

IMRS-CI

International Max Planck Research School for Competition and Innovation

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Why care about balance??

Insights from an empirical legal study on the perceptions of moral rights protection

Purpose of this Study

Current focus of debates -

rights of © holders v. society's access to information

Wither balance between author's rights and © holder's rights?

Importance of this Study

- Why do we need a balance in copyright law?
- Why is a study on public perceptions of the balance between author's rights & © holder's rights important?
- Lack of empirical literature on the subject

Preview

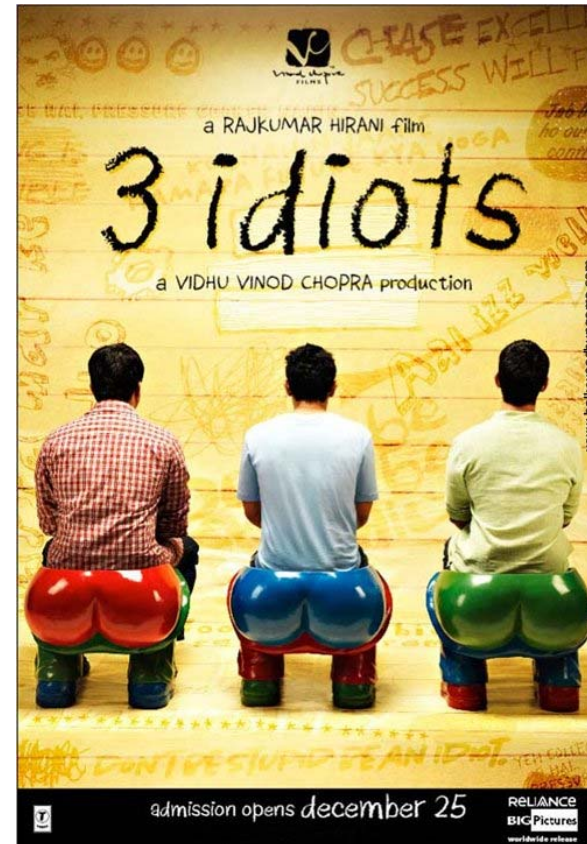
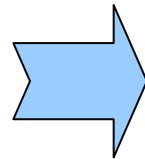
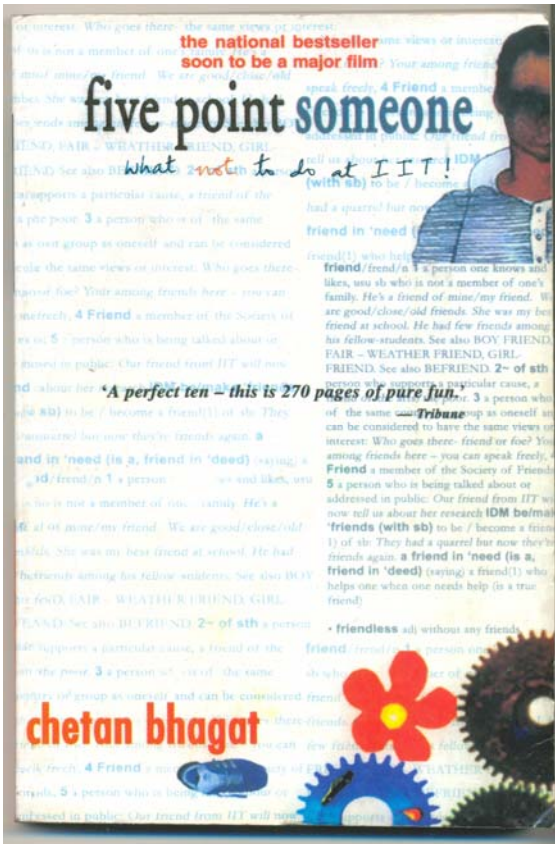
- Overview of Methodology used in the study
- The example of 'three idiots' controversy
- An empirical analysis of the perceptions of the broader public regarding moral rights
- Legal Analysis of the issues involved
- How the present regime fails to reach a balance?
- Recommendations

