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**BETWEEN RECOGNITION AND REVENUE: UNDERSTANDING THE
INTERPLAY OF COPYRIGHTS AND MORAL RIGHTS IN CREATIVE WORKS**

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ABSTRACT:

Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.³The domain of intellectual property, particularly in relation to creative works, has experienced profound shifts with the proliferation of digital platforms and technological advancements. Two critical components of this domain, copyrights and moral rights, often overlap, conflict, and intersect in myriad ways, necessitating a comprehensive exploration of their interplay. This paper seeks to unpack the nuanced relationship between these two sets of rights and to highlight the implications of their interaction for artists, authors, and the broader creative industry.

Copyrights, as traditionally conceptualized, serve as the bulwark of economic protection for creators. They grant exclusive rights to the creators or rights holders, permitting them to reproduce, distribute, perform, and display their works or authorize others to do so. This legal provision, rooted in the economic rationale, aims to motivate innovation by ensuring that creators can derive monetary benefits from their intellectual labour. With the promise of exclusive rights, artists are incentivized to contribute to the cultural and knowledge pool, ensuring the continual growth of creative sectors. Contrastingly, moral rights, deeply embedded in civil law traditions, hinge on the belief that creative works are not mere commodities. They are seen as an extension of the creator's persona, carrying a part of their identity and soul. As such, moral rights protect the personal and reputational facets of creators. These rights typically include the right to attribution (being recognized as the creator) and the right to object to derogatory treatments that might deform or mutilate the work in a manner prejudicial to the creator's honour or reputation.

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³ Universal Declaration of Human Rights, Article 27(2), 1948

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The digital age, characterized by the ease of replication, dissemination, and modification of content, has exacerbated the tensions between copyrights and moral rights. For instance, while a creator might license a work for economic gains, they might simultaneously object to its modification or use in a context that they find derogatory, invoking moral rights. Additionally, the global reach of the internet and platforms like YouTube, Spotify, and others mean that a work can be accessed and potentially altered across jurisdictions, each with its interpretation of moral rights. Interestingly, while international treaties, like the Berne Convention, have tried to harmonize copyright laws, moral rights remain inconsistently applied across nations. This inconsistency is especially palpable when comparing common law jurisdictions like the U.S., where moral rights are limited, to countries in Europe where these rights are more robustly recognized.

Furthermore, the burgeoning remix culture, where creators build upon existing works, further muddies the waters. While such activities might be seen as transformative and a form of expression in itself, they can easily infringe upon the moral rights of the original creator, who might feel that their work has been distorted. In conclusion, the intricate dance between copyrights and moral rights in the realm of creative works requires meticulous attention. It's a dance that entails recognizing the economic aspirations of creators while simultaneously upholding the deep, personal connections they harbour with their creations. As the digital landscape continues to evolve, reimagining and recalibrating the relationship between these sets of rights becomes not just pertinent but imperative for fostering a vibrant, respectful, and innovative creative ecosystem.

Keywords: Copyrights, Moral Rights, Authorship, Dual Rights, Creative Work

INTRODUCTION:

In the intricate tapestry of intellectual property, copyrights and moral rights emerge as two critical threads, distinct in their origins and implications but often woven tightly together in the realm of creative works. To appreciate their interplay, it's imperative first to understand their individual natures and purposes.

Copyrights, at their core, are a set of exclusive rights granted to the creator or owner of a work, encompassing the privileges to reproduce, distribute, perform, and adapt the work. Rooted in the economic rationale, copyrights are designed to serve dual purposes: to incentivize creators by allowing them to derive monetary benefits from their intellectual labor, and in turn, to enrich the public domain by ensuring a constant flow of new creations. In essence, copyrights act as a reward mechanism, promising

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artists, writers, and other creators exclusive control over their works for a specified period, after which these creations typically enter the public domain for all to access and build upon.

