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GLOBAL PERSPECTIVES ON THE IDEA-EXPRESSION DICHOTOMY: COMPARATIVE ANALYSIS OF FILM COPYRIGHT LAWS

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ABSTRACT

The idea vs. expression dichotomy is the defining boundary of the copyrights law, that aids in delineating that which constitutes protectable intellectual property and that which remains in the public domain. This paper will analyse the doctrine of the idea vs. expression and how it is interpreted across the world and in various legal systems, with a particular focus on the film industry. By examining the laws of the various countries, the study sheds light on how different countries balance the right to protection of creative works with the need to maintain a vibrant public domain. In the United States, the "idea vs. expression" dichotomy is am established principle; it follows that the principle of expression of an idea, and not the idea itself, is subject to copyright protection. In contrast to this, laws of the United Kingdom have developed a nuanced approach to the doctrine of the "idea vs expression" dichotomy. The approach of the United Kingdom is was initially somewhat inspired from the United States but now has distinct applications of the doctrine in some of the cases. Additionally, the Court of Justice of the European Union (CJEU), has emphasized the importance of protecting the unique expression of creative work while recognizing the need for creativity.

The Indian understanding of this dichotomy is significantly varied, particularly due to its unique taste in storytelling that is often presented be through several mediums such as dancing, cinema or plays. Therefore, it faces unique challenges in applying the doctrine of idea vs expression dichotomy. Indian courts have tried to strike a balance between the need to protect the filmmaker's rights while ensuring the underlying ideas and themes of work remain accessible for reinterpretation and innovation. On the other hand, Japan's approach is mixed with the Western approach and cultural heritage while fostering innovation in its burgeoning film industry. This paper will further go on to explore the impact of technological advancements and artificial intelligence enforcements of the idea-expression dichotomy. In conclusion, the study argues that while the idea-expression dichotomy remains a vital component of copyright law, its application in the film industry requires continuous adaptation to address the complexities of an increasingly evolving global media landscape.

I. INTRODUCTION

The main aim of the existence of copyright law is to protect intellectual property by ensuring that the original work of the authors, and artists, is secured from unauthorized use.[1] This law has given exclusive rights to the creators over its creation, which includes the ability to reproduce, distribute,

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[1] Agreement on Trade-Related Aspects of Intellectual Property Rights, art. 9(2), Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299.

or display their works, thus offering an economic incentive for creativity and innovation. The subject matter covered under this law includes various categories like literary work, music, drama, choreography and particularly relevant to this paper, motion pictures and audiovisual works. The copyright law provides for a crucial distinction between the ideas and the expression. Expression is the creative way of presenting an idea whereas the idea is just a thought. Under this law, the expression has been given protection, but the ideas themselves are not, and this difference is the foundation of the idea-expression dichotomy.[2]

The main objective of this doctrine is to strike a balance between the rights of creators to their expression of an idea, and the general public's right to not be excluded from the subsequent usage of such idea in a different form. Once the work is in the public domain, the public can benefit from the idea and gain some knowledge, but no one has the right to reproduce the same expression of the ideas. This kind of balance is important, especially in the film industry, where storytelling, visuals, and sound can be both highly innovative and vulnerable to infringement. Without the protection, the original expressions, such as scripts, cinematography, and character portrayals, are likely to get copied. In consequence, the law ensures that the idea behind these expressions remains free for others to rebuild along with their creativity in different ways.[3]

The idea vs. expression dichotomy is considered to be the cornerstone of copyright law, especially when it comes to defining the work that can be protected. This principle's broader concept is that the idea cannot be protected under this law, but the creative way in which the ideas are being expressed, i.e., the expression of the idea, is being protected.[4] This ensures that while creative expressions are shielded from theft, the basic building blocks of creativity—ideas—remain open to all.

The doctrine has been applied in different ways in various legal systems. The United States has strongly enforced this doctrine under its Copyright Act, with its court holding that an idea cannot be protected under this law, but the expression of the idea can be protected.[5] For instance, the plot of the film is just an idea, but its dialogue and character development fall under this concept. On the other hand, the courts in the United Kingdom evaluate whether the expression of an idea is "substantial" enough to merit copyright protection.[6] In countries like India and Japan, the

[2] Samuels, *The Idea-Expression Dichotomy in Copyright Law*, 56 TENN. L. REV. 321 (1989).
[3] Ang S, *The Idea-Expression Dichotomy and Merger Doctrine in the Copyright Laws of the US and the UK*, 2 INTERNATIONAL JOURNAL OF LAW AND INFORMATION TECHNOLOGY (IJLIT) 111–153 (1994).
[4] Siegel v. Warner Bros. Entertainment Inc, 542 F. Supp. 2d 1098 (C.D. Cal. 2008)
[5] H.R. Rt:P. No. 94-1476, 94th Cong., 2d Sess. 61 (1976); S. Rt: P. No. 94-473, 94th Cong., 1st Sess. 58 (1975) (emphasis added).
[6] Collins, *Some Obsolescent Doctrines of the Law of Copyright,* 16 CAL. L. REV. 127 (1928).

interpretation of the dichotomy depends upon the cultural and legal nuances,[7] especially in film copyright cases.

In India, the rich tradition of storytelling exists by virtue of dance form, cinema or theatre and has had to maintain the balance between the protection of the artistic work and the need to allow the free expression of culture. Similarly, Japan, like India has its unique combination of mediums for expression, and faces challenges in adopting this doctrine while also promoting creativity in the film industry. There exist variances in the interpretation of the idea vs. expression across the globe, which highlights the need for a comparative analysis to understand how different legal systems interpret and apply the idea-expression dichotomy in the context of films.

