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Protection of Performers' Rights Under the Copyright Regime: Issues and Challenges in The Digital Era

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ABSTRACT

We are living in a time where most of the things have gone digitalized or technology has taken over to make our life easy and more efficient, it has given new ways to communicate and express, but as we all know every coin has two faces and similarly this digital era has its own pros and cons. This advancement in the field of technology has made it easy for anyone to access the huge amount of data stored in digital form, which has raised issues related to copyrighted work or property protection. The creator and performers have history of getting exploited by the hands of owner of the copyrighted work because they used to hold majority of the rights like distribution or creation, there was some relief after 2012 amendment of The Copyright Act 1957 as it introduced the Indian copyright regime with moral rights and equal share of royalty. The Performer's rights remain a relatively new legal concept in India. After the amendment, Indian law recognizes performers as holders of a distinct set of rights, acknowledging their performances as intellectual creations and comparing their hard work to an inventor's development of a product or process, which requires legal recognition and protection. This paper brings forth the issues that are being faced at ground level by the owners and performers in order to protect their work and art that are being exploited on the digital platforms this study also shed light upon the modern trends that are a threat to copyright and determine whether current legal frameworks sufficiently handle the complexity. The study distinguishes and explains the rights of an owner and a performer that have created the work and explains the concept of moral rights that come attached with copyrighted work, under the name of neighbouring rights. In this backdrop, the current paper mainly focuses on highlighting the modern trends and technologies that are main issues in the protection of rights of a performer and simplifies the relation between copyright and performers' rights.

Keywords: Intellectual Property, Copyright, Digitalization, Performer's Right, Technology, WIPO,

INTRODUCTION

The first thing that comes in mind of a person that is not from law field is "what is intellectual property?" as being one of the complicated areas of law it is also very hard to explain but in layman language the intellectual property stands for creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce, anything that originate from somebody's mind that hold value is intellectual property. Patents, copyright, and trademarks are examples of legal protections for intellectual property that allow people to earn recognition or financial benefit from what they invent or create. By creating the right balance between the interests of innovators and the greater public interest, the IP system seeks to provide an environment in which creativity and innovation can flourish [1]. We know that today's society knowledge holds more power than money and a nation's social and economic development depends upon the production, diffusion and absorption of information and knowledge, and that's why it is important to protect these creations. There are many types of intellectual property but the one that is always surrounded by controversies is copyright. The word Copyright used to describe the rights that creators have over their literary and artistic works and these Works covered by copyright range from books, music, paintings, sculpture, and films, to computer programs, databases, advertisements, maps, and technical drawings [2]. As artistic work or creation is an intellectual production, a performance is also a creative work of a performer. The performer is the person that usually help in creation an art or work that turns into copyrighted work in future, we can also say that the help a copyright owner to create the artistic work, and as the performer is using its intellect to create or perform the work that's why they must have some rights over their work, thus this thinking gave birth to performers' right. The law on performers' rights is still in its formative state and there is various uncertainty over what the terms, performance, performer and performers' right mean. This article focuses on simplifying the meaning and application of performers' rights

The distribution of information is very fast these days and most of them is are transmitted through internet because it's the very easy and fastest way, with that the use of mobile phones and television are at its peak. This technological advancement has made a three pillars of communication naming telecommunications, multimedia, and broadcasting informatics getting used more and more. William Shakespeare's quote, "All the world's a stage, and all the men and women are merely players"¹ was spoken many years ago, yet its literal interpretation may have significant consequences for copyright issues in the digital realm. As technology progresses, it's important to recognize that AI has advanced in creating characters, including those from the

¹ All the world's a stage' is the opening line from a monologue by a character, Jaques, in William Shakespeare's play, As You Like It.

acting community. Looking ahead a few years, we may soon see films produced entirely by AI using its own algorithms, featuring performances that synthesize the faces of real actors. [3]

