Journal of Intellectual Property Rights
Vol 31, May 2026, pp 423-435
DOI: 10.56042/jipr.v31i3.29995

# Shadows of Ownership: The Timeless Struggle of Scriptwriters

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*Received: 23rd March 2026*

Script writing is a dedicated activity of a film or a play. For Indian screenwriters, however, this very spark often becomes their greatest risk. While copyright protects the written script or screenplay, the basic idea remains vulnerable, especially during the delicate stages of casting and development. In today's fast-changing creative world and enhanced use of visual media, script writing has evolved beyond its standard steps and forms. Competitive industry practices, global streaming platforms, use of artificial intelligence are reshaping authorship, and the gap in the protection of scriptwriters rights seems wider than ever. This paper examines how India's copyright law and judicial decisions have dealt with this dilemma, revealing the uncertainties that still put writers in a precarious situation. Further, it analyses the practical safeguards, use of copyright registration, negotiating clear contracts, and turning to the often-overlooked remedy of breach of confidence. The findings of the study call for a systemic reform and a reminder that storytellers deserve protection and the approaches.

**Keywords:** Confidentiality, Creative Protection, Copyright, Idea-Expression Dichotomy, Intellectual Property, Infringement, Scriptwriters

A script forms the structural foundation of any cinematic or digital production. It is the narrative blueprint upon which visual composition, character development, and dialogue are constructed. Although directors and actors often become the public face of a project, the scriptwriter remains central to its creative vision. In recent years, the rapid expansion of global streaming has significantly altered both the scale and reach of scripted content. Platforms such as Netflix, Amazon Prime Video, and Disney+ have created a transnational distribution ecosystem in which regional narratives circulate globally. More than 30% of Netflix's global viewing hours now come from non-English titles[1], with viewing of such content in the United Kingdom increasing by nearly 90% over the past three years[2], reflecting rising international demand for local storytelling.

At the same time, scriptwriting has moved far beyond the traditional 90 – 120 page screenplay or television episode. Today, storytelling lives across digital spaces. The seemingly spontaneous Instagram reel or short-form video is often carefully structured to capture attention within seconds. In gaming, writers build expansive worlds with branching narratives that can run into hundreds of thousands, sometimes millions, of words. Even corporate communication relies on scripted storytelling, from branded videos and executive messages to AI chatbots and virtual platforms. Podcasts and immersive virtual reality experiences likewise depend on structured storytelling, even when framed as informal or user-driven. Yet, for these scriptwriters, the promise of copyright, meant to safeguard their creative labour, often collides with an uneasy truth: ideas, the seeds of every story, enjoy no protection, while their expression must clear complex legal and practical hurdles.

In the digital age, this tension has only deepened. Writers now have to deal with more than just the usual questions of originality; they must navigate a complex web of intellectual property doctrines, aggressive industry practices, AI-driven content manipulation, and global streaming platforms that erase territorial boundaries. In such a setting, the distance between inspiration and misappropriation narrows dangerously. There have long been instances where an artist, acting in good faith, sends their creative brainchild to esteemed production houses, hopeful for collaboration, only to watch their concept lifted by opportunistic and profit-driven players who hide behind the oft-repeated phrase "the idea is not copyrightable.

Disputes bring this reality into sharp focus. The Commercial Court in Kottayam championed scriptwriters in the *Karmayodha* judgment, ordering the director to pay ₹30 lakhs to Regi Mathew and

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clarifying that a writer's script ownership remains distinct from the producer's film rights.[3] This struggle for authorial credit is echoed in the dispute involving actor Nani's *HIT: The Third Case*, where writer Soniya Vimal alleged the film was an unauthorised adaptation of her registered scripts, *Agent 11* and *Agent V*. Although she shared her synopsis in confidence, striking similarities prompted the Madras High Court to take cognisance and consider damages and profit-sharing.[4] By contrast, the Bombay High Court dismissed plagiarism allegations against Balaji Telefilms over *Dream Girl 2*, reasoning that the story's central theme of gender disguise was too generic to be protected, further burdening the plaintiff with costs[5].

Such episodes are not isolated. A Jharkhand writer accused Dharma Productions of reworking their submitted concept without acknowledgement[6]. Television creator Anil Gupta's idea, *'Swayamvar'*[7], became the subject of dispute when it surfaced as '*Shubh Vivaah*'. The Delhi High Court recognised his contribution, leading to settlement and the show's eventual release under a new title, '*Kahin Naa Kahin Koi Hai*'. In yet another modern twist, AI tools have started changing storylines without the author's permission. For example, when Raanjhanaa's tragic ending was digitally re-imagined, it upset its screenwriter and brought up new worries about how algorithms can affect creative works[8].

These stories reveal a systemic vulnerability: while copyright seeks to protect expression, the law's limits often leave scriptwriters exposed at the very stage where their work is most fragile, during the pitching and development process. The idea-expression divide has been the subject of much scholarly discussion, but little has been written about how it affects the lived realities of Indian screenwriters facing both legal ambiguities and technological disruption.