As films are made and shared around the world, it is essential to understand the interpretation of the idea vs. expression dichotomy around the world in relation to the film industry. In this connected world, films are produced and distributed across the world, and filmmakers often take inspiration from someone else's film, making the boundaries of copyright protection both important and complex.

In many cases, the idea of the film or the plot of the film can entirely appear similar to that of the other film which leads to the potential question of infringement but in actuality, it is not infringement as mere similarities in theme or ideas do not amount to copyright violation—only the replication of specific expressions does. This principle is important, especially in film industries such as Hollywood, Bollywood, and Japanese cinema, where cultural exchange and creative borrowing are common. Objective of the Study

The primary objective of this paper is to draw a comparative analysis between the interpretation of the idea-expression dichotomy and its application across the globe in the context of the film industry, primarily focusing on the laws of the United Nations, United States, Japan and India. The study will explore how legal systems around the globe balance the protection of creativity and how these creativities are open to access to the general public. Adding on, this paper will also include the impact of technological advancements, including the role of artificial intelligence, in shaping copyright law enforcement in the global film industry.

It begins with the historical evolution of the idea-expression dichotomy, followed by an in-depth analysis of the interpretation of the idea-expression dichotomy in the U.S., U.K., Japan, and India, along with significant case laws. The next chapter of this paper is dedicated to the impact of

[7] KENNETH R. STUNKEL, IDEAS AND ART IN ASIAN CIVILIZATIONS: INDIA, CHINA AND JAPAN (1st ed. 2012).

technology and artificial intelligence on copyright law in the film industry, and the paper will conclude with recommendations and reflections on the future of film copyright law in the global media landscape.

II. HISTORICAL EVOLUTION OF THE IDEA-EXPRESSION DICHOTOMY

The idea vs. expression dichotomy is the fundamental principle of copyright law that distinguishes between what can be protected and what cannot be protected. The basic interpretation behind this principle is that the idea cannot be protected but the way the idea is being expressed is to be protected.

The US Supreme Court established the foundation of this principle in the landmark case of Baker vs. Selden (1879)[8]. In this case, Selden developed a bookkeeping system while Baker adapted it in a different format. The court held that while Selden's book is copyrighted, the bookkeeping system itself is not since copyright protects expression and not ideas. The court emphasized that copyright protection is applied to the way in which an idea is expressed and not the idea itself. This judgement led to the development of the idea vs. expression dichotomy, where the idea is in the public domain and is free for all, but the way the idea is expressed is protected. This ruling is considered important as it seeks to prevent the monopolization of ideas and ensure that the copyright will not affect innovation and creativity. The distinction made in Baker vs. Selden between uncopyrightable ideas and copyrightable expressions continues to shape the legal landscape of copyright protection.

One of the most significant cases is that of Nichols vs. Universal Pictures Corp (1930)[9] This case was one of the first leading precedents in United States copyright law dealing with the alleged infringement of the playwright's work by a film studio. Judge Learned Hand articulated the distinction of idea vs. expression. In this case, plaintiff Nicholas felt that her play, using family conflict and romance, was used without permission.[10] The court had to determine whether Universal Pictures Corp infringed upon the idea of the play or its specific expression. Hand clarified that abstract ideas such as family conflict are not protected, but details such as plot, characters, or dialogue are protected.

He famously said that in any work, especially in a play, one can strip away more and more detail, but at a certain point, what remains is just a basic idea, which is not protected by copyright. The

[8] Baker vs. Selden, 101 U.S. 99 (1879).
[9] Nichols vs. Universal Pictures Corp., 45 F.2d 119.
[10] *Id.*

more general the work becomes, the less it can be protected. This ruling in the Nichols case helped courts understand how to separate ideas that anyone can use from expressions that can be copyrighted.

Over the years the court has given a clearer and more refined interpretation of the principle, and its applications. Creative works often consist of both - broad themes (ideas) and specific details (expressions), and distinguishing between the two is not always straightforward. For example, while a broad concept like a romantic comedy or a hero's journey would be considered an unprotectable idea, the specific dialogues, scenes, and character's development in a particular film or book could be copyrighted.[11]Despite these challenges, the core principle of the idea-expression dichotomy has remained intact.

III. THE IDEA-EXPRESSION DICHOTOMY IN THE U.S. FILM INDUSTRY

For decades the idea vs. expression dichotomy has been a fundamental part of the U.S. copyright laws. The Copyright Act 1976 is designed to protect the creative expressions of the idea, while ensuring that the idea itself is available for use by the general public.

The idea vs. expression dichotomy in U.S. Copyright Law is not a modern invention; it has been rooted in philosophy for centuries, particularly the work of Plato, Aristotle, and John Locke. These philosophers, through their work, have given the difference between ideas that are conceptual and expressions that are tangible and perceptible.

As per Plato, art is the imagination and the abstract idea or imagination, and its representation is the true essence of reality and reflection of the deeper thoughts, which is expression. Aristotle argued that art should show the universal view and reality, and each artist has a personal way of representing the same. The idea in a modern way is different from the specific way it is expressed.[12]

John Locke, in his work on human understanding, further defines this distinction.[13] Locke argued that ideas are derived from experiences and exist in the mind, while expressions are the words, symbols, or other tangible means used to communicate these ideas. This separation between the intangible and the tangible has had a lasting influence on copyright law, where only the specific,

[11] Sid & Marty Krofft Television Productions In 0076c. vs. McDonald's Corporation, 562 F 2d 1157 (9th Cir. 1977).
[12] ARISTOTLE, THE COMPLETE WORKS OF ARISTOTLE (1984).
[13] JOHN LOCKE, TWO TREATISES OF GOVERNMENT 287-89 (Peter Laslett ed., Cambridge Univ. Press).

tangible expression of an idea can be protected, while the underlying idea remains free for others to use.[14]

The Copyright Act of 1976 made major changes in the copyright laws in the U.S. It was federal law as the state law could not provide the same protection.[15] This Act was important when people felt that ideas had been stolen after they had shared them with networks or production companies. Before the Act, the creators could rely on state laws in cases such as of breach of implied contract or misappropriation. However, through the Act, the federal copyright law became the main source of protection, thus reducing the options the creators had for legal recourse.[16]

This philosophical understanding is reflected in the U.S. Supreme Court judgements, including in the case of White-Smith Music Publishing Co. vs. Apollo Co. (1907).[17] The Court ruled that the idea of the music composition is not copyrightable, and the specific expression of the composition is to be protected.