Overview of the Methodology Used in the Study

- **Mixed Methods Approach:**
 - Quantitative - **empirical survey** on perceptions of moral rights
 - Qualitative - a recent **moral rights controversy in India** as a **case study**

- **Applicability of the study to other jurisdictions?**

Background of 'Three Idiots' Controversy



Background of 'Three Idiots' Controversy

- Adaptation of a famous novel 'Five Point Someone' to a Hindi movie '3 Idiots'
- Lack of proper attribution to the novel in the movie
- Author (Novelist) demanded better attribution
- Movie Production company denied the request
- Movie is now the highest grossing movie – in the history of Indian film industry

Perception of Moral Rights – An Empirical Analysis

Methodology:

- **Survey / Pencil-and-Paper** based questionnaires
- **Sampling method used: Stratified Purposive sampling**

undergraduate students in- ***Arts, Science, Engineering and Law***

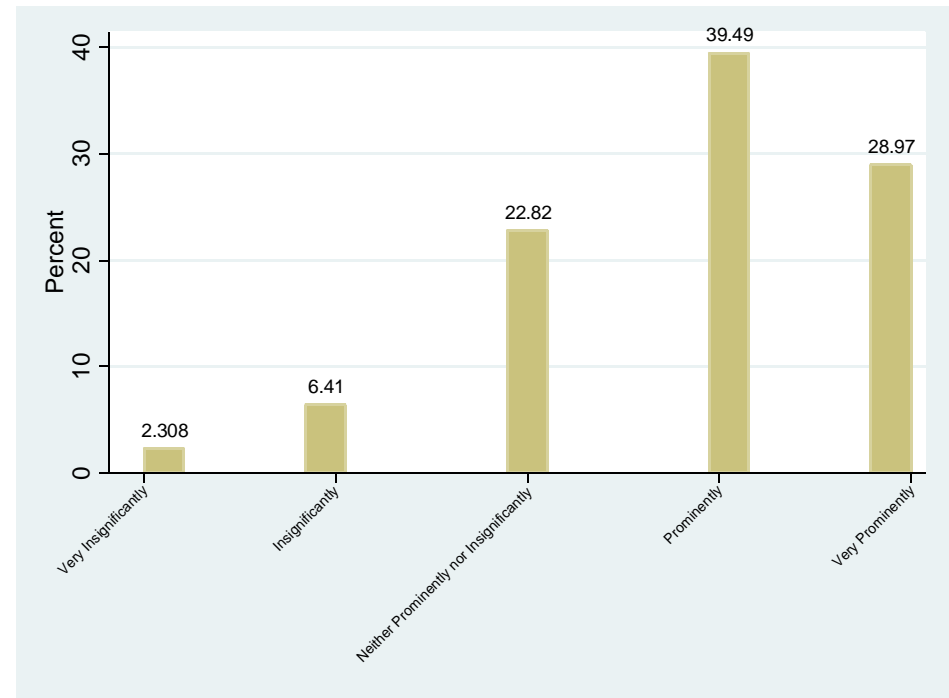
in colleges located in - ***Cities, Towns*** and ***Villages***
(Census of India 2001 classification)

Perception of Moral Rights

How prominently should the name of an author and his/ her novel be displayed at the beginning or at the end of a movie, if that movie is based on a novel?

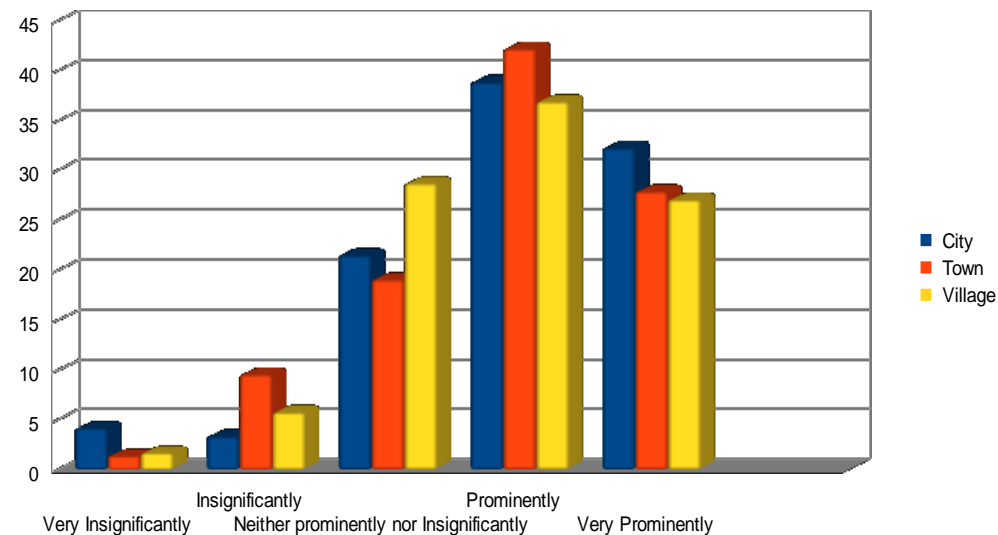
68.46% of the total respondents = **Prominently or Very Prominently**