The present study examines the interaction between Indian law and the idea–expression dichotomy in the realm of scriptwriting and offers strategies for writers to fortify their standing in an uncertain industry. Analysing landmark judgments from *R.G. Anand* v *Deluxe Films*[9] to recent High Court rulings, alongside international perspectives, highlights the doctrinal foundations and practical challenges of classifying works, particularly between "*literary*" and "*dramatic*." It also looks at the roles of contracts, institutional mechanisms, remedies, and confidentiality principles. Ultimately, it calls for better use of the tools we already have and more focused reforms. In a time when scripts can be easily copied or re-imagined, the study suggests the need to rethink protections and proceeds in five parts: first, analysing the theoretical foundations of the idea-expression dichotomy; second, examining the statutory classifications of the creative journey. Third, it outlines essential contractual safeguards; fourth, it details remedies for civil and criminal infringement; and, finally, it explores the equitable doctrine of breach of confidence, culminating in systemic reform proposals for India's digital age.

## Understanding the Idea-Expression Dichotomy: Old Doctrine, New Challenges

### Origins and Global Framework of the Dichotomy

The idea–expression dichotomy is one of copyright law's oldest and most fascinating balancing acts, a centuries-old attempt to encourage creativity while stopping anyone from "owning" the basic building blocks of thought. Born in 1879, the US case of *Baker v. Selden* [10], the principle quickly travelled across legal systems. Its essence is simple to state but tricky to apply: ideas are free for everyone, but the specific way you express them, your words, scenes, and compositions can be protected.

Globally, this principle finds reinforcement in international and domestic instruments, most notably in Article 9(2) of the TRIPS Agreement[11] and the WIPO Copyright Treaty[12], which explicitly state that copyright protection shall not extend to "ideas, procedures, methods of operation, or mathematical concepts as such."[13] This is echoed in the US statute[14], which clarifies that no matter how an idea is described, explained, illustrated, or embodied, it remains outside the scope of copyright protection.

India has harmonised its position with this global consensus. Copyright under the Copyright Act, 1957 (hereinafter 'the act')[15] subsists in three primary categories: (i) literary, dramatic, and musical works, (ii) cinematographic works, and (iii) sound recordings. An idea, once transformed through skill, effort, and a spark of creativity into something tangible, may qualify for protection. Until then, it's an open field for others to explore.

### Indian Courts and the Evolution of Protection Standards

In India, the Act reflects this dichotomy without explicitly defining "*idea*" or "*expression*." However, judicial interpretations[16] have played a significant role in shaping the Indian approach to the idea-expression

dichotomy. In *R.G. Anand* v *Deluxe Films*,[9] the Supreme Court of India addressed the concept of the idea-expression dichotomy in a landmark decision, where the plaintiff, a playwright, claimed that the defendant, a filmmaker, had copied elements of his play in a film. While both works shared a theme of provincialism, the Supreme Court ruled that copyright does not extend to ideas themselves, only their specific expressions. This decision became foundational in Indian copyright law, affirming the limited scope of protection for abstract ideas.

Following *R.G. Anand*, Indian courts have applied this doctrine cautiously, aiming to differentiate between the reuse of an idea and the replication of an expression. In *R. Madhavan* v *S.K. Nair*,[17] the Kerala High Court applied the same seven-point test, noting significant and material differences in expression despite thematic similarities, thus finding no copyright violation. However, an exception emerged in *Anil Gupta* v *Kunal Dasgupta*,[7]where the Delhi High Court held that a novel and innovative concept could receive copyright protection if highly original and distinctive, even if not fully expressed.

The Indian judiciary's approach reflects a tendency to uphold a conservative perspective, often aligning with British interpretations that allow copyright on highly distinctive ideas that cannot be separated from their expression. The United States, by contrast, has more rigidly maintained a distinction between idea and expression, influenced by its constitutional framework that emphasises the free exchange of ideas. As seen in the *Eastern Book Company*[18] case, the Indian Supreme Court reinforced that copyright primarily protects original expressions, not the underlying ideas, reaffirming that judicial decisions and public domain texts are not subject to copyright.

While the ubiquity of the idea-expression dichotomy is widely accepted, the distinction between an "idea" and an "expression" remains complex and nuanced. Scholars and jurists often describe this dichotomy as "vague and arbitrary,"[19] with distinctions sometimes appearing "blurry,"[20] "obscure," or "amorphous".[21] This ambiguity creates practical headaches for authors, filmmakers, game designers, and now AI developers, who must figure out which parts of a work are protectable and which are fair game.

**Digital Disruption and Emerging Regulatory Frameworks**

The tensions between idea and expression are not just academic; they play out in vivid, high-stakes cultural battles. One of the most striking recent examples emerged when *Raanjhanaa* was re-released in Tamil Nadu under *the title Ambikapathy,* with an AI-generated "happy" ending replacing its original tragic conclusion. The move sparked an immediate backlash: the film's director, Aanand L. Rai, denounced the alteration as a 'reckless and dystopian experiment' and disassociated himself from the new version, while actor Dhanush lamented that it stripped the film of its soul. Screenwriter Himanshu Sharma too voiced deep concern, stressing that the rewritten ending undermined the integrity of his creative vision and highlighted the growing threat of algorithmic interference in authorship. Eros Media, the studio behind the release, defended the change as a lawful 'creative re-imagining,' insisting it did not overwrite the original.[8]

The episode crystallised how AI tools blur the fragile line between homage and distortion, reigniting long-standing anxieties over "idea leakage" and the erosion of artistic integrity. For scriptwriters, these developments are particularly unsettling. In India's legal framework, where the producer is typically considered the author of a film, screenwriters' capacity to assert moral rights or resist alterations is often constrained, making it easier for their creative vision to be reshaped or sidelined without consent. In an era when technology can seamlessly remix, reframe, and repackage narratives at scale, the debates over credit, consent, and creative control have moved from the margins to the centre of copyright discourse.