In the case of NBC and FOX, both the networks developed reality television shows with similar boxing competition formats. NBC's "The Contender" and Fox's "The Next Great Champ"[18] were based on a similar concept. In this case, the court ruled that the similarity was not copyright infringement because the general idea of a boxing show is not protected; what is protected is the specific expression. This is quite often the case in film and TV, where creators may pitch ideas but have them produced as similar shows with different plots or characters by producers or filmmakers.

In the case of Berge vs. Board of Trustees of the University of Alabama, the plaintiff claims that her ideas and methods had been stolen;[19] they applied the pre-emption principle, dismissed the claim and stated that her expression of those ideas is protected under copyright acts.

In the case of Kalem Co. vs. Harper Bros, the court ruled that the making of the movies out of someone else's novels is infringement of the copyright, even though the film is a different medium as compared to the books.[20] As technology is developing, new forms of expression are also

[14] JOHN LOCKE, AN ESSAY CONCERNING HUMAN UNDERSTANDING (P. Nidditch ed., 4th ed. 1700, 1975).
[15] Copyright Act of 1909, 17 U.S.C. §§ 101-914 (2000).
[16] The Copyright Act of 1976, 17 U.S.C. § 106 (2000).
[17] White-Smith Music Publishing Co. vs. Apollo Co, 209 U.S. 1 (1908).
[18] Wade Paulsen, *Fox's 'The Next Great Champ' Faces New Lawsuit Alleging Idea Theft*, REALITY TV WORLD (2004), https://www.realitytvworld.com/news/fox-the-next-great-champ-faces-new-lawsuit-alleging-idea-theft-2868.php.
[19] Berge vs. Bd. of Trs. of the Univ. of Ala., (104 F.3d 1453, 1463).
[20] Kalem Co. vs. Harper Bros, 222 U.S. 55 (1911).

developing. This ruling expanded the scope of copyright protection to include not only literal copies but also adaptations into different formats.

This case is one of the examples which elaborates the broader concept of the expression that developed over time. Similarly, in the case of King Features Syndicate vs. Fleischer, the court ruled that making three-dimensional toys out of the cartoon characters was an infringement of the copyright, even though the medium had changed.[21] The task of the courts is to ensure that copyright protection does not go too far to stifle creativity and competition. However, courts are also responsible for protecting original expressions for the purpose of rewarding creativity and innovation. Much of the time, this will demand delicate judgments, and this is where the courts developed specific tests to guide the process.

The two-step test, which is also known as the "Arnstein test," was given by the US court in its landmark case of Arnstein v. Porte.[22] The court created this test to determine whether the defendant committed copyright infringement first requires a finding of access by the defendant to the plaintiff's work. If access is shown, then the court must find some "substantial similarity" between the two works. But this test, itself, is fraught with difficulty because "substantial similarity" must be in the protectable expression, not just in the unprotectable idea.[23]

One such case is Universal City Studios vs. Film Ventures International,[24]wherein the Supreme Court ruled that while the theme of a town being terrorized by a shark was unprotectable, the unique parallels of plot, characters, and events were sufficient to constitute copyright infringement because the expression of the idea was too similar to be a mere unprotected concept.

Courts, thus, distinguish between unprotected ideas and protectable creative expressions and decide whether elements are common to a genre or unique contributions. It delimits the boundaries of intellectual property, prevents the monopolistic use of common ideas, and at the same time, protects original work.

IV. UK LAWS ON IDEA VS EXPRESSION IN THE FILM INDUSTRY

Idea vs. expression is the core principle of the U.K. copyright laws, especially within the film industry. This principle differentiates between the idea that is unprotected and the expression that is protected in a legal context.

[21] King Features Syndicate vs. Fleischer , 299 F 533 (2d Cir. 1924).
[22] Arnstein v. Porte, 154 F.2d 464 (2d Cir. 1946)
[23] Shyamkrishna Balganesh, *The Questionable Origins of the Copyright Infringement Analysis*, 68 U. PA. L. REV. 1591 (2016).
[24] Universal City Studios, Inc. vs. Film Ventures International, Inc., 543 F. Supp. 1134 (C.D. Cal. 1982).

This principle of idea vs. expression has always been in the U.K. laws. In 1911, the parliament passed the copyright act and stated that the idea is not to be protected but the protection to be granted to the expression over this idea. Before 1911 as well the laws in the U.K. mostly focused towards the protection of expression and did not extend towards the idea and it was emphasized in the case of Millar vs. Taylor that ideas are free of the public but the expression in those ideas through tangible forms like text or film could be protected under copyright.[25]

Before 1911, UK courts held that copyright protected only the expression of an idea, not the idea itself. Copying the exact expression was infringement, but using the idea differently was not.[26] After the 1911 act was passed by the parliament, the U.K. courts developed the principle of "distinguishing between general ideas and detailed expressions," where they stated that just taking the inspiration from the idea of any artistic work is not an infringement of the copyright, but copying the detailed or the specific expression is an infringement of the copyright and that may be subject to legal action. The U.K. court has given this decision in several cases, including in the case of Baigent vs. The Random House Group,[27] where the court was of the opinion, that copying themes or ideas without reproducing the specific expression did not amount to copyright infringement.

