



# THE PERFORMER RIGHTS IN THE MULTIMEDIA INDUSTRY

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**ABSTRACT:** - *This article sought to evaluate the performer's standing in India's audiovisual industry by tracing it back to the beginning of the industry and also to understand the protection offered to the performance by existing statutes with the goal of providing employment and social security to the performer. The performer's status is determined by examining judicial opinions.*

**Keywords:** -Performers rights, industry, audiovisual media, live performance, broadcast

## INTRODUCTION


Copyright is a form of intellectual property protection that the original creator's work of writing is provided under existing law. For a time constraint, authors, composers, and others have the unique right to print, publish, and sell copies of their unique creation. Under British administration, the first Copyright Legislation was enacted in India in 1914, and the prevailing Copyright Act was enacted in 1957 and revised in 1999. For a long time, the Copyright Act did not recognise the rights of performers such as musicians, actors, and singers. Section 38 of The Indian Copyright Act was amended in 1994 to include the rights of the performers, which were named "performer's rights." This was put in place to ensure that the performers' livelihoods were not jeopardised by technological advancements.

The artistic and technological qualities required for the film industry in the early days in India were significantly reliant on the other countries of the world. The film industry did not have any model to follow in terms of procedures and practises because it was an artistic form that was an offspring of a scientific invention—the cinematograph. This scenario was the same in the other parts of the world. In 1913, the first feature film, *Harishchandra*, was made with borrowed technology and the assistance of foreign technical staff. Finding talent and convincing them to perform was challenging for early filmmakers. Film experts and historians refer to the years before sound came to the movies as the silent era.

## THE SILENT ERA AND THE PERFORMING ARTISTS

During that era, onscreen intertitles were used to describe story points, convey essential speech, and occasionally even remark on the action for the cinema audience because silent films did not have synchronised sound for conversation. It's worth noting that during the silent film era, the names of the actors were not listed in the credits. However, by the early 1930s, the actors were beginning to receive film credits.

With the emergence of sound, the film medium's worth as a creative venture



skyrocketed, far beyond the fame and following experienced by unfixed audiovisual media such as theatrical troupes and such. With the opportunity offered by the emergence of sound in the Indian cinema business, the familiar inventive showman performer developed.

### **THE LEGISLATIVE FRAMEWORK AND THE ENTERTAINMENT INDUSTRY**

The Union Government has the authority to enact legislation regarding the approval of films for public exhibition. The powers mentioned in the Concurrent List, which is List 3 of the 7<sup>th</sup> Schedule, govern the social and economic security of those working in the film business, as well as those involved in filmmaking. Despite the fact that both the centre and the states have concurrent legislative rights, the centre's use of prerogative would preclude the state from taking any further action in this area. The current system of power and revenue distribution is problematic in light of the industry's need for cohesion. The centre solely receives revenue from excise and customs fees on film imports, as well as fee paid by the producer for accreditation by the censor board. Despite the fact that copyright (intellectual property rights) is listed in the central list, this must be seen in the backdrop of the film industry and financial realities that inadvertently fall into the favour and authority of state governments.

The Cine Workers and Cinema Theatre Workers (R&E) Act, 1981, this act ensures that the working environment of low-paid artists and others in India's film industry are secure. The Act's premise is that existing labour laws do not give sufficient protections for low-wage artists and technicians working on feature films in terms of their terms and conditions of employment, wage payment, and other comforts and perks.


By amending the Indian Copyright Act in 1994, performer rights were added to Section

38 of the Act. These rights are expressly granted to Performers (as defined in Section 2(qq)), which includes singers providing a show (i.e., a live acoustic or visual presentation). Performers' rights are classified as related rights and are fully independent of the ownership of 'works.' They safeguard the interests of individuals who help make works available to the public.

### **THE 'INDUSTRY' STATUS**

The Indian film industry was designated "industry" status by the Indian government in 2001. National Film Development Corporation Limited (NFDC) was established by the government in 1975 to produce and co-produce films. The Central Government notified the entertainment sector, including films, as an acceptable activity under industrial concern in execution of the authorities provided by Section 2 (C) xvii Industrial Development Bank of India Act, 1964. The Reserve Bank of India (RBI) developed guidelines for banks to fund the film industry after it was granted "industry" status in 2001. This enabled much-needed institutional financing that had previously been unavailable.

Many foreign studios, such as Walt Disney, Warner Bros., and Sony, have partnered with local production houses to make and distribute films as a result of improved corporate governance policies and due to which new performers started coming in



the industry and the industry expanded and seeing the industry started touching new heights of success.

As from perspective of performers' rights, this creates an ideal environment for establishing a mechanism to implement pay models in other nations. The most notable element is that agreements connected to or involving persons involved in the film's production have been given a high priority. This applies to both the production management department and the creative team. Aside from the title registration, the language, the film producer's name, co- name, producer's dance filmmaker's name, and music director's name must all be provided. Importantly, the truth about any pending disputes with the key actors, actresses, or other talent from previous/previous enterprises must be stated. The application seeks information on the acquisition of intellectual property and related contracts.

However, in the case of music compositions, the singer's status and contract are not necessary to be disclosed in addition to the composer's and their backgrounds, copyright and intellectual property rights ownership. Rather, the music director's details or particulars are sought. Details concerning cinematography, art direction, costume design, studio facilities, sound recording, and dubbing have been requested from the applicant.

### LIVE PERFORMANCE IN THE COPYRIGHT ACT

A "live performance" will be defined as an artist performing a song in front of a group of people. However, what appears to be a harmless post from a devoted admirer may in fact be a violation of the artist's personal rights.

This is especially true if the fan is attempting to profit financially from a firsthand recording of the artist's live performance.


According to section 2 (m) (iv) of The Indian Copyright Act, 1957, the performer has the right to prevent their live performances from being broadcasted.

The Honourable Supreme Court declared in *Fortune Films International v. Dev Anand* that a film actor has no rights over his performance. The Indian Copyright Act of 1957, which included Sections 38 and 39, modified this position in 1994, providing protection to Performer's Rights. While establishing that performer's rights were distinct from copyright, the Delhi High Court held in *Super Cassettes Industries v. Bathla Cassette Industries* that re- recording a song without the authorization of the original artist was a violation of the performer's rights. In *Neha Bhasin v. AnandRaj Anand* the Delhi High Court considered what constitutes a "live performance." The Court stated that every performance, whether it is in front of an audience or in a studio, must be live in the first instance, the performer's right is breached if this performance is videotaped and later exploited without the performer's permission.

This judgement was an important step forward in the acknowledgment of performer's rights in India by the Indian Court.

### CONCLUSION

Though there are numerous copyright limits and concerns, a thorough understanding of copyright law and fair use practises will enable us to safely use copyrighted information for academic and research purposes. Before/during the



procurement/subscription of any materials, a sufficient level of understanding of copy right issues must be envisaged. According to the Indian copyright act of 1957, neither the publisher nor the facilitator is accountable for any infringement of copyrighted content, but the person who engages in the infringement activity is totally responsible for his actions.

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