This constrained capacity is statutorily entrenched in Section 2(d)(vi) of the Act, 1957, which defines the author of a computer-generated work as "the person who causes the work to be created." This definition creates a potential loophole that allows producers who deploy AI tools to claim authorship of the machine-assisted outputs, effectively bypassing the human writer entirely.

This legal fragility coincides with a massive industrial shift. What began as an experimental "proto-deal" in 2016 with Sunspring, where an LSTM network named "Benjamin" generated a sci-fi screenplay[22], has evolved into high-stakes corporate integration. Recent partnerships, such as Lionsgate's collaboration with Runway[23] and Disney's engagement with OpenAI[24], signal a fundamental change in the "Script-to-Screen" pipeline. By training models on vast proprietary catalogues to generate cinematic video and storyboards, these deals threaten to bypass human concept artists and pressure writers to craft "prompt-friendly" narratives, reducing them to mere editors of algorithmic output.

The existential nature of this threat galvanised the global creative community, most notably during the 2023 Writers Guild of America (WGA) strike. For 146 days, writers halted the industry to demand fair treatment against the "existential problem" of AI. The resulting agreement was a landmark victory in establishing that AI cannot be a "writer" or "source material," thereby protecting credits and separating rights.[25] Crucially, it ensured that writers can choose to use AI without producers mandating it, preserving their compensation and professional agency.

Regulatory responses to these challenges are emerging unevenly across jurisdictions. In the United States, works created entirely by AI are excluded from copyright protection, whereas AI-assisted works that bear human authorship may qualify.[26]Across the European Union, the forthcoming AI Act requires AI-generated or AI-manipulated content to be clearly labelled and to maintain traceability.[27] In India, explicit AI-copyright rules are still taking shape, though a significant regulatory step has been taken with the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2026, which mandate watermarking and labelling of visual content and metadata embedding for traceability (28) in what is called as 'synthetically generated information' to the AI works. Yet, creators must largely navigate the uncertainties of judicial remedies.

So, the central question persists: where does an idea end, and expression begin? The answer has never been more critical or more elusive. Protect too little, and creators feel unprotected. Protect too much, and innovation suffers. The sweet spot is where creativity thrives, ideas remain free, and expressions get the recognition and protection they deserve.

## The Creative Journey and its Statutory Classifications

The journey from idea to expression is a deeply personal and often challenging process. The creative journey commences with a simple idea - an inception that kindles the passion and fuels the imagination of the creator. This idea germinates, evolves, and takes form, meticulously shaped into a tangible expression recognised in the cinematic world as a concept note, lyrics, novel, plot, poems, prose, script or any other tangible manifestation. This journey is a dedication-filled process, driven by emotions and determination to bring the initial spark of creativity to life. At this juncture, the so-called idea, devoid of any protection under the regime, is developed into a concept fledged with adequate details, capable of registration under the Act.[7]

### Literary versus Dramatic Works Classification

For a film, this progression generally moves through four essential stages: first, a story; second, a script; third, a screenplay; and fourth, music.[29] Together, these elements culminate in the final product, a cinematograph film. But this seemingly linear journey raises a persistent legal question: should a script be treated as a literary or dramatic work? Are these categories distinct, and if so, do rights flowing from each differ?

Section 2(h) of the Act[30] defines "dramatic work" as "*any piece for recitation, choreographic work, or entertainment in dumb show, the scenic arrangement or acting, the form of which is fixed in writing or otherwise, but does not include a cinematograph film*" The Copyright Office, through its Practice and Procedure Manual, has sought to clarify this by citing *Academy of General Education, Manipal* v *B. Malini Mallya*[31], which distinguished between the two categories: a literary work is meant to be read, whereas a dramatic work "*forms the text upon which the performance of the play rests*."[32]

Despite this judicial guidance, uncertainty remains over how a script should be registered or treated. Reflecting this ambiguity, the Copyright Office itself seems reluctant to resolve the question firmly. The Statement of Particulars under Form XIV for Application for Registration of Copyright simply merges the two into a single category, "Literary/Dramatic", instead of requiring a precise classification.[33] This administrative shortcut highlights the gap between statutory language and practical enforcement.

The Indian Act draws inspiration from the UK Copyright Act, 1956 (34), which explicitly mentions "a scenario or script," a phrasing echoed in the Australian (35) and New Zealand Copyright Acts.[36] In essence[37], a dramatic work should possess the ability to be performed and must be created to be performed,[38] and also be affixed in a construct before the acting or scenic arrangement,[39] either written or otherwise (like movement notations, drawings, etc.),[40] to facilitate a synchronisation which ensures *'what is performed is as what was planned'*.[41] Accordingly, scripts and screenplays that meet these requirements are considered dramatic works.