Whether the case of copyright infringement has been committed depends much in ascertaining whether a "substantial part" has been copied. The U.K. courts consider whether the part of the work taken is also considered an integral part of the original work. It is not about the amount copied but about its importance or significance that is weighed. For instance, a general plotline in a movie has no copyright protection, but the detailed storyline, specific dialogue lines, or unique stylistic elements can be important enough to have copyright protection.

The U.S. courts are less willing than their U.K. counterparts to grant copyright protection to non-textual elements, especially to films and creative work. The U.S. draws a stricter line between the idea and expression, while the U.K. is more flexible and provides a wider area for this principle. In the case of Kenrick vs. Lawrence,[28] the court rejected the request to grant protection to the simple drawing because the idea was too basic. Such flexibility is necessary for the film industry as filmmaking is a highly visual medium wherein the originality extends beyond mere script and

[25] Millar vs. Taylor [1769] 4 Burrow 2303.
[26] Sankalp Jain, *The Principle of Idea-Expression Dichotomy: A Comparative Study of US, UK & Indian Jurisdictions*, SSRN (Mar. 26, 2012), https://ssrn.com/abstract=2229628.
[27] Baigent vs. The Random House Group [2007] EWCA Civ 247.
[28] Kenrick vs. Lawrence [1890] 25 QBD 99.

dialogue. Elements such as cinematography, camera movements, lighting, and visual composition contribute to the uniqueness and artistic value of a film. If copyright law does not account for these aspects, it may leave filmmakers vulnerable to imitation, discouraging innovation and creativity. In cases where the filmmakers play a significant role in creating original cinematographic techniques or unique visual style, the greater willingness is shown by the U.K. courts in copyright protection beyond script and dialogue.[29]

Norowzian vs. Arks Ltd. (1999) is one of the more important cases in U.K. copyright law, particularly concerning the film industry.[30] The question was whether a new film editing style could be copyrighted. It was on appeal that Norowzian argued that his three-minute short film "Joy," which featured innovative jump cuts and fast motion in telling its story, had been copied in the Guinness commercial, "Anticipation," produced by Arks Ltd.

At the first instance ruling, it was held that Norowzian's editing style could not be copyrighted as an editing technique and style formed part of the methods, and hence was not copyrightable. However, the Court of Appeal reversed this decision by holding that the film itself is a dramatic work, and hence, copyrightable in its own right. For instance, in cases where one cannot clearly distinguish the unprotected idea, namely the editing style, from its protectable expression, which is the final film. Highlighting the broader approach to copyright protection in the U.K., where rather than individual aspects, the holistic creative output can be protected.

This case in filmmaking understands the point that even if methods or processes, such as styles of editing, may not be copyrightable, the expression of that final work is capable of copyright. In line with this, the broader interpretation by the U.K. courts on what qualifies as copyrightable expression in creative works is shared.

The relationship between copyright and freedom of expression in media law is one of the main issues in the U.K. and many countries. U.S.A. in the case of Harper & Row, declared that copyright is the "engine of free speech," which reflects this perspective.[31] However, this perspective was criticized in the U.K. as it argues that by strengthening the copyright laws, it has to restrict the freedom of expression. This restriction in the digital world makes it difficult to engage the existing work without infringing the laws. This problem becomes particularly relevant in the context of

[29] L.T.C. Harms, *The Hedgehog, the Fox and Copyright - A Diversion*, 1 EUROPEAN INTELLECTUAL PROPERTY REVIEW 35 (2013).
[30] Norowzian vs. Arks Ltd [1999] EWCA Civ 3018.
[31] Harper & Row 471 U.S. 539, 589 (1985).

UGC (User Generated Content) applications, where many users tend to remix or transform existing films and videos, other kinds of media, and so forth.[32]

With the U.K. copyright law having no statutory provisions for works such as parodies or mashups, the conundrum is broadened. Where these forms of expression have real value for satire and cultural critique, they are often left unprotected by the law. Reform has been called for, with some urging for the introduction of new exceptions that would grant more licenses to represent copyrighted materials, especially in the film industry.

Public policy is clearly involved in making the "idea-expression" distinction in the U.K. copyright law. Some Legal scholars describe the idea-expression dichotomy not only as a legal principle but also as a means to extend the public policy underlying freedom of speech and the progress of creative works. In that respect, U.K. copyright law prevents the ideas from leaving the public domain; no creator can claim a monopoly in broad concepts or themes. This is particularly important in filmmaking where creativity often develops from previously created ideas and genres.

The U.K. courts have accordingly taken a very broad approach regarding what constitutes "expression," more significantly in the non-text elements of the film, its visual and audio components.[33] This has produced some concern amongst critics that there is over-protection of copyright. Critics fear that this may lead to the nebulous division between ideas and expression,[34] thereby resulting in inconsistent decisions by the courts, thus increasingly making it harder for filmmakers to identify what aspects of their work come under copyright protection.[35]

When it comes to protecting the expression of the idea, the European Union laws, primarily InfoSoc Directive 2001/29/EC and the Berne Convention,[36] which all EU member states, including the U.K. (pre-Brexit) adhered to, upheld the concept that the idea itself cannot be copyrighted but the creative expression of those ideas can be copyrighted. Article 2 of the Berne Convention States that protection is granted to the original work in a fixed form or format. [37]

[32] K.P. Abinava Sankar, *The Idea-Expression Dichotomy*, JOURNAL OF INTERNATIONAL COMMERCIAL LAW AND TECHNOLOGY (2008).
[33] Sankalp Jain, *The Principle of Idea-Expression Dichotomy: A Comparative Study of US, UK & Indian Jurisdictions* (Mar. 26, 2012) (unpublished manuscript), available at SSRN.
[34] Patrick Masiyakurima, *The Futility of the Idea/Expression Dichotomy in UK Copyright Law*, 38 IIC 548, 548 (2007).
[35] Patrick Croskery, *Institutional Utilitarianism and Intellectual Property*, 68 CHI.-KENT L. REV. 631 (1993).
[36] Francisco Javier Cabrera Blázquez et al., Copyright Licensing Rules in the EU, IRIS Plus, Eur. Audiovisual Observatory, July 2020.
[37] Berne Convention for the Protection of Literary and Artistic Works, art. 2, Sept. 9, 1886, 828 U.N.T.S. 221.