On the other hand, moral rights, with their origins deeply embedded in civil law traditions, hinge on the philosophy that creative works are not merely economic assets. They are seen as an extension of the creator's spirit and essence. Thus, irrespective of who holds the copyright or how the work is economically exploited, moral rights safeguard the personal and reputational interests of the creator.⁴ These rights include, but are not limited to, the right to be acknowledged as the author (attribution) and the right to object to any distortion, modification, or misuse of the work that might be prejudicial to the creator's honour or reputation (integrity).

The significance of understanding the nuances of copyrights and moral rights cannot be overstated in today's digital age. With the proliferation of technology, the ways in which we create, share, modify, and consume content have undergone seismic shifts. Digital platforms have democratized access to a vast array of works, giving creators a global audience at their fingertips. However, this ease of access and dissemination also comes with challenges. Online environments have made it significantly easier to replicate, distribute, and alter content. While this has led to a burgeoning of remix cultures, fan-made adaptations, and a democratization of creativity, it also raises complex questions about the rights of original creators. The law provides creators with exclusive property rights as incentives to produce and disseminate creative wealth. The law also recognizes a set of limitations to these rights in order to maintain a vibrant public domain.⁵

Moreover, the global nature of the internet blurs jurisdictional boundaries. A work created in a country with robust moral rights can easily be accessed and potentially altered in another with a limited recognition of these rights. This discrepancy can lead to conflicts, with creators feeling that their works are being exploited or misused without the necessary acknowledgments or protections. On the whole, the topic's relevance is accentuated by the digital age's challenges and opportunities. Understanding copyrights and moral rights, and more crucially, their interplay, becomes paramount not only for creators but also for policymakers, legal professionals, and consumers. As we navigate this digital era, striking a balance between economic incentives and the ethical recognition of a creator's personal connection to their work is a challenge that we must collectively address.

HISTORICAL ASPECTS:

⁴ Gupta, S. (2016). "Moral Rights in the Age of Digital Reproductions." *Indian Journal of Intellectual Property*, 5(2), 45-60

⁵ Neil Weinstock Netanel, *Copyright and a Democratic Civil Society*, 106 *YALE L.J.* 283, 288 (1996).

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The history of copyrights is intertwined with the development of printing and the dissemination of information. Before the printing press's advent in the 15th century, manuscripts were manually copied, making the unauthorized duplication of works a less pronounced issue. However, with Gutenberg's innovation, the rapid multiplication of texts became possible, leading to the rise of an informal system where printers held 'privileges' or exclusive rights to print particular works.

This system's inadequacy became evident with the increasing exploitation of authors' works. It led to the inception of the world's first copyright legislation, the Statute of Anne in 1710 in Britain.⁶ This was a transformative shift: it focused on protecting authors rather than just printers or publishers, granting them exclusive rights for 14 years, with the possibility of renewal for another 14 years.

Parallely, in the artistic corners of Europe, a different kind of right was taking shape — moral rights. Rooted deeply in the continental European tradition, these rights were born out of a philosophical conviction that an artist's work is an inextricable part of their persona. Unlike copyrights, which were economic, moral rights aimed to safeguard an artist's personal and reputational interests, ensuring that their work could not be presented in a manner derogatory to their honour.

The 19th century witnessed the internationalization of these rights. The Berne Convention in 1886 was a seminal moment. Not only did it lay the foundation for global standards in copyright protection, but it also acknowledged moral rights, particularly the rights of attribution and integrity. As the 20th century progressed, the world grappled with newer challenges, especially with technological advancements. Treaties like the WIPO Copyright Treaty in 1996 and legislative acts like the U.S.'s DMCA in 1998 were responses to the digital age's complexities, reinforcing copyright protections in an interconnected world. In essence, the historical tapestry of copyrights and moral rights is a narrative of balancing economic interests with the deeply personal connection artists feel to their creations, evolving continuously in response to societal and technological shifts.

Some of the major milestones in the evolution of Copyrights and the Moral Rights are the international treaties and conventions which throw some light as to what exactly these rights mean and how they need to be recognised including their protection. The Berne Convention provides that, "Independently of the author's economic rights, and even after the transfer of said rights, the author shall have the right to claim

⁶ 1710. 8 Anne, c. 19.