The *Practice and Procedure Manual*[42] also defines "concept notes," "plays," "stories," and "novels." However, the Act leaves the term "plot" undefined, creating ambiguity. The Oxford Dictionary describes a plot as "the series of events that form the story of a novel, play, movie, etc.," suggesting that a plot is broader in scope than a mere story or concept note.

#### Rights Disparities and Strategic Considerations

While scripts may fall within the definition of dramatic works, their authors do not enjoy the statutory right to royalty provided under Section 18 proviso[3] read with Section 19(9) of the Act to authors of literary and musical works incorporated into films. This legislative framework for royalties originates from Article 4 of the EU Rental Directive 1992.[43] In contrast, several jurisdictions, including Italy,[44] Estonia[45], and Spain[46], have taken a more progressive approach, extending comparable protections to a broader spectrum of contributors, expressly naming scriptwriters and often recognising them as co-authors or joint authors of the film. In India, however, the producer remains legally designated as the sole author and owner of the cinematograph film, leaving scriptwriters without these protections despite their foundational role.

This disparity compels screenwriters to consider strategy. Classifying a script as a literary work rather than a dramatic work opens access to non-waivable royalty protections. Section 14(1) of the Act even allows a literary work to be later adapted into a dramatic work, preserving flexibility while strengthening the author's initial rights. Indian practice reflects this approach: the script of *Aaranya Kaandam*[29] was registered as both a literary and dramatic work; in *Salim Khan* v *Sumeet Prakash Mehra,*[47] the script, dialogues, and screenplay were all treated as literary works; and in the celebrated Satyajit Ray case concerning *Nayak*, the screenplay too was categorised as literary.[48]

Ultimately, the debate over whether a script is literary or dramatic echoes the timeless question: What's in a name? For scriptwriters, the answer lies not merely in labels but in the protection and recognition their creative labour commands. Ultimately, it is expression, however classified, that shapes the narrative of originality and secures its place in law and art.

## Safeguarding Contracts and Rights for Aspiring Scriptwriters

For aspiring scriptwriters, the biggest challenge is often not writing the story but keeping it safe. Ownership of a script typically defaults to the employer when written under an employment contract, unless otherwise agreed. And when credits are disputed, or worse, when authorship is wrongly attributed, writers risk losing not just recognition, but control over their creative vision.

In these cases, understanding the significance of moral rights is crucial. Moral rights include the right to be recognised as the creator, to prevent derogatory alterations, and to safeguard reputation. Unlike economic rights, which may be assigned or transferred and usually expire 60 years after the author's death, moral rights are perpetual, underscoring the enduring link between a creator and their work.[49]

#### Registration Options and Professional Organisations

While copyright registration is not mandatory,[50] it provides critical evidence of ownership in legal disputes. Aspiring writers can secure their scripts through self-registration with the registrar of Copyrights in the Indian Copyright Office[51] or by seeking assistance from the newly recognised Screenwriters Rights Association of India (SRAI)[52] or organisations such as the Screenwriters Association (SWA).[53] The SRAI is a government-registered copyright society for *"dramatic works and literary works associated with dramatic productions"*, empowered to license uses, publish tariffs, collect royalties, distribute them to rightsholders, and enter reciprocal arrangements with foreign societies. SWA, on the other hand, operates as a trade union, providing contract advisory services, facilitating the negotiation of fair contractual terms, offering work registration facilities (covering Synopsis, Story, Script, Screenplay, Dialogue, Song, and Mukhda), delivering training programmes, and maintaining a Dispute Settlement Committee (DSC) that follows a quasi-judicial mediation and arbitration process to resolve disputes over credits, payments, and related issues in a time-bound and efficient manner.[54] When utilised together, SWA's contract guidance and dispute-resolution procedures ensure that negotiated rights are documented and enforceable. At the same time, SRAI's collective licensing framework transforms these rights into sustainable income streams, particularly when works cross multiple territories and platforms where individual enforcement would be impractical.

For those seeking a more accessible approach, there's also the option of what's commonly known as *"poor man's copyright"*. This method involves sealing your script in an envelope and sending it to yourself

through registered post. While not a substitute for formal registration, the stamped envelope may serve as supplementary proof of creation.

#### Preventive Documentation and Professional Practices

However, protecting your work effectively starts with adopting disciplined professional practices from the very beginning. Writers should circulate only production-ready drafts and register each significant version before submission.[55] All files should be watermarked and labelled "Confidential"; dated submission emails should summarise the pitch content and attachments. Circulation should be accompanied by non-disclosure agreements (NDA) or submission agreements acknowledging receipt and confidentiality, avoiding clauses permitting reuse without payment. Careful version control creates a transparent record of authorship and development.