Article 11 of the EU Charter of Fundamental Rights ensures freedom of expression and all in the free circulation of ideas in integration to copyright laws, "Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers." However, the InfoSoc Directive 2001/29/EC provides exclusive rights to the authors and the creative workers, thus limiting the usage and copying of the same expression.

V. JAPAN'S COPYRIGHT LAW OVERVIEW

The Japanese copyright law is a blend of Japanese tradition and Western legal frameworks with the goal of promoting cultural development while protecting creative works. Japanese copyright law's essence can be found in Article 2, paragraph 1 of the Japanese copyright law,[38] which gives the definition of copyright as "An expression of thoughts or feelings that is creatively expressed" in the area of literature, academia, art, or music. This portrays the idea-expression dichotomy, the principle which protects only specific expressions of the idea while the idea itself stays open for others to use.[39]

The Japanese copyright law highlights the point that even if the ideas, theories, and concepts, are original or novel, they will not find protection under the copyright. For example, the Mathematical Science Paper Incident showcases that even the creative expression existing inside of the scientific writing may be protected by copyright, but the underlying broader ideas and equations, which are essential for academic advancement, are not granted protection.[40] This differentiation makes sure that Japan's copyright law does not come in the way of the free flow of ideas imperative for innovation and cultural growth.

In the context of the Japanese film industry. The application of the idea-expression dichotomy creates new challenges because of the rich cultural heritage of the Country. Japan's film industry is deeply impacted by the traditional art forms like Kabuki theatre and Noh plays, which often reinterprets historical themes and cultural narratives. In various creative industries, the filmmakers often take inspiration from common cultural ideas, but the specific and unique expression through characters, dialogue, and visual elements is the distinguishing factor which receives copyright protection.

[38] Japanese Copyright Act**,** art. 2, ¶ 1, No. 39, Acts of Parliament, 1899 (JP).
[39] *Can Copyrights Be Granted to Ideas? The Boundary Between Expression and Idea*, MONOLITH LAW (Nov. 28, 2023), https://monolith.law/en/general-corporate/idea-copyright-admit-expression.
[40] [Osaka High Court], Feb. 25, 1994, Heisei 10 (o) 364 (of 1998), (Japan)

In the Esashi Oiwake Incident, the plaintiff, a composer, sued Japan Broadcasting Corporation (JBC) for allegedly using the prologue of his musical composition in a TV program without authorization, claiming a violation of his adaptation and broadcasting rights under Japan's Copyright Act.[41] The courts faced the challenge of differentiating between a filmmaker's expression and the public domain idea of a local festival. The plaintiff argued that a television program's narration mirrored the prologue of his book. While lower courts initially sided with the plaintiff, the Supreme Court of Japan ultimately ruled that the similarities between the works existed in factual content and not in protectable expressions. This case highlights the difficulty of applying copyright law to creative works that are deeply rooted in shared cultural knowledge.[42]

However, Japan's focus on preserving cultural heritage and promoting communal values may lead to a more nuanced approach when dealing with cultural works. While Western copyright law, particularly in the U.S., often emphasizes individual ownership, Japan's legal framework seeks a balance that protects creative rights while maintaining cultural continuity. This cultural emphasis means that even when creators use shared narratives, their specific artistic contributions are valued and protected, ensuring a fluid integration of tradition and modernity.

VI. INDIA: BALANCING CREATIVITY AND PROTECTION

The diverse and rich cultural heritage of India has had an impact on the legal approach to copyright. The Indian storytelling traditions, cinema, theatre, dance, and literature, all are embedded in the very culture. India's creative film industry, better known as Bollywood, thrives through the narration of ancient Indian epics, folklore, and classical narratives, blending traditional and modern elements, leading to frequent overlaps in themes like love triangles, familial duty, and revenge. This has resulted in frequent overlaps in the themes, ideas, and plots of different films and has presented new and unique challenges to the idea-expression dichotomy in copyright law.[43]

Indian copyright law, such as that relevant to the film industry, seeks to strike a balance between rights of creators and access by the public to cultural materials. This is perhaps best reflected in the richness of India's storytelling traditions, considering the amendment of the Copyright Act of 1957. Indian courts hardly boast of leading case precedents on the type of issues arising in the film

[41] [Tokyo District Court],1999 (Ju) 922, Minshu Vol.55, No.4 at 837 (Japan)
[42] *Id.*
[43] K.P. Abinava Sankar, *The Idea-Expression Dichotomy*, 3 J. INT'L COM. L. & TECH. 111 (2008).

industry, but have made outstanding judgments clarifying how these principles apply to the creative industries like film.

Copyright law in India is governed by the Copyright Act of 1957. However, that Act does not define the idea-expression dichotomy. It just protects literary, dramatic, musical, and artistic works that are origina1, films, and sound recordings in writing but remains silent with regards to protection for mere ideas. Copyright extends only to expressions that have been given a tangible form. This is essential in the film industry because filmmakers may create similar concepts but will still find a way to express them uniquely. Copyright is often employed in such cases.