N=390



Perception of Moral Rights - based on type of location

How prominently should the name of an author and his/ her novel be displayed at the beginning or at the end of a movie, if that movie is based on a novel?



Differences not statistically significant at 0.05 level

(Wilcoxon rank-sum Test)

n (City)=121, n (Town)=147, n(Village)=122, N=390

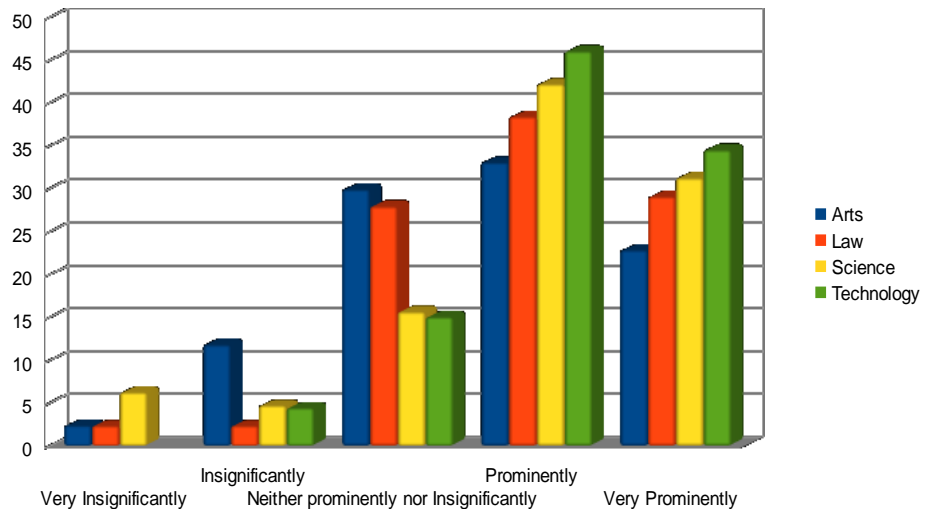
Perception of Moral Rights - based on type of education

How prominently should the name of an author and his/ her novel be displayed at the beginning or at the end of a movie, if that movie is based on a novel?

Only the differences between Arts and Technology statistically significant

(Wilcoxon rank sum Test/ $Z = -3.716$, $p < 0.001$)

$n(\text{Arts}) = 127$, $n(\text{Law}) = 86$, $n(\text{Science}) = 64$,
 $n(\text{Technology}) = 113$, $N = 390$

