider v. Yashraj Films Pvt. Ltd.**,<sup>9</sup> this case involved allegations of copyright infringement of a song in the film 'Dil To Pagal Hai'. The plaintiff claimed that the defendant had copied his song, but the court found that the similarity between the two songs was only in the idea and not in the expression. The court held that copyright law protects only the expression of an idea and not the idea itself.

### **IDEA-EXPRESSION DICHOTOMY IN CINEMATOGRAPHY**

The birth of ideas is impossible without their manifestation in explicit expression, making the notion of an idea devoid of expression pointless. Courts are tasked with the daunting responsibility of separating ideas from their expression in copyright infringement cases. Yet, such a task is arduous as the two are often intertwined, posing difficulty for the Court to distinguish. Therefore, it is crucial for the Court to determine the fine line where plagiarism crosses the boundary of copying an author's ideas and violates the expression of those ideas.

Cinematographic films, as well as theatrical plays and novels, encompass various elements such as themes, characters, and representations. For instance, the films *2 States* and *New Delhi* explore the theme of "provincialism" in India, which involves North Indians opposing the idea of their children marrying South Indians, and vice versa. This theme is intertwined with other themes like the "problem of dowry in India" and "father-son relationships"

Had the idea-expression dichotomy not existed, the movie "*2 States*" may have been considered a duplicate of "*New Delhi*" due to their comparable themes. Nevertheless, upon viewing both films, it is evident that they are distinct and not copied from one another. When determining a copyright infringement case, the court must differentiate between the two and ascertain if there is any appropriation of the expression of an idea. However, this is a challenging task because separating a film into original and non-original components is difficult. Therefore, the judiciary has created some methodologies to assist in this process.

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<sup>8</sup> (2016) SCC OnLine Bom 3970.

<sup>9</sup> (2014) SCC OnLine Bom 652

## **EXCEPTIONS**

Perhaps, the idea-expression dichotomy does render a sense of freedom in innovation and encourages different versions of an idea but it has its share of exceptions carved into the rule, viz. the doctrine of Merger and doctrine of Scenes a Faire.

- **Doctrine of Merger**

Owing to the word ‘merger’, the doctrine is applied when ideas and expressions merge without any overt boundary. If the idea and expression cannot be distinguished from one another, protection of the expression alone cannot be possible. The idea must have limited ways of expression or the expression must be distinct for the doctrine to be applicable. Though this suffers a dearth of precedents in India, the concept has been widely discussed overseas.

*Herbert Rosenthal Jewelry Corp. v. Kalpakian*<sup>10</sup> is known as a landmark ruling in the doctrine of merger. It was claimed that the defendant manufactured bee-shaped jewel pins which were similar to the plaintiff’s product. The Court held that there was no infringement as the idea can be expressed in a particular form and restricting the other party from creating their bee-shaped jewel pins would be awarding exclusive rights of an idea to the plaintiff. Here, the idea and expression merge and cannot be protected under copyright law.

- **Doctrine of Scenes a Faire**

The term ‘Scenes a Faire’ is translated in the English language to mean ‘scene that must be done’. In expressions, certain elements inherently form part of the idea and render copyright inapplicable. Taking the example of the horror genre in movies, scenes of the lights flickering and doors rattling are included in almost every horror movie. However, based on this doctrine, ‘The Conjuring’ movie series cannot copyright these scenes as they are observed in several other movies and will be used. This could include places, objects, characters, language, etc. that cannot be protected under the domain of copyright.

## **TESTS DISTINGUISHING IDEA AND EXPRESSION**

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<sup>10</sup> 446 F. 2d 738 (9th Cir. 1971)

The R.G. Anand Case, also known as the “*Gabbar Singh Case*”, is a landmark case in Indian copyright law that was heard by the Supreme Court in 1978. The case dealt with the question of whether a film director had infringed the copyright of a playwright by adapting his play into a movie.

The case established several principles in Indian copyright law, which have been influential in shaping the country's intellectual property jurisprudence. Some of the key principles evolved from the R.G. Anand case include:

1. Copyright protection is limited to the expression of ideas, and not to the ideas themselves.
2. Copyright infringement occurs when a substantial part of a work is copied, but not when only the central idea or theme is used.
3. The standard for determining substantial similarity is whether an ordinary person would recognize the alleged infringing work as having been derived from the original work.
4. Adaptations or transformations of a copyrighted work may not necessarily infringe on the original copyright, as long as they are sufficiently different in form and expression.
5. The fair use doctrine, which allows for the use of copyrighted works for certain purposes such as criticism, commentary, or news reporting, should be interpreted broadly to encourage creativity and innovation.

Overall, the R.G. Anand case is significant in shaping India's copyright law. The principles established in the case help to balance the rights of copyright owners with the public interest in promoting creativity and innovation. The case is still referenced in copyright law today and has influenced other countries' intellectual property jurisprudence as well.