RELATIONSHIP BETWEEN COPYRIGHT & PERFORMER RIGHT

The relationship between copyright and performer's rights is complementary yet distinct within intellectual property (IP) law. While both aim to protect creative contributions, they address different stakeholders and stages of creative expression. India passed its first copyright legislation, in the year of 1914, which was modelled after the English Copyright Act of 1911². Later India brought a new law 'The Copyright Act, 1957'. This Act was amended in 1994 and 2012 to reflect the most recent advancements in information technology as well as meet the international standards for performers and copyrights. Initially there was no provision for the protection of performers' rights in the original 1957 Act, it was only after the 1994 amendment were certain performance rights recognized, which were then supplemented by other performer rights granted in the 2012 amendment. [4]

Copyright gives protection to the original work like a musical composition, literary work, or script and grants exclusive rights to the creator and author of that original work on the other hand Performer's Rights protect the live or recorded performance of a work that belong to the performer. Copyright protects the work from reproduction, distribution, adaptation, and performers right control recording, broadcasting, or monetizing of a particular performance. In India, performer's rights are acknowledged in Section 38 of the Copyright Act of 1957 (which was amended in 2012), in accordance with international agreements like the WIPO Performances and Phonograms Treaty (WPPT) [5]

The performer's right is defined under the Indian copyright act, its safe guard performers from the unlawful use of their work. The word 'performer' is defined under Section 2(qq) of the Copyright Act, a performer is defined to include an actor, singer, musician, dancer, acrobat, juggler, conjurer, snake charmer, a person delivering a lecture, or any other person making a visual or acoustic live presentation³.

Performers often rely on copyrighted works to create their performances. However, their rights do not override the copyright holder's authority over the original work [6], for example A musician performing a copyrighted song needs the composer's/licensor's permission to use the work but retains control over how their performance is recorded or broadcast. In *Time Warner Entertainment Co. v. RPG Netcom* [7] the court held that the goal of copyright law is to restrict the copying of physical substance and form in the sphere of literature and art⁴. It is effectively a negative right granted to the author, in that the Act does not grant the owner the right to publish its work, but rather the power to prohibit other persons from doing what the owner is only entitled to do under the Act.

RIGHTS OF THE PERFORMER UNDER THE INDIAN COPYRIGHT ACT 1957

Under the Indian Copyright Act, 1957, performers enjoy a robust framework of rights designed to protect both their economic interests and creative integrity. These rights are categorized into economic rights and moral rights, each addressing distinct aspects of a performer's legal entitlements.

Economic Rights of Performers

Right to Broadcast a Performance

A performer holds exclusive authority to permit or prohibit the broadcasting of their live performance. Unauthorized transmission through radio, television, or digital platforms constitutes copyright infringement. However, if the performance is incorporated into a cinematograph film, the rights over the recording vest with the film's producer. Despite this transfer, the producer cannot commercially exploit the recording without the performer's consent. If such exploitation occurs, the performer retains the right to claim royalties, ensuring they benefit financially from subsequent uses of their work.

Right to Reproduce and Distribute Recordings

Performers possess exclusive rights to reproduce, distribute, or commercially rent copies of their audio or visual recordings. This includes the authority to authorize third parties to create sound or visual recordings of their performances. However, any such authorization is bound by the scope of the agreed terms; unauthorized commercial use by third parties remains actionable. Crucially, the performer must obtain consent from all collaborators involved in the creation of the work, such as lyricists, composers, or co-performers, to lawfully exercise these rights.

Right to Communicate the Work

Beyond broadcasting, performers retain the exclusive right to communicate their work to the public through any medium, including wired or wireless platforms. This encompasses digital dissemination via social media, streaming services, or Over-The-Top (OTT) platforms, ensuring performers control how their work reaches audiences in an evolving digital landscape. [8]

Moral Rights Under Indian Law

² An Act to amend and consolidate the Law relating to Copyright. 1 & 2 Geo. 5. c. 46

³ Section 2(qq) The Copyright Act, 1957

⁴ *Time Warner Entertainment Co. v. RPG Netcom* AIR2007DELHI226

Moral rights, enshrined under Section 38A (for performers) and Section 57 (for authors) of the Copyright Act, safeguard the non-economic, personal connection between a creator and their work. These rights are perpetual, inalienable, and survive even after the transfer of copyright ownership.