Further, the contract negotiations should go beyond payment and cover the full spectrum of rights. Credit and attribution provisions should ensure explicit on-screen and promotional credit, parity with co-writers, inclusion in trailers and metadata, and approval or consultation rights for alterations affecting story integrity.[56] Payment terms should provide for milestone-based fees tied to specific deliverables such as outlines, drafts, and revisions, along with late-payment interest and kill-fees for cancellations after delivery. Options should be limited in duration, with only paid extensions permitted, and rights should revert if production does not commence within the agreed timelines.[57] Derivatives and remakes, such as adaptations, prequels, sequels, dubbing, and translations, should attract separate remuneration, accompanied by transparent reporting and audit rights.[58] Assignment clauses must prevent dilution of protections while preserving inalienable royalties under the 2012 amendments. Finally, dispute-resolution provisions should enable recourse to SWA's DSC for efficiency while leaving room for judicial remedies, especially urgent injunctions on credit or misattribution.

Taken together, preventive documentation, robust contracts, and institutional mechanisms provide writers with a layered defence. Registering scripts with the Copyright Office and SWA creates a paper trail that can stand firm in any ownership dispute. Careful circulation, coupled with well-drafted agreements on payments, credits, derivatives, and option limits, lays down the foundation for fair and lasting participation. On the enforcement side, SRAI plays a crucial role by administering licences, recovering fees, collecting royalties at home and abroad, and even prosecuting infringement claims when needed. SWA, in turn, provides a safety net through its Dispute Settlement Committee, offering quick resolution of credit or payment conflicts, while courts remain available for urgent relief. This integrated framework empowers writers not only to defend their authorship but also to monetise it sustainably, an essential footing as new technologies increasingly test the boundaries of creative ownership.

## Rescue: Infringement of Copyright and associated Civil & Criminal Rights

According to Salmond, "Right" in copyright implies a "legally protected interest".[59] His interpretation recognises copyright as part of a broader category of rights, viewing it as a form of "Right over incorporeal property." This legal framework prohibits the unauthorised appropriation of creative works stemming from their creators' efforts, expertise, and investment. The primary aim of copyright law is to protect the rights of creators, ensuring that their work is not unlawfully reproduced or exploited by others. This protection serves as an essential foundation for promoting the legitimate use of copyrighted materials, ultimately benefiting the general public.[60]

#### Establishing Originality and Copyright Requirements

Section 51 of the Act provides recourse to aggrieved parties in cases of infringement, but enforceability presupposes that the claimant establishes originality, expression, and fixation as the trinity of copyright requirements, wherein the question of originality has long been debated. In University of London Press[61], it was clarified that originality requires a work to originate from the author rather than being a mere copy. This principle has since become well-established: a work that simply reproduces another cannot qualify as original. In the United Kingdom, the traditional understanding was encapsulated in the so-called "sweat of the brow" doctrine,[61] which focused on the author's labour, skill, and effort rather than any creative or visionary contribution. By contrast, the United States has always taken a stricter approach. Under Article I, Section 8 of the Constitution,[62] Congress is empowered to grant authors rights over their original works, but protection extends only to creative expression, not facts. Hence, names, telephone numbers, and other factual compilations fall outside

the scope of copyright, because facts cannot be "authored." US copyright law therefore rejects the 'Sweat of the Brow' doctrine, holding that originality requires independent creation and at least a minimal degree of creativity[63]. The economic logic is straightforward: granting monopoly rights over facts would compel others to "reinvent the wheel" to avoid infringement, thereby slowing knowledge sharing and innovation. Central to this approach is the doctrine of a modicum of creativity, which emphasises that beyond the mere collection and assembly of pre-existing data, the selection, coordination, or arrangement of that data introduces novelty and renders a work original.

Novelty is the concept used in the Patent or Design Act; hence, the Hon'ble Supreme Court of Canada formulated a doctrine that blends the two approaches, holding that the 'Sweat of the Brow' threshold is too low, while the 'Modicum of Creativity' threshold is too high (64). The Canadian test thus requires the exercise of skill and judgment, which may not necessarily amount to creativity in the sense of being novel or non-obvious, but at the same time must go beyond mere labour and capital. This Canadian position was accepted in India, as seen in *EBC* v *DB Modak* (18), where the Supreme Court held that a mere mechanical or routine process would not qualify a work for copyright protection. Instead, some amount of creativity, coupled with skill and judgment, is necessary, illustrated in the court's observation that copy-editing judgments in the SCC require legal knowledge and judgment in restructuring paragraphs, which imbues the work with the minimum level of creativity required for copyrightability.

In the European Union, however, the Court of Justice of the European Union (CJEU) has consistently affirmed that originality must mean the "author's own intellectual creation." This standard insists that the author exercise free and creative choices to imprint their personal touch on the work. Landmark rulings such as *Infopaq*[65] and *BSA*[66] rejected the sufficiency of mere labour and skill, making creative freedom the decisive factor. This approach, carried forward in Cofemel[67] and other cases, excludes additional requirements such as artistic merit or aesthetic appeal. Historically, UK law had adopted the looser "skill, labour, and effort" threshold, but during its EU membership, the UK absorbed the higher EU standard, with courts like in *SAS*[68] and *Kogan* v *Martin*[69] recognising that originality requires something more than industriousness. Even after Brexit, the EU influence remains strong. In *THJ* v *Sheridan*,[70] Arnold LJ reaffirmed that originality must be assessed objectively: it is not concerned with artistic merit, nor with the author's intention, but with whether the work reflects free and creative choices rather than being dictated by technical constraints. Notably, this understanding is now also embodied in legislation stating originality requires the work to be the author's intellectual creation[71], thereby aligning UK law with the CJEU standard and underscoring that copyright protects intellectual creation rather than the mere expenditure of effort.