As per the provision of Section 13 of the Copyright Act,[44] it provides that the original works receive protection under this act. However, the legislation does not consist of any provisions for the protection of ideas, plots, or themes in their basic abstract form. It means that the filmmaker's specific way expression of the idea—through dialogues, screenplay, and character development, etc.—can be copyrighted, but the basic concept or the theme of the film will remain unprotected.

The Courts in India have attempted to deal with many cases which deal with the application of the idea-expression dichotomy in relation to the film industry. These judgements showcase the judiciary's approach in attempting to balance the rights of creators with the public access to cultural materials.

A. R.G. Anand vs. Deluxe Films (1978)[45]

The landmark case of Copyright law dealing with the idea-expression dichotomy in Indian copyright law is the case of R.G. Anand vs. Deluxe Films. In this particular case, R.G. Anand was a playwright, and he had claimed that the defendants in the case had copied some substantial portions of his play named Hum Hindustani in order to make the film New Delhi. He sought an injunction on the grounds of copyright infringement and argued that the film was made as an unauthorized adaptation of his work. The Hon'ble Supreme Court of India had ruled, stating that copyright cannot exist for ideas, themes, or plots. It stated that even though the similarities in the broad themes of the films cannot be avoided at the time when dealing with similar subject matter, protection under copyright is given only to the specific expression of those ideas.

This judgement cleared the ambiguity and clarified that under the Indian copyright law, the protection does not extend to general ideas or themes but only to their unique expression, and

[44] Copyright Act, § 13, No. 14, Acts of Parliament, 1957.
[45] R.G. Anand vs. Deluxe Films, (1978) AIR 1613.

therefore, stands as a crucial precedent for the film industry, allowing filmmakers to often work on similar themes in new creative ways.

B. Anil Gupta vs. Kunal Dasgupta (2002)[46]

This case is also famously known as the Swayamvar Case, where the Delhi High Court went on to address the idea-expression dichotomy in relation to television formats. Anil Gupta, the plaintiff in the present case, had developed a reality matchmaking TV show, and in order to televise it, he had approached Kunal Dasgupta and had later raised an allegation saying that Dasgupta copied the idea and made a similar show without any authorization from him.

The Delhi High Court held that even though an idea cannot be copyrighted, the structured concept and details of the show, which were reduced in writing, shall be constituted as protectable expression under the Copyright law. The Court had said that if the defendant used the concept originally developed by the plaintiff, it would result in copyright infringement, even if the idea of the show is solely copied. The case highlighted the necessity to convert the ideas into written, concrete, tangible format in order to bring them under the purview of the copyright law.

C. Barbara Taylor Bradford vs. Sahara Media Entertainment (2004)[47]

The Calcutta High Court decided this issue of literary works adaptation in films. Author Barbara Taylor Bradford accused Sahara Media of planning a TV series based on her novels without her consent. The defendant urged that her books only inspired the show and asserted they did not use any of her original expressions.

The High Court had ruled in favor of Bradford, highlighting the point that the ideas existing in the books may also exist in the public domain, but the specific expression of those ideas by her via her unique plots, narrative structures and characters were entitled to protection under the copyright law. In this case, the principle was reiterated that copyright protection in the context of the Indian legal system covers the expression of ideas only and not the very idea itself.

D. Beyond Dreams Entertainment Pvt. Ltd. vs. Zee Entertainment Enterprises Ltd. (2015)[48]

This case of the Bombay High Court was dealing with the issue of protection of a concept for a television show. Beyond Dreams Entertainment were the plaintiffs in the instant case who had come up with a concept of a TV show, which was also shared with Zee Entertainment. It was

[46] Anil Gupta vs. Kunal Dasgupta, (2002) AIR 2002 DELHI 379.
[47] Barbara Taylor Bradford vs. Sahara Media Entertainment, (2004) (1) CHN 448.
[48] Beyond Dreams Entertainment Pvt. Ltd. vs. Zee Entertainment Enterprises Ltd., 2015(4) ALLMR 518.

alleged by the plaintiff that Zee had produced a show which was based on the concept note of the plaintiff, because of which the plaintiff had filed a copyright infringement suit.

It was held by the court that while the basic plots and ideas were not copyrightable, the concept notes of the plaintiff containing detailed specific elements, such as the character relationships, storylines, and sequences of events, were expressions protectable expressions under the Copyright law. The use of the detailed elements by the defendant had amounted to copyright infringement, emphasizing that the Courts in India will grant protection to the detailed expression of the ideas, even if there is no protection of the general idea.

These judgments have significantly shaped India's creative industries by reinforcing the idea-expression dichotomy, ensuring that while ideas remain in the public domain, their unique expressions are protected. This has encouraged innovation in films, television, and literature, allowing creators to draw inspiration from common themes while safeguarding their original expressions. It has also provided clarity for copyright disputes, balancing artistic freedom with intellectual property rights.

E. How the approach of India is different from USA, UK and Japan.

One of the major key differences lies in the cultural context between India and other countries like the U.S.A., U.K., and Japan, which have a major influence on the idea vs. expression dichotomy. India has a deep-rooted account for storytelling in various cultural and traditional ways, which frequently overlap themes across artistic works. Many filmmakers use various traditional tales and historical events that border cultural ideas and specific interpretations. Those ideas, through unique visual elements, dialogue, and plot structures, can still be protected.

Unlike the U.S.A. and the U.K., which accord more importance to individual ownership and whose tests of copyright infringement are stricter, India has adopted an approach that is flexible and balanced between the protection of original contributions to a work against public access to shared cultural narratives. The Supreme Court in R.G. Anand vs. Deluxe Films adopted a comparative approach, applying the audience perception test to determine infringement, for it would amount to an action for infringement if a spectator believes that the work is a copy.[49] This test has been considered more practical than the substantial similarity test followed in the US, which looks at the comparison of protectable elements of the works.