## **UNDERSTANDING MORAL RIGHTS**

Moral rights in copyright are a set of rights that are distinct from economic or property rights, and are based on the idea that creators have a personal connection to their works that goes beyond mere ownership. Moral rights are usually associated with the author or creator of the work, and can include the right to be identified as the author or creator, the right to prevent others from modifying or distorting the work in a way that would harm the creator's reputation, and the right to withdraw the work from circulation.

Incorporating the idea of moral rights into the Act is evidence of India's acceptance of the principle, which is shared by many other nations. In India, an author has the right to claim for damages if their work is distorted, mutilated, or modified in a way that harms their image or honour, and they also have the right to assert their authorship over the work.

The right of attribution, which is the right of the author to be identified as the creator of the work, is an important aspect of moral rights. This right ensures that the author receives appropriate credit for their work and helps to protect their reputation. The right to prevent modification or distortion of the work is another key aspect of moral rights, as it allows the author to ensure that their work is not altered in a way that would harm their reputation or artistic vision.

Moral rights in copyright are often seen as a way to protect the integrity of a work and the reputation of its creator, even after the economic rights in the work have been transferred or licensed to others. They can also provide a means for authors to maintain some control over their works, even after they have been published or made available to the public.

## **INTERSECTION OF MORAL RIGHTS AND IDEA-EXPRESSION DICHOTOMY IN CINEMATOGRAPHY & RELATED WORKS**

The intersection of moral rights and the idea-expression dichotomy in cinematography and related works can be complex. On the one hand, moral rights recognize the personal and reputational interests of creators, and protect the integrity of their works. On the other hand, the idea-expression dichotomy limits the scope of copyright protection to the expression of ideas, rather than the ideas themselves.

In the context of cinematography and related works, the idea-expression dichotomy means that copyright protection extends only to the specific expression of an idea in a film or other work, and not to the underlying idea itself. This can make it difficult to apply moral rights to these works, as moral rights are typically concerned with protecting the author's connection to the work as a whole, rather than just the specific expression of an idea.

However, there are still ways in which moral rights can be applied to cinematography and related works. For example, moral rights may be used to protect the reputation of the director or other creative personnel involved in the making of the film. This could include the right to be identified as the director or to prevent the film from being altered in a way that would harm the director's reputation.



In R.G. Anand was the writer and director of a film called "Hum Hindustani", which was released in 1960. Anand claimed that certain scenes from his film had been copied by the defendants and used in their own film, "Nadaan", which was released in 1971. Anand filed a lawsuit against the defendants, alleging copyright infringement.

*Mannu Bhandari v. Kala Vikas Bhandari*<sup>11</sup> is a case in Indian copyright law that deals with the concept of moral rights of authors. Mannu Bhandari, the author of a literary work titled "Aapka Banti," filed a lawsuit against Kala Vikas Bhandari, who had adapted the work into a play without the author's permission and made significant changes to the plot and characters. The court held that the changes made to the original work without the author's permission amounted to a violation of her moral rights. The court recognized the importance of moral rights in copyright law and the inherent connection between an author and their work. The court also emphasized the importance of the right of attribution, which is one of the moral rights recognized under Indian copyright law, as a way of protecting an author's reputation and creative contributions. The court awarded damages to the author and ordered Kala Vikas Bhandari to give appropriate credit to the author in all future performances of the play.

*Amar Nath Sehgal v. Union of India*<sup>12</sup> is a significant case in Indian copyright law that deals with the concept of moral rights of artists. The case involved the removal of a sculpture titled "Bharat Mata" from the entrance of the Central Hall of Parliament House in New Delhi without the artist's permission. The artist, Amar Nath Sehgal, filed a lawsuit against the government for copyright infringement and violation of his moral rights.

The court held that the removal of the sculpture without the artist's consent violated his moral rights, as an artist has the right to protect their reputation, honor, and dignity as an integral part of their intellectual property rights. The court also recognized that the sculpture was a work of artistic expression protected under Indian copyright law and awarded damages to the artist.

Overall, the case highlights the need for respecting the moral rights of authors and recognizing the importance of giving credit to creators for their work.

## **ARTIFICIAL INTELLIGENCE (AI) AND IDEA-EXPRESSION DICHOTOMY VIS A VIS MORAL RIGHTS**

AI is increasingly used in cinematography and related fields to create special effects, generate music, and even generate entire scenes and storylines. It is transforming the way filmmakers

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<sup>11</sup> AIR 1987 Delhi 13

<sup>12</sup> 2005 (30) PTC 253 (Del)

and creatives approach their work by creating realistic CGI, sound effects, and helping generate story ideas and scripts.