**Proving Infringement through Access and Similarity**

Once the threshold of originality is satisfied, litigation shifts from qualifying a work for protection to proving infringement of that protection. Therefore, from the perspective of litigation, a plaintiff must go beyond establishing originality and ownership: they must prove substantial similarity[72] and access[73] of the work to the defendant. Courts accept that even subconscious access is sufficient, provided it can be reasonably inferred.[74] The inverse ratio rule illustrates this balance: the greater the degree of substantial similarity, the lesser the burden to prove access.[75] Plaintiffs rely on the Abstraction–Filtration–Comparison (AFC) Test to filter out unprotectable elements (scènes à faire, facts, and common themes) and focus only on protectable expression.[76] Through such methods, plaintiffs demonstrate that the defendant has appropriated copyrightable expression, not merely unprotected material.

If substantial similarity is proven through these tools, courts readily find prima facie infringement. At that stage, defendants may argue independent creation.[77] a bare possibility of access,[78] or reliance solely on unprotected elements.[79] They may also invoke fair use, assessed under the four-factor test in *Hubbard* v *Vosper*[80] However, courts are generally reluctant to extend fair use protection where plaintiffs have shown access plus substantial similarity.[81]

Thus, the plaintiff's litigation strategy rests on proving (i) the trinity of copyright requirements, (ii) access, and (iii) substantial similarity, supported by structured tests such as the AFC. Once these are satisfied, prima facie infringement is established, and the defendant's reliance on independent creation or fair use is often insufficient. This ensures that copyright law upholds its purpose, protecting

intellectual creation while preventing the unauthorised exploitation of the author's work.

**Civil and Criminal Remedies for Protection**

Civil remedies under Chapter XII of the Act provide the most immediate protection to scriptwriters whose creative labour is unlawfully appropriated by empowering them to seek injunctions, damages, and/or an account of profits. For writers, the injunction is often the first line of defence, as it can swiftly restrain a producer, publisher, or online platform from exploiting a script without consent. Courts may even grant ad-interim injunctions at the preliminary stage, recognising that the unauthorised circulation of a script can irreparably dilute its value. Significantly, Section 62 of the Act carves out an exception to the general rule in Section 20 of the CPC, granting plaintiffs a *'long-arm jurisdiction'*, allowing them to file suits not only where the defendant resides but also where the plaintiff resides or carries on business. This flexibility is especially empowering for authors far from commercial hubs; even a scriptwriter from Ranchi can haul a Mumbai-based producer before the District Court of Ranchi.

However, when infringers are unknown, as is standard with pirated or leaked scripts shared on platforms like YouTube or Telegram, courts employ John Doe' aka Ashok Kumar,[82] orders to proceed against unidentified parties. Over time, Indian courts have further evolved injunctions, ranging from website-blocking and dynamic[83] to dynamic-plus[84] and even superlative orders,[85] ensuring that infringing content is effectively removed across domains, mirror sites, and future iterations.

Beyond injunctions, damages serve both as compensation and as deterrence. Writers may seek exemplary damages[86] for wilful misuse of their scripts, and in addition, courts may order the rendition of accounts[87] so that profits wrongfully earned are surrendered. Anton Piller orders[88] may be granted to preserve evidence, permitting entry and seizure of infringing material, and are reinforced by inspection powers under Order XXXIX, Rule 7, CPC. Likewise, Mareva injunctions,[89] read with Order XXXVIII, Rule 5, CPC, allow the freezing of an infringer's assets to prevent the frustration of decrees. In addition, Section 58 of the Act empowers courts to order delivery of infringing copies and plates to the copyright owner, ensuring financial redress and the restoration of control over misappropriated works.

Further, Chapter XIII of the Act prescribes criminal liabilities to strengthen protection against infringement, recognising the gravity of misappropriating creative works. Section 63 of the Act renders infringement a cognisable and non-bailable offence, thereby enabling the registration of an FIR against the infringer. This provision is particularly significant for scriptwriters, as it ensures immediate recourse when their work is exploited without their consent. Further, under Section 66 of the Act, courts are empowered to order the disposal of infringing copies, ensuring that pirated scripts or adaptations are withdrawn from circulation. Section 67 of the Act extends liability to those who knowingly make false entries in the Copyright Register, an important safeguard against an infringer seeking to register a script in their name wrongfully. Together, these provisions underline the punitive and preventive framework of the Act, deterring misappropriation while restoring control to original authors.

In essence, copyright is a shield over intangible property, protecting a creator's intellectual labour from misuse and unfair exploitation. Indian law, in tune with global standards, demands originality rooted in skill, judgment, and a touch of creativity, striking a careful balance between rewarding authors and ensuring public access. When infringement is proven through access and substantial similarity, the law responds firmly through civil and criminal remedies, from injunctions and damages to FIRs and the disposal of infringing copies. By embedding these safeguards, the Act not only preserves authorship and deters misappropriation but also nurtures an environment where creativity and innovation can truly thrive.