Right of Attribution

The right of attribution ensures performers are recognized as the creators of their work. They may demand that their name be associated with the performance in all public uses or, conversely, remain anonymous if preferred. This right prevents scenarios where performers are denied credit, as exemplified in controversies like the Genda Phool case, where original creators were excluded from acknowledgments.

Right to Integrity

The right to integrity protects performers from distortions, mutilations, or modifications of their work that could harm their honour or reputation. For instance, a sexually objectified reinterpretation of a folk song divorced from its original socio-cultural context could violate this right by misrepresenting the performer's artistic intent. Courts may grant injunctions or damages to remedy such violations.

Subsidiary Rights

Indian law also recognizes ancillary rights to address broader ethical concerns. These include the right to withdraw a published work from circulation, prevent excessive criticism that devalues the work, and block unauthorized uses that violate the performer's artistic persona. Such provisions underscore the law's recognition of creative works as extensions of the performer's identity. [9]

INTERNATIONAL FRAMEWORK

The protection of performers' rights in a globalized world relies on a robust international legal framework designed to address the challenges of cross-border exploitation and technological evolution. Three foundational treaties—the Rome Convention (1961), the WIPO Performances and Phonograms Treaty (WPPT, 1996), and the Berne Convention (1886)—form the bedrock of this framework. Each treaty addresses distinct aspects of performers' rights, from economic safeguards to moral protections, while collectively fostering a cohesive system for international recognition and enforcement. [10]

The Rome Convention (1961)

Adopted in 1961, the Rome Convention⁵ marked a watershed moment in international intellectual property law by formally recognizing performers as rights holders alongside producers and broadcasters. Prior to its enactment, performers often lacked legal recourse against unauthorized use of their work, particularly in cross-border contexts. The Convention introduced minimum standards of protection, granting performers control over the broadcasting, recording, and reproduction of their live performances. A cornerstone of the treaty is the principle of "national treatment," which ensures that foreign performers receive the same legal protections as domestic artists in member states. While groundbreaking, the Rome Convention's scope remained limited to digital-era challenges, leaving gaps in addressing digital performances and emerging media. Its legacy lies in establishing performers as legitimate stakeholders in copyright law, setting the stage for future treaties to expand these protections.

The WIPO Performances and Phonograms Treaty (1996)

The WPPT⁶, adopted under the World Intellectual Property Organization (WIPO) in 1996, modernized the international framework to address the realities of the digital age. Recognizing the transformative impact of the internet and digital media, the treaty extended performers' rights to cover online distribution, streaming, and reproduction [11]. Notably, it introduced moral rights for performers, including the right to attribution and protection against distortions that harm their reputation—a significant leap beyond the Rome Convention's purely economic focus. The WPPT also mandated legal safeguards for technological measures like digital rights management (DRM), aiming to curb piracy in an era of effortless content replication. Its widespread ratification has profoundly influenced national laws, such as India's 2012 Copyright Act amendments, which incorporated digital performance rights. Judicial innovations like India's "dynamic injunctions" in cases such as *UTV Software v. 1337X.TO* (2019) [12] reflect the treaty's enduring relevance in combating online piracy.

The Berne Convention (1886)

Though primarily focused on authors' rights, the Berne Convention's⁷ principles have indirectly shaped the evolution of performers' protections. Established in 1886, it introduced foundational concepts like "national treatment" and "automatic protection," eliminating formal registration requirements for cross-border recognition. These principles were later extended to performers through subsequent treaties like the Rome Convention and WPPT. The Berne Convention's integration with modern agreements, such as the TRIPS Agreement under the World Trade Organization (WTO), further strengthened the global enforcement of intellectual property rights. While it does not explicitly address performers, its emphasis on equitable treatment and minimum standards laid the groundwork for a unified international approach to creativity and ownership.

⁵ International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations [496 U.N.T.S. 43](#) Signed: 26 October 1961

⁶ WIPO Performances and Phonograms Treaty (or WPPT) is an international treaty adopted in Geneva on 20 December 1996.

⁷ Berne Convention for the Protection of Literary and Artistic Works

9 September 1886; Bern, Switzerland

CURRENT DEVELOPMENTS AND TRENDS

Digital Streaming and Online Platforms

The Platforms like YouTube, Spotify, and Netflix dominate music and video distribution, they are present in everyone's phone. Performers often struggle to get fair compensation, as revenue models favour platform owners and producers. Performers' rights enforcement becomes harder when performances are shared globally within seconds.