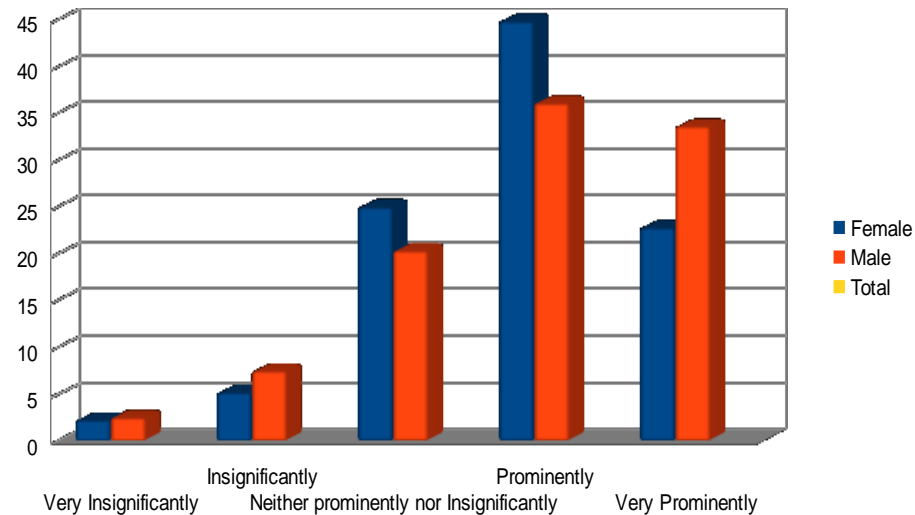


Perception of Moral Rights - based on gender

How prominently should the name of an author and his/ her novel be displayed at the beginning or at the end of a movie, if that movie is based on a novel?

Differences not statistically significant at 0.05 level
(Wilcoxon rank-sum Test)

n (Female)= 136, n(Male)=241, N=377*
*13 respondents did not specify gender

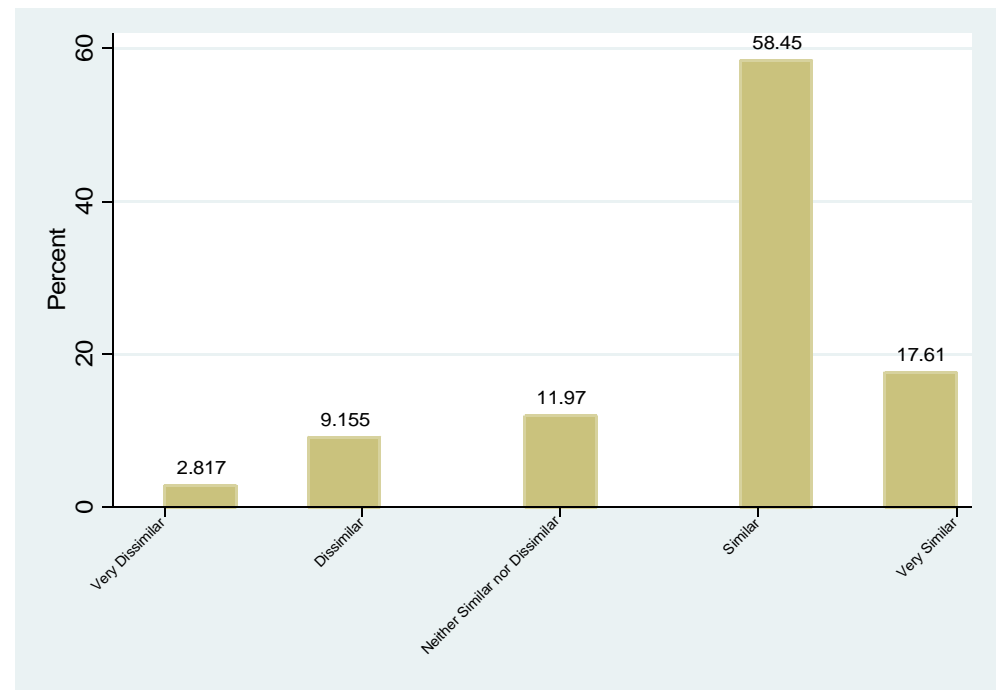


Perception of Moral Rights in the Context of '3 Idiots' Controversy

To what extent the movie '3 Idiots' is similar to the novel '5 Point Someone'?

76.06% of respondents = **similar or very similar** to the novel!