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authorship of the work, and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honour or reputation.”⁷

DELVING RIGHT INTO THE CONCEPT OF COPYRIGHT AND MORAL RIGHT:

In the realm of intellectual property, a fundamental distinction arises between the rights reserved for creators and authors: copyrights and moral rights. Both types of rights share the common goal of recognizing and protecting the creations of the mind, but their essence, purpose, and implications differ considerably.

Copyrights predominantly serve as an economic tool, conceived to grant creators exclusive rights over their creations for a stipulated period. When an individual pens a novel, composes a song, or directs a film, they naturally acquire a bundle of rights over that work. These rights primarily allow the creator to decide how their work is reproduced, distributed, performed, or adapted. For instance, an author has the right to choose which publishing house will print their book, and a musician can determine who can play their song during public events.

The driving philosophy behind copyright is multifaceted. At its core, the system is designed to incentivize creativity. By providing a temporary monopoly over a creation, it ensures that creators can reap financial benefits, encouraging a continual cycle of innovation.⁸ Additionally, copyrights strike a balance by ensuring that after a designated period (often several decades after the creator's death), the work enters the public domain, allowing society at large to access, use, and build upon it.

While copyrights emphasize the economic dimension, moral rights are rooted in the deeply personal relationship between a creator and their work. Originating from civil law traditions, especially in continental Europe, moral rights encapsulate the idea that artistic creations, whether a painting, novel, or song, are not just commodities but extensions of the creator's persona.

Two primary components define moral rights. Firstly, there is the 'right to attribution,' ensuring that creators are always acknowledged for their work. This means, for instance, that a painter must be credited whenever their painting is displayed, regardless of who currently owns the canvas. Secondly, there's the 'right to integrity,' which allows creators to object to any alteration, distortion, or mutilation of their work

⁷ Article 6bis(1) of the Berne Convention (1971)

⁸ Arathi Ashok, Economic Rights of Authors under Copyright Law: Some Emerging Judicial Trends, Journal of Intellectual Property Rights Vol 15, January 2010, pp 46-54

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that may harm their honour or reputation.⁹ This right ensures, for example, that a poignant novel cannot be arbitrarily edited to change its message without the author's consent.

Moral rights are, by nature, inalienable. Unlike copyrights, which can be sold, transferred, or waived, moral rights typically remain with the artist. This enduring bond underscores the philosophical premise of moral rights: artistic creations are not mere economic entities but manifestations of the creator's spirit and should be treated as such.

In essence, copyrights and moral rights represent two facets of the intellectual property spectrum. Copyrights focus on the tangible, providing creators the leverage to control the economic exploitation of their works.¹⁰ In contrast, moral rights focus on the intangible, echoing the profound emotional and personal connection between artists and their creations. Both sets of rights play crucial roles in shaping the artistic and cultural milieu of societies, ensuring that creators are recognized, respected, and rewarded in diverse ways for their invaluable contributions. In today's digital age, as the lines between economic and personal interests blur, understanding the distinction and interplay between copyrights and moral rights becomes even more critical. As we navigate this evolving landscape, a nuanced comprehension of these terms will be instrumental in fostering a rich, respectful, and vibrant creative ecosystem.

BALANCING ECONOMIC INCENTIVES WITH ETHICAL CONSIDERATIONS:

The domain of intellectual property, especially in the context of creative works, often treads a fine line between two poles: economic incentives and ethical considerations. At the heart of this dichotomy lie copyrights and moral rights. While both serve to protect the interests of creators, they represent divergent paradigms, prompting continuous debates about how best to strike a balance in the ever-evolving landscape of artistry and innovation.