F. Similarities with Global Practices

[49] *Supra* note 45.

Despite the numerous differences, the protection is given to the expressions that have been reduced to a tangible form via copyright laws in countries like India, U.S.A., U.K. and Japan. The need for creators to put their ideas in a script, screenplay, or visual representation is a globally adopted practice. In the case of Anil Gupta vs. Kunal Dasgupta, the court ruled that the idea must be reduced to the concert format to receive protection under copyright laws. Indian law mirrors the approach taken in other jurisdictions, which require specificity in order to qualify for copyright.

Another similarity lies in the protection of non-literal elements like e structure, sequence, organization, screen displays, menu structure and user interfaces of a software, these are the aspects of creative work that may not be directly textual or literally expressed and may include a structure, sequence, organization, and overall arrangement of work.[50] But they still embody the creator's originality and creativity. Although the Indian film industry does not frequently test the boundaries of copyright law concerning visual style or editing techniques to the same extent as in the U.K., the judiciary has demonstrated a willingness to protect such expressions when necessary. For example, in the Beyond Dreams Entertainment vs. Zee Entertainment case,[51] the court acknowledged that specific concept notes and sequences of events—non-literal elements—could be protected as expressions. This reflects a shared understanding with other countries that even non-verbal creative contributions can be subject to copyright protection.

India's copyright laws, though in principle like those of other countries, are formed and molded according to the specific cultural scenario that it is in. Courts in India weigh the creativity of individual minds against the access to information related to culturally significant ideas. Indian laws are much more nuanced than in rigid systems such as that of the U.S.A. However, it doesn't mean that India is an exception to the international norms. India also faces challenges in adapting its copyright laws to the digital age just like other countries.

VII. IMPACT OF TECHNOLOGY AND ARTIFICIAL INTELLIGENCE

Advancements in technology, particularly in Artificial intelligence (AI), have majorly impacted the film industry around the globe. It has disturbed the traditional style of filmmaking and copyright protection of the film. Now automated tools assist in script writing, editing, and even directing, changing the dynamics of film production. AI is also an issue for the film industry, as the content

[50] Ivin George, *Protection of Non-Literal Elements of a Computer Program Under Copyright*, 5 COMMONWEALTH L. REV. J. 117 (2019).
[51] *Supra* note 48.

generated by the deepfake or virtual actors is an actual threat to copyright law, especially when it comes to distinguishing between the original ideas and their expressions.[52]

AI has really been helpful in the creative process, especially for a film. Automated tools now assist at various stages of the production process:

- **Scriptwriting:** AI can analyze existing scripts and generate new ones based on familiar narrative structures and will mimic the stylistic choices of human writers.
- **Editing**: AI-based tools speed up the post-production process by identifying patterns in footage and suggesting edits or doing them entirely on their own.
- **Directing**: While entirely mechanical, AI has already begun to influence some of the creative choices at the shot and scene level in film-making.

These tools have changed the old model of filmmaking, where human creators were solely responsible for the creative expressions which copyright law is applied for. The involvement of AI in content creation has blurred the lines between contributions from the human mindset and machine-generated output, specifically in defining what constitutes an original expression.

As discussed, multiple times in this paper, idea vs. expression is the fundamental concept in copyright law, stating that while ideas are free for all to use, the specific expression of those ideas can be protected by copyright. However, AI-generated content is a challenge to this principle.[53] AI can generate content that is highly creative, and to a larger extent, it mimics human expression, which blurs the line between idea vs. expression. As noted by Clark D. Asay, "AI has the potential to independently create works that are strikingly similar to existing ones, raising questions about authorship and infringement." In the film industry, it raises the critical question about who owns the copyright over AI-generated films, or whether they can be copyrighted. The role of the human creator diminishes when AI handles substantial parts of the creative process, challenging traditional notions of originality.[54]

One of the most important questions about AI-generated films is who owns the copyright over that film. Traditionally, under copyright laws, it was assumed that the creator of the original work or the filmmaker would have the copyright, exclusive rights to reproduce, distribute, and perform

[52] Yoshinori Okamoto, *Is Japan Still a Machine Learning Paradise?,* YUASA AND HARA (Apr. 18, 2024), https://www.yuasa-hara.co.jp/english/publication/2608/.
[53] Katherine Lee et al., *Talkin' About AI Generation: Copyright and the Generative AI Supply Chain,* 13 J. COPYRIGHT SOC'Y WORKING PAPER (2024).
[54] Clark D. Asay, *An Empirical Study of Copyright's Substantial Similarity Test*, 13 U.C. IRVINE L. REV. 35, 75 (2022).

the work. Now, when AI has the main role in creating the film, then this assumption becomes complicated.[55]

Copyright, in essence, tends to favor the filmmaker in terms of editing or even scriptwriting; however, in the case of AI doing a significant part of the creative process, the question of ownership becomes relevant. Japan and the U.S.A. don't recognize AI as a creator under copyright laws since it classically requires a human component of creativity or originality.

Although current legislation for copyright does not recognize AI as the creator, legal reforms are necessary to address the increasing role of AI in creative industries. Countries like the U.S.A. have introduced a provision under their copyright laws for computer-generated work which states that the person who arranges the creation of work is the author. However, this approach is insufficient to resolve the issue of AI-generated works that are produced with minimal human intervention.[56]

Indian copyright law does not mention anything specifically about AI-generated content. The Indian copyright regime does not protect ideas but only expressions related to them, in a similar pattern followed by other jurisdictions. What India's legal system is unable to determine relates to the positioning of AI-generated works under this distinction. For instance, with respect to scenes where AI-generated content closely resembles preexisting works, Indian courts may need to devise new tests for originality and infringement as regards how AI fits into the framework of idea expression.