**Rescue: Concept of confidentiality**

The law of breach of confidence extends beyond the proprietary rights of copyright, offering a broader scope of protection. It provides shelter to mere ideas devoid of copyright protection, allowing them to be safeguarded if they have been acquired by a person under circumstances where it would be a breach of good faith to publish them, and the person has no cause or excuse for doing so. While copyright operates in rem against the world, confidence operates in personam against specific information recipients, imposing duties of non-disclosure and non-use without authorisation.[90] The duty of confidence applies to both written and spoken information, binding the original recipient and anyone who later receives it with knowledge of its confidential nature.

**Legal Framework for Breach of Confidence**

Section 16 of the Act clarifies that while no one is entitled to copyright or any similar right outside the scope of the Act, this provision does not eliminate "any right or jurisdiction to restrain a breach of trust or confidence." Although copyright law protects the expression of an idea, a breach of trust/confidence safeguards the expressed idea when communicated to a third party under a relationship of trust. This doctrine ensures that even ideas lacking copyright protection can still be shielded under confidentiality laws if disclosed under a bond of trust.

To claim the protection of breach of confidence, the plaintiff must demonstrate that the information in question is confidential, that it was provided under circumstances of confidence, and that it was used without authorisation or that there was a threat to use it. As far as the first element is concerned, namely, confidentiality of the information, at least three sub-elements need to be considered. The first is identifying the confidential information itself, for without proper identification, it will not be possible to hold the information confidential. Secondly, the information shared must be original and not be in the public domain. The originality itself has some nuances to be considered. To claim protection, the idea must be sufficiently developed so that it is capable of being realised as an actuality. In distinguishing confidentiality from copyright, courts have stressed that originality carries a different meaning under the two doctrines. In copyright law, originality requires a minimal degree of creativity expressed in tangible form. In contrast, in confidence law, originality simply means that the information is not already in the public domain and has been sufficiently developed to be capable of realisation. Thus, while copyright may refuse protection to a nascent idea, confidentiality law safeguards it if it has been shared in trust and has commercial or creative potential.[91]

**Judicial Applications and Case Studies**

In a matter of conflict,[92] where the plaintiff had given shape to her idea by expressing it in a detailed concept note and a production plan relating to the programme *"Work in Progress,"* she approached the defendants to produce it. However, the defendant took the concept note presented as inspiration and produced it in their show titled *"Summer Showdown."* The Hon'ble apex court clarified that confidentiality was not being claimed in relation to the issue of civic woes as such, but rather to *"her concept of the programme"* and the unique approach for raising awareness on civic problems. The court held that, while the issue of civic woes might be in the public domain, the plaintiff's concept for a reality show on this theme was novel and disclosed in confidence, thereby establishing a breach of the confidentiality doctrine.

*Beyond Dreams Entertainment Pvt. Ltd.* v *Zee Entertainment Enterprises Ltd*[93] held that producers cannot escape liability by making superficial modifications if their work ultimately flows from a confidential concept originally disclosed by a scriptwriter. The court observed that minor alterations, such as adding or removing characters, variation of dialogues, or introducing new elements, would not absolve the producer if the core of the scriptwriter's concept was appropriated. In essence, even where the outward expression of the producer's work appears different, it may still constitute a close adaptation or misappropriation of the scriptwriter's idea. To address this, the court invoked the springboard doctrine, recognised initially in *Saltman Engineering Co. Ltd.* v *Campbell Engineering Co. Ltd*[94], and reaffirmed in *Seager* v *Copydex Ltd*[95], which establishes that confidential information, once disclosed in trust, cannot be used as a foundation or springboard for another's creation, even if further development or embellishments are added. Thus, the Bombay High Court clarified that the duty of confidence extends beyond preventing literal copying, covering any unauthorised use of confidential material as the starting point for derivative works.

Further, in the case of *Markets and Markets Research Pvt. Ltd*.,[96] the Delhi High Court upheld that confidential data could be protected in conjunction with copyright. The plaintiff alleged that the defendant, a competitor, misappropriated both copyrighted reports and proprietary, confidential methodologies used in generating these reports. The court issued an ex parte interim injunction, restraining the defendant from using or distributing materials containing the plaintiff's confidential information. This order reinforces that copyright law, in coordination with confidentiality doctrines, can protect commercially valuable secrets.

However, while the Delhi High Court recognised the potential misuse of confidential information, it did not specify the criteria for determining the confidential nature of such information. In *Rochem Separation Systems,*[97]the Bombay High Court emphasised that specific details of the confidential information must be provided to validate such claims.

The court advised that claimants submit well-documented descriptions of the confidential data under seal, if necessary, to substantiate confidentiality claims. Without such specifics, establishing a breach of confidence becomes challenging.