The following are instances of AI generated work in recent times with reference to cinematography and related works :

6. The use of AI in the creation of visual effects in the movie "Avengers: Age of Ultron". In this movie, the studio used an AI program called "Helios" to help create the numerous visual effects throughout the film, including the creation of the villainous Ultron character.
7. The legal dispute over ownership of the AI-generated portrait "Edmond de Belamy". This artwork was created by a French art collective using an AI algorithm, and was sold at auction for over \$400,000. However, the sale raised questions about who owned the copyright in the artwork, and whether the AI algorithm could be considered a legitimate creator of artistic works.
8. The use of AI-generated visual effects in the movie "Baahubali 2: The Conclusion". In this blockbuster Indian film, the studio used an AI program called "Mantra VR" to create the film's complex visual effects, including the creation of the massive armies and battle scenes.
9. The use of AI-generated music in the movie "96". In this Tamil-language film, the director used an AI program called "Aiva" to create the film's soundtrack, which included original compositions generated by the AI algorithm.
10. The development of an AI scriptwriter for Bollywood films. In 2020, an Indian startup called "CineRiser" announced the development of an AI program that could generate scripts for Bollywood films. The program used machine learning algorithms to analyze thousands of Bollywood films and then generate new scripts based on popular themes and plot points
11. The use of AI in post-production for the movie "Article 15". In this Hindi-language film, the studio used an AI program called "SilhouetteFX" to help with the film's post-production, including color grading and visual effects.

The increasing use of AI in cinematography and related works has the potential to significantly impact the idea expression dichotomy. With AI generating entire scenes, storylines, and even scripts, it may become more difficult to distinguish between ideas and expression, as the AI-generated content may blur the lines between the two.

This could lead to challenges in copyright infringement cases, as the traditional framework for analysing idea expression dichotomy may not be well-suited to dealing with AI-generated content. Additionally, as AI becomes more advanced, it may be capable of generating increasingly complex and nuanced expressions, which could further complicate the task of distinguishing between idea and expression. Ultimately, the impact of AI on the idea expression dichotomy is still evolving, and it remains to be seen how this issue will be addressed in the future.

## **CONCLUSION**

This piece aims to broaden readers' conceptual horizons. Questions that policymakers should ask when deciding whether or not there has been copyright infringement include what the author meant to convey, what the average consumer or affected group would think, how the author chose to communicate, and how novel the communication method was.

Protecting an expression because it is the author's chosen method of communication is understandable, but the idea-expression dichotomy becomes problematic when security is extended only to the expression and the idea is ignored. Keep in mind that if you remove the meaning from a phrase, it has no value. The purpose of the legislation is to protect the concept, with the expression functioning as a concrete, observable, and objectifiable manifestation of the concept.

Simultaneously, there has been a sincere request to broaden the scope of copyright protection to cover original and innovative concepts that are not safeguarded by patent laws, for the betterment and advancement of society as a whole. Nonetheless, it is challenging to differentiate between a new idea and a regular one.

Therefore, expanding copyright protection would require granting additional authority and responsibilities to the copyright board. This board would have to make the same distinction as the patent board in determining whether an idea is novel and qualifies for copyright protection. The author's believe, it's helpful to reflect on Circuit Judge James M. Carter's remark from the Kroft Television Products case, where he said that Michelangelo's David was "nomore than a statue of a nude man." With all due respect, the artist's work has been misunderstood. Michelangelo's David is a statue that sums up the quintessence of his creative genius, his artistic inspiration. Every twist of a muscle, every twitch of a wrist and every crease of a smile depicts laborious forethought. If Michelangelo did not see beforehand the image of his David, nor the

magnificent frescoes on the ceiling of the Sistine Chapel, it would have been impossible for him to create these works of art. Creative genius, creative forethought, creative inspiration came first. What came next was the sweat of the brow, mere expression. To reduce his ideas into expression would be to reduce a genius into a labourer. The quintessential law is but a step away. All that is required is solidarity in the letter and spirit of the law.

The development of copyright law is largely attributed to judicial decisions and interpretations of statutes, which makes the role of the judiciary crucial in shaping and defining copyright law. Copyright law is based on the protection of creative expression, and since it is often difficult to create clear-cut rules and guidelines for all situations, the courts often rely on principles developed through case law to determine the scope and limits of copyright protection.

In cases involving moral rights, the protection is often subjective and dependent on the artist's perception of their work. Therefore, courts play an essential role in balancing the interests of creators and users of creative works, and their interpretations of copyright law can have significant impacts on the rights of copyright owners, users, and the public at large.

The courts must consider the specific facts of each case to determine the appropriate level of protection to be afforded to creative works and to provide guidance to the parties involved in the case and the public at large. As such, it is vital that the judiciary maintains a nuanced and well-informed approach to copyright issues, balancing the interests of creators and users to ensure that copyright law continues to evolve in a manner that supports creativity, innovation, and the public good.