N=142 * Only those who had read the novel as well as watched the movie in question were considered for this analysis

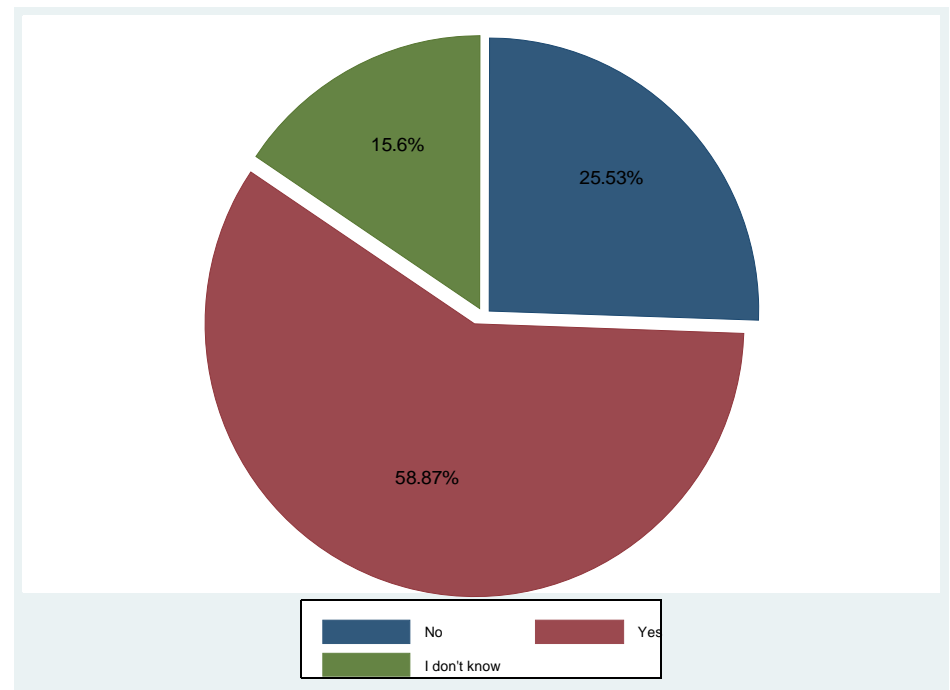


Perception of Moral Rights in the context of '3 Idiots' controversy

Do you think that the name of Mr. Bhagat and the novel (Five Point Someone) should have been shown more prominently at the beginning of the movie?

58.87% of respondents = **Credits should have been shown more prominently**

N=141 *Only those who had read the novel as well as watched the movie in question were considered for this analysis



Summary of Empirical Analysis

- Public is highly supportive of moral rights
- Perspectives mostly uniform across most of the categories analysed
- **Indicating a broader public support** towards balancing?

Legal Position of Moral Rights in India

- **Different from most other 'copyright' countries**

Shift is more towards the continental approach

- **Legislative provision:**

Sec. 57 of the Copyright Act 1957:

Rights covered: Right of Attribution, Right of Integrity

Legal Position of Moral Rights in India

Attitude of Judiciary:

- Highly pro-active approach towards protection of moral rights
- *Ms. Mannu Bhandari v. Kala Vikash Pictures Pvt. Ltd.*
- *Amar Nath Sehgal v. Union of India and another.*

Summary of the legal position

Legal Position as applied to the facts of the Controversy:

- **Particular relevance of**
 - context (how others were credited in the movie)
 - the sole request of the novelist - better attribution to his work

- Strong support from the legislative provisions + a highly proactive judiciary = ?

Can Strong Legal Position Alone Ensure Balance of Rights?

Factual ending of the controversy:

- Author did not pursue his claims
- Movie continues its exhibition – now the highest grossing movie in the history of Indian film industry

Critical question(s):

- Will any aspiring/ economically poor authors be able to exercise her/his right?
- Need for a balance in the © regime that makes rights meaningful?

What Fails Meaningful Exercise of Moral Rights of Authors ?

- Unbalanced negotiation processes
- Absence/ Failure of collective bargaining mechanisms
- The inordinate delay and costs involved in judicial settlements
- Lack of awareness about the rights

Possible solutions for attaining a better balance

- **Capacity building** - for establishing effective collective bargaining systems for authors
- Building **arbitration forums** that could resolve disputes quickly and efficiently at lower costs for the authors/ producers or publishers
- **Redefining the position of moral rights** in highly **collaborative industries** like the movie industry, without diluting its spirit – French example
- **Raising legal awareness** about the author's rights – a particularly important aspect in digital era

Thank You!

suggestions/ comments/ criticisms:
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