Global developments have defined the approach of India to idea-expression dichotomy, for example, where developments in the U.S.A. and U.K. are shaping the discussions on the creative roles of AI As developments of AI become increasingly stronger in film productions, India's vibrant film industry will be under greater pressure since it has always been an industry with cultural narratives used repetitively. This will be what is ultimately crucial in terms of making the public domain accessible but ensuring human creativity is protected: determining the point at which AI generates fit into traditional storytelling structures.[57]

[55] Daryl Lim, *AI & IP: Innovation & Creativity in an Age of Accelerated Change*, 52 AKRON L. REV. 813 (2018).
[56] Kalin Hristov, *Artificial Intelligence and the Copyright Dilemma*, 57 IDEA 431 (2017).
[57] Ashna Shah, Akanksha Choudhary & Sarthak Sadd, *Artificial Intelligence and Automated Content Creation: Copyright Scenario in India*, 4 INT'L J. LEGAL SCI. & INNOVATION 1 (2022).

VIII. CONCLUSION AND SUGGESTIONS

The idea-expression dichotomy is a universal cornerstone of copyright law but is applied very differently in the light of regional legal frames of reference and cultural influences. Every country would experience pain in seeking a balance between protection for creativity and openness to the flow of ideas for further innovation in any film industry. The comparative analysis of the U.S., U.K., India, Japan, and the EU would outline points of similarity and divergence in how they support copyright protection.

Clearly delineated in the U.S. in seminal cases such as Baker vs. Selden and Nichols vs. Universal Pictures Corp, the idea-expression dichotomy is one which concerns itself with justifying protection for expressions of ideas as broad concepts are left in the public domain. Such strong delimitation between idea and expression does prevent it from hindering creativity but challenges other areas such as cinema. Conversely, U.K. law applies this distinction between thought and expression but, with considerable ease, extends the protection to non-textual aspects, such as visual and stylistic elements of the film. For instance, in Norowzian vs. Arks Ltd., the U.K. demonstrates their tendency to liberally interpret protectable expression, especially in the case of films.[58]

India and Japan, too, follow the idea-expression dichotomy but have been imbued with unique cultural considerations. In India, rich storytelling traditions often blur between public domain ideas and original expressions like the case of R.G. Anand vs. Deluxe Films.[59] In a culture that encapsulates Western copyright law and its rich cultural heritage, Japan has its share of challenges, which were well demonstrated in the Esashi Oiwake Incident, where facts in a song were being held separately from protected expression.[60]

Although these states typically adhere to this idea-expression dichotomy, it has several drawbacks. A major problem is that the limits of the boundary between ideas and expression are vague and uncertain**.** HLA Hart argues that such "open texture" of the law gives rise to inconsistent application with regard to cases where the line between what is an idea and what is an expression is unclear[61]. For example, the Lucas filmdecision in the U.K. Raised concerns when the scope of copyright protection for artistic works was narrowed to require that they have an "artistic purpose"

[58] *Supra* notes 24.
[59] *Supra* notes 35.
[60] *Supra* notes 42.
[61] Andrew Hadjigeorgiou, *Hart and the Oxford Jurisprudence Circle*, (2021), https://pure.rug.nl/ws/portalfiles/portal/149301104/Title_and_contents.pdf.

to be entitled to protection and has created uncertainty in the copyright regime, particularly concerning what protects expression under the Copyright Act. [62]

Another drawback of the idea vs expression dichotomy is adequately protected creators, particularly in the film industry where idea and expression are closely related. In the film industry, the concept of the films is often copied in a way that is within the boundary of copyright infringement, as in cases like Beyond Dreams Entertainment Pvt. Ltd. vs. Zee Entertainment,[63] the protection of the detailed expression rather than the border idea is the vulnerable exploitation of the creators.

To overcome these drawbacks, certain corrective measures have been suggested by many scholars. The first is to have greater clarity and consistency in defining the boundary in defining the clear boundary between idea and expression. Legislative and judiciary to provide a more structured approach to defining, possibly creating guidelines or criteria that help determine when an idea crosses the line into protectable expression. This will legal proceedings and offer creators clearer protection.

Second, expansion in copyright exceptions, the laws should provide more exceptions so that people can take up the existing work and transform it into something new, like parodies and remixes, especially in digital and user-generated content, which would encourage creativity while maintaining protection for original expressions.

Countries around the world are also suffering from these legal challenges in one way or the other. United States copyright laws require human authorship; the AI-generated content is not easily copyrightable under the present regulation in the U.S.A. However, some argue that AI should be considered employment, and that AI-generated work should be considered as work made for an heir, with copyright assigned to the entity that owns the AI system. In contrast, the U.K. is more progressive. Its provision allows protection to be granted to computer-generated work, granting copyright to the person making the necessary arrangements for the creation of the work. EU, Japan, and other nations are still in the process of developing a framework that can address computer-generated work.

Lastly, technological advancements, AI is the new challenge to the idea vss expression dichotomy, and it is becoming increasingly capable of generating new content. The legal framework must

[62] Lucasfilm Limited and others (Appellants) v Ainsworth and another (Respondents)[2011] UKSC 39.
[63] *Supra* note 47.

involve the provisions to deal with this issue**.** One solution is to establish a separate category for AI-generated content, with clear rules on how copyright can be assigned to the content generated by it.[64]

In conclusion, technological advancements like AI are reshaping the global film industry and presenting unprecedented challenges to copyright law. These developments necessitate amendments to traditional legal frameworks, particularly the idea-expression dichotomy, as countries seek to balance the protection of creativity with the realities of AI-driven content creation.

[64] Khanuengnit Khaosaeng, *Wands, Sandals and the Wind: Creativity as a Copyright Leapfrog,* 36 E.I.P.R. 238 (2014).