Artificial Intelligence (AI) and Deepfakes

AI can mimic voices, faces, and performances (e.g., AI-generated music or deepfake videos). This Raises concerns over consent, identity misuse, and economic exploitation of performers without their involvement. Performers may lose control over their likeness or voice.

International Harmonization of Rights

Treaties like the WIPO Beijing Treaty on Audiovisual Performances (2012) recognize performers' rights globally. Stronger global recognition of moral and economic rights, especially for audiovisual performances (film, TV, etc.). More performers are now protected under law even in countries where they weren't before.

Expansion of Moral Rights

Growing emphasis on performers' moral rights—right to be credited and to object to distortion of their performance. Performers gain greater control over how their performance is used or altered, especially in remix culture and commercial edits.

Rise of Independent Artists and Direct Distribution

Performers now self-publish via platforms like Bandcamp, SoundCloud, and social media Greater autonomy, but also challenges in managing and enforcing rights without big-label support or legal infrastructure.

CHALLENGES IN DIGITAL ERA

Unauthorized Use and Digital Piracy

The ease of unauthorized recording, reproduction, and distribution of performances in the digital age has led to widespread infringement, with performers frequently encountering their works shared on social media and streaming platforms without consent, resulting in lost revenue and diminished control. This issue was addressed in *Taj Television Ltd. v. Rajan Mandal*⁸, where the Delhi High Court issued a landmark 'John Doe' order, granting an ex-prate injunction against unidentified cable operators illegally broadcasting the FIFA World Cup. The ruling established a critical precedent for rights holders to combat digital piracy by taking legal action against anonymous infringers, providing an essential mechanism to curb the unauthorized distribution of performances

Inadequate Remuneration from Digital Platforms

Despite the extensive dissemination of their work, performers often receive disproportionately low compensation from digital streaming platforms. Existing revenue-sharing models predominantly benefit producers and distributors, leaving performers with an inequitably small share of earnings. A pivotal case addressing this issue is *The Indian Singers Rights Association (ISRA) v. Chapter 25 Bar and Restaurant*⁹. In this, the ISRA initiated legal proceedings against the establishment for publicly playing songs performed by its members without authorization or royalty payments. The Delhi High Court upheld ISRA's claim, affirming performers' statutory right to royalties for the commercial exploitation of their works. The judgment reinforced the enforceability of performers' remuneration rights, particularly in commercial settings, and underscored the legal mandate to compensate performers for the unauthorized use of their performances.

Ambiguities in Legal Framework

Although the Indian Copyright Act recognizes performers' rights but there are still some ambiguities and inconsistencies in the law that hinder effective enforcement. Key challenges include unclear provisions on digital rights and the complexities of regulating cross-border content distribution. A notable case that highlights these issues is *The Indian Singers' Rights Association v. Night Fever Club & Lounge*¹⁰. In *The Indian Singers Rights Association (ISRA)* initiated legal action against the club for the unauthorized public performance of songs by its members. The Delhi High Court affirmed that performers retain exclusive rights and are entitled to royalties even when their performances are embedded in cinematographic films, barring specific contractual exceptions. This ruling exposed gaps in the legal framework, particularly concerning the scope of performers' rights across different media formats and the ambiguities surrounding royalty entitlements

The Emergence of AI as a Threat to Performers' Rights

⁸ *Taj Television Ltd. & Anr. vs. Rajan Mandal & Ors.* ([2003] F.S.R. 22)

⁹ *ISRA v. Chapter 25 Bar and Restaurant* CS (OS) 2068/2015 & IA No. 14261/2015

¹⁰ *The Indian Singers' Rights Association v. Night Fever Club & Lounge* 2016 SCC OnLine Del 5418

The advent of AI technologies capable of replicating voices and performances without authorization presents a growing challenge for artists, with instances of AI-generated content mimicking real performers raising serious concerns about identity theft and erosion of artistic authenticity. While jurisdictions like Tennessee have responded with legislation such as the ELVIS Act, India currently lacks robust legal safeguards against such misuse (AP News, Wikipedia). This issue was highlighted in *Arijit Singh v. AI Platforms*¹¹, where the renowned playback singer filed a lawsuit against AI platforms for unauthorized use of his voice and likeness. The Bombay High Court granted interim relief, prohibiting the platforms from exploiting Singh's vocal and visual identity, thereby affirming the violation of his personality rights. This landmark ruling not only addresses the immediate risks posed by AI-driven impersonation but also establishes a crucial judicial precedent for protecting performers' rights in an era of rapidly evolving digital replication technologies.