Copyrights, as instruments of economic motivation, grant creators exclusive rights over their creations. By allowing them control over the reproduction, distribution, and adaptation of their works, copyrights ensure creators can monetize their endeavors. This economic facet of copyrights has a twofold rationale. First, by rewarding creativity with potential financial gains, it fosters an environment where artists, writers, and innovators are incentivized to produce original works. Second, by time-limiting these

⁹ S&P, "Moral Rights Under Copyright Law", <https://singhania.in/blog/moral-rights-under-copyright-law> (last visited on 15 Oct, 2023)

¹⁰ Kashis IPR – A gateway to IPR protection in the Indian Sub-Continent, "Moral Rights under Copyright Law", <https://www.kashishipr.com/blog/moral-rights-under-copyright-law/> (last visited on 15 Oct, 2023).

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exclusive rights, copyrights ensure that creations eventually become part of the public domain, benefitting society at large by enriching the collective pool of knowledge and culture.¹¹

On the other side of the spectrum lie moral rights, which stem from deep-seated ethical considerations. Rooted primarily in civil law traditions, these rights emphasize the intrinsic bond between creators and their works. Beyond the realm of monetary gain, moral rights recognize that creations, be it a poignant piece of music or a compelling novel, are extensions of the creator's soul and identity. Thus, the right to attribution ensures creators are always acknowledged, while the right to integrity defends against any modification that might tarnish the creator's honor or reputation.

As we stand at the intersection of a digital revolution, the tug-of-war between economic incentives and ethical considerations becomes even more pronounced. The digital realm, characterized by easy replication and global dissemination, has exponentially amplified the earning potential for creators. Streaming platforms, e-books, and digital art platforms promise royalties and revenues across borders. Yet, the same digital space has also escalated challenges. Piracy, unauthorized use, and content misappropriation jeopardize the very economic incentives copyrights aim to safeguard.

Concurrently, the digital age has also blurred the lines of artistic integrity. Remix culture, digital modifications, and fan-made content, while celebrating creativity, often wade into murky waters of moral rights. When a classic song is remixed without the original artist's consent or a revered painting is digitally altered, questions about the ethical treatment of original works come to the fore.

Balancing these economic incentives with ethical considerations necessitates a multi-faceted approach. Policymakers must draft legislation that not only fortifies copyright protections in the digital realm but also respects and recognizes the inviolable nature of moral rights. Education plays a pivotal role.¹² Creators, consumers, and intermediaries, like digital platforms, must be apprised of the rights and responsibilities enshrined in intellectual property laws. Therefore, the dance between copyrights and moral rights is emblematic of the broader challenge of balancing commercial aspirations with ethical imperatives. As we venture further into the digital age, understanding and respecting this balance is not

¹¹ William M. Landes and Richard A. Posner, "An Economic Analysis of Copyright Law", 18 J. Leg. Stud. 325, 325-33, 344-53 (1989)

¹² Tzu-I Lee, A Battle Between Moral Rights and Freedom of Expression: How Would Moral Rights Empower the "Charging Bull" Against the "Fearless Girl", 17 J. MARSHALL REV. INTELL. PROP. L. 672 (2018)

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just a legal necessity but a moral obligation. The very essence of creativity—its spirit, its passion, and its potential for societal impact—depends on this delicate equilibrium.¹³

INDIAN PERSPECTIVE:

India, with its rich cultural and artistic heritage, recognizes the importance of copyrights and moral rights within its legal system. The Indian Copyright Act, 1957, codifies these rights. While copyrights are a common subject of litigation, what stands out in India is the distinct recognition of moral rights, termed as the "Author's Special Rights" under Section 57 of the Act. To have a better understanding of the concept, some significant case laws highlighting the judicial trend in analysing copyrights and moral rights in India will come in handy. The integrity aspect of moral rights is stressed upon in *Mannu Bhandari v. Kala Vikas Pictures Pvt. Ltd. (1987)*¹⁴, wherein the court ruled in favour of the author, Mannu Bhandari, when significant changes were made to her novel without her permission in its film adaptation. The court held that the mutilation of the work, which prejudices the honour of the author, is a violation of her special rights. Similarly, when there was a question raised with respect to Moral rights concerning the integrity and respect of an artist's work, the Delhi High Court held that such treatment of the work was derogatory, and the artist's moral rights were infringed. The court emphasized the high regard for the artist's dignity and the spiritual connection between the creator and creation. The case revolved around the mural made by the artist Amar Nath Sehgal, which was removed and stored in a deteriorated condition by the Union of India.¹⁵ In *Indian Performing Rights Society vs. Eastern Indian Motion Pictures Association*, which is famously called as the N. S. Gopalakrishnan's case¹⁶, question was raised with respect to Royalties for lyricists and composers. This landmark decision by the Supreme Court of India upheld that composers and lyricists have a right to receive royalties for the commercial exploitation of their work, emphasizing both economic and moral rights. In many such decisions, the Court has highlighted that moral rights vests in the author of the work and they are independent of the copyright. The interplay between economic rights and moral rights within the context of copyright law illustrates the dual facets of ownership in creative works by signifying the balancing of interests of creators and users, ensuring that authors retain control over how their work is used and presented, even after transferring economic rights. Even after authors transfer their economic rights, their moral rights persist. These rights, inherent to creators, safeguard their work's integrity and protect against any alterations or uses that may damage their

¹³ Richard Watt, "An Empirical Analysis of the Economics of Copyright: How valid are the results of studies in developed countries for developing countries?", *The Economics Intellectual Property*, pg. 65-108

¹⁴ AIR 1987 Delhi 13.

¹⁵ *Amar Nath Sehgal v. Union of India*, 117 (2005) DLT 717.

¹⁶ AIR 1977 SC 1443

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reputation or integrity. Unlike economic rights, which can be assigned or licensed, moral rights remain with the author throughout their lifetime and often extend beyond, ensuring their artistic vision and ethical concerns are respected. This enduring connection between creator and creation underscores the profound relationship artists have with their work, reinforcing the significance of acknowledging and upholding their moral prerogatives in the realm of intellectual property.¹⁷ These cases, among others, depict India's evolving jurisprudential landscape in balancing the economic interests of copyright holders with the ethical considerations inherent in moral rights. The Indian judiciary, through its decisions, emphasizes not just the economic facets of creative works but also the deep-rooted emotional, cultural, and spiritual connections artists and creators have with their creations.

CONCLUSION & SUGGESTION:

As India continues to burgeon as a global powerhouse of creativity, literature, cinema, music, and art, the confluence of copyrights and moral rights becomes all the more significant. The robust legal framework, supplemented by judicial interpretations, has provided a foundation. However, the challenges presented by the digital age, globalized content dissemination, and diverse cultural interpretations necessitate further refinement in the area. There is potential scope for improvement in the sector and they may be made by strengthening digital protections, i.e., with the rise of digital platforms, both copyrights and moral rights face increased vulnerability. A comprehensive digital rights management system, in line with international best practices, should be developed to curb unauthorized use, reproduction, and distortion of original content online. Further, the majority of copyright and moral rights infringements stem from ignorance rather than malice. Public campaigns, workshops, and educational programs can play a crucial role in raising awareness about the importance of intellectual property rights and the repercussions of their violations. Given the potential for conflicts, especially in the digital domain, there's a need for a streamlined, efficient, and accessible mechanism for dispute resolution. Consideration could be given to specialized intellectual property courts or tribunals. And as content becomes global, harmonizing Indian laws with international standards will reduce conflicts and promote smoother international collaboration and content exchange. On the whole, the intricate dance between copyrights and moral rights in India reflects the nation's dual commitment: to acknowledge and reward the intellectual labour of its creators while simultaneously respecting and preserving the profound personal and cultural ties they share with their creations. As the nation stands at the cusp of a digital revolution, the task is to carry forward this legacy, ensuring that in an era defined by bytes and pixels, the soul of creation remains inviolable. This

¹⁷Arun Chadha vs Oca Productions Pvt. Ltd. &Ors, 2013 (53) PTC 401 (DEL)

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challenge, while formidable, presents an opportunity for India to set a precedent, marrying tradition with modernity, economics with ethics, in its unique, indomitable style.



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