Building upon the case of *Zee Telefilms Ltd,*[91] it is pertinent to note the Delhi High Court's citation of *Richard Brady* v *Chemical Process Equipment Pvt. Ltd,*[98] where the court implicitly supported that certain confidential information could qualify for copyright protection when it forms part of an original creative work. Similarly, the Calcutta High Court in *Indian Explosives Pvt. Ltd*[99] upheld that confidential data can be protected under copyright, illustrating the interplay between copyright law and confidentiality in protecting business secrets. Hence, courts have increasingly recognised that confidentiality protects the originality and commercial potential of disclosed information, bridging the gaps that copyright alone cannot cover. This synthesis of copyright and confidentiality law underscores a judicial commitment to upholding trust in creative collaborations and preserving the integrity of intellectual contributions.

## Conclusion

The journey from *Baker* v *Selden* (10), nearly 150 years ago, to today's AI-generated film endings shows us one simple truth: the idea–expression dichotomy has never been easy to pin down. For scriptwriters, it remains a living dilemma. What began as a doctrine meant to balance protection of creativity with the freedom of ideas now feels stretched thin in a digital world where algorithms can twist a writer's vision into something unrecognisable. In the competitive and unforgiving world of creative arts, this uncertainty casts a heavy shadow on the journeys of aspiring writers, leaving them anxious about the vulnerability of their ideas. Copyright protects expressions, not ideas, and that gap too often empowers studios and producers to appropriate concepts without credit or compensation.

At the same time, Indian copyright law does extend protection to scripts once they are fixed in tangible form and satisfy the requirements of originality and authorship. The difficulty, therefore, lies not in the complete absence of protection, but in its limited scope and its structural positioning within a producer-centric cinematographic framework that does not expressly recognise scriptwriters as participatory authors of the film itself.

This struggle exposes three urgent contradictions. First comes the classification paradox: are scripts to be treated as literary works, dramatic works, or both? The distinction is not academic; it determines rights. Dramatic works remain excluded from the royalty safeguards under Section 18 of the Act, even though scripts form the lifeblood of every film. This ambiguity, coupled with the statutory recognition of the producer as the author of a cinematograph film, pushes scriptwriters into a comparatively marginal legal position despite their foundational creative role. Second, while a layered system of protection exists through copyright registration, confidentiality provisions, and the support of industry bodies like SWA and SRAI, most emerging writers remain unaware of these safeguards. The framework is there, yet it operates in the shadows, invisible to those who need it most. Thus, the problem is not merely doctrinal but also structural and economic, reflecting asymmetries in bargaining within the film industry. Third, technology has further complicated the landscape. Increasing instances of AI-assisted alterations, whether through automated edits, alternate endings, or contextual reframing, demonstrate how narrative authority can be reshaped without meaningful consultation with the original writer. In such circumstances, the harm to a scriptwriter is not merely technical but deeply personal. Moral rights, particularly the right of integrity, become crucial when a machine-driven change distorts the narrative vision initially conceived by the writer. The injury to honour and reputation does not diminish simply because the modifying agent is algorithmic rather than human. Accordingly, protection against prejudicial distortion should extend even to technologically mediated alterations. However, when AI merely imitates a writer's distinctive style without altering a specific script, the concern shifts beyond conventional copyright doctrine toward safeguarding creative identity itself in an age of algorithmic mimicry.

Equally, the question must be framed within the economics of copyright. Can the creation of an alternative or "happy ending" be defended as a competing commercial or artistic interest? Copyright seeks to incentivise creativity while permitting adaptive innovation. The best efforts and creative labour of scriptwriters deserve structural recognition and reward, yet enforcement must remain at an appropriate arm's length to avoid stifling legitimate technological experimentation or cinematic reinterpretation. The balance lies in calibrated protection, preventing

reputational harm and bad-faith distortion while preserving space for transformative creativity and market responsiveness.

The way forward cannot be left to chance. Parliament must address the definitional and protectional grey zone and extend royalty rights across all forms of scripts. Such legislative clarification should also reconsider the recognition of scriptwriters' contributory authorship within cinematographic works to ensure structural balance in the allocation of rights. The Copyright Office should also require AI-generated adaptations to disclose their origins, ensuring accountability in algorithmic transformations. At the same time, writers must be proactive: registering their work, negotiating contractual safeguards on credit and creative control, and leaning on collective support from associations. Private ordering through carefully drafted AI-use clauses, credit integrity protections, and collective rights management through bodies such as SWA and SRAI can provide immediate, industry-responsive safeguards alongside statutory reform. Equally crucial is fostering a culture of respect for originality, where industry leaders and legal practitioners reinforce fairness and dignity in creative labour. However, these protections must remain economically calibrated so that enforcement operates at an appropriate arm's length, preserving space for legitimate technological innovation and creative reinterpretation. Without such reforms, scriptwriters risk fading into the background, treated as mere raw material suppliers for algorithms. Current jurisprudence already provides meaningful direction in shaping this path forward. Recent judgments show that while courts continue to uphold the idea–expression divide with doctrinal clarity, they are increasingly prepared to rely on equitable principles, including the doctrine of breach of confidence, to protect writers' carefully developed conceptual frameworks where statutory copyright proves insufficient. If these judicial precedents, legislative refinements, and balanced market mechanisms evolve together, we can ensure that storytellers' voices are not only heard but also honoured in a rapidly changing creative landscape.

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