Limited Awareness and Enforcement Mechanisms

Many performers are unaware of their rights or lack the resources to enforce them. The absence of robust collective management organizations and support systems makes it challenging for performers to claim royalties or take legal action against infringements. In the case of *Neha Bhasin v. Anand Raj Anand*¹², the singer Neha Bhasin filed a case concerning the unauthorized use of her live performances. The court recognized that both recorded and live performances are protected under performers' rights, and unauthorized use constitutes infringement. The case highlights the need for greater awareness among performers regarding their rights and the importance of enforcement mechanisms to protect these rights effectively.

Global Enforcement Challenges in Protecting Performers' Digital Rights

The borderless nature of digital content creates significant jurisdictional complexities in safeguarding performers' rights, as unauthorized use in one jurisdiction can instantly impact artists worldwide while making legal remedies difficult to pursue. This challenge was addressed in *UTV Software Communication Ltd. v. 1337, to & Ors.*¹³, where the Delhi High Court pioneered the "dynamic injunction" mechanism - permitting rights holders to block not only identified pirated content websites but also their mirror/redirected versions without needing separate litigation for each infringement. By establishing this flexible legal tool, the judgment created an important precedent for combating cross-border digital piracy, offering rights holders a more practical solution to enforce protections in an increasingly interconnected digital landscape where content flows freely across territorial boundaries. The ruling recognizes the need for legal frameworks to evolve alongside digital distribution models that routinely circumvent traditional jurisdictional limitations.

CONCLUSION

In today's fast-evolving digital landscape, the protection of performers' rights stands at a critical crossroads. While international instruments such as the Rome Convention, the WPPT, and the Berne Convention offer a foundational framework for economic and moral rights, the advent of advanced digital technologies, including AI-generated content, algorithmic distribution, and borderless streaming, has exposed significant gaps in this framework. Recent cases, like *Arijit Singh v. AI Platforms* (2024), highlight the legal system's struggle to keep pace with synthetic media and voice cloning, signaling the urgent need for modernized protections.

In India, despite strong legislative provisions safeguarding performers' economic and moral rights, enforcement remains inconsistent, especially for those in regional and traditional arts. Unauthorized digital reproduction and distribution on social media and streaming platforms not only undermine the creative labour of artists but also erode their economic livelihood. Meanwhile, technological tools that facilitate perfect and instantaneous reproduction of performances contribute to widespread piracy and unauthorized use, often with limited accountability. A future-proof approach to protecting performers must be multi-dimensional. Legal reforms should explicitly address emerging technologies such as AI-generated performances, and robust international collaboration is essential to harmonize cross-border enforcement. Judicial innovations like India's "John Doe" orders and the adoption of digital rights management technologies can significantly enhance enforcement mechanisms.

Additionally, performers must be empowered through education and awareness of their legal rights. Licensing systems, equitable remuneration models, and collaboration between industry stakeholders can create an ecosystem where creativity is respected and fairly compensated. Ensuring inclusivity by protecting marginalized and regional performers is vital to preserving cultural diversity in the global digital sphere.

Ultimately, as performers increasingly turn to digital platforms for content creation and distribution from live social media streams to music streaming services, the law must evolve to recognize their changing realities. Protecting performers' rights is not merely about legal compliance; it is about sustaining the value of human creativity in an age dominated by data, algorithms, and automation. By bridging legal gaps, leveraging technology, and promoting collaboration, the international community led by countries like India can ensure that performers are not left behind in the digital revolution, but rather, are celebrated and protected as key contributors to global cultural heritage.

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