

## **COPYRIGHT PROTECTION OF PERFORMERS IN INDIA**

*Deepika Dwivedi\* & Dr. Vivek Kumar\*\**

### ***Abstract***

*This paper deals with the copyright protection which is given to the performers under the Copyright Act of India. It discuss about the definition of performers as given under the Copyright Act, background of the performers right in India. It also mentions the International conventions for the protection of the performer's rights. Various rights exclusive and moral rights are also mentioned in the paper. It also talks about those acts which amounts to infringement of the rights conferred to the performers along with the remedies provided in the act for their protection.*

**Keywords:** *Performer rights, copyright, intellectual property rights, sound recording, video recording, broadcast, injunction, Anton pillar order, etc.*

---

\* Student-BALLB(H) @ Law College Dehradun, Uttaranchal University, Dehradun (Uttarakhand)

\*\* Asst. Professor of Law @ Law College Dehradun, Uttaranchal University, Dehradun (Uttarakhand)

## INTRODUCTION

Copyright is a type of intellectual property protection which grants exclusive right for a certain term of term of year to an author, composer, etc., or his assignee to print, publish and sell copies of his original work. Performer's right were not recognised for a very long term by the Indian Copyright Act, like musicians, singers, actors, acrobats, etc<sup>1</sup>.

Following conclusions of Uruguay round of multilateral trade Negotiation on 15 December 1993, the parliament enacted the copyright (second amendment) Act in 1994 as it became clear by then that it would be obligatory for India to protect the rights of performer in order to become a member of the upcoming. The object of the amendment act was to extend protection to all the performers by means of a special right, to be known as the "performer's right" in respect of the making of sound recording or visual recording of their live performances, and of certain related act<sup>2</sup>.

**Meaning and definition:** The definition of 'performance' has been amended by the Amendment Act of 1994 to mean, in relation to performer's right "*any visual or acoustic presentation made live by one or more performer*". Further the definition of 'performer' has also been inserted by the 1994 Amendment. Section 2 (qq) of the Copyright Act, 1957 defines performer to include an actor, singer, juggler, musician, dancer, acrobat, conjurer, snake charmer, a person delivering a lecture or any other person who makes a performance.

A person shall not be treated as a performer, whose performance in a cinematograph film is casual or incidental in nature and in the normal course of the practise of the industry is not acknowledged anywhere including in the credit of the film. Such a person, however shall be considered as performer for the purpose of section 38B(b) which provides moral right to performer to restrain or claim damages in respect of any distortion, mutilation or other modification of his performance that would be prejudicial to his reputation<sup>3</sup>.

## BACKGROUND OF PERFORMER'S RIGHT

Prior to Copyright (second amendment) Act 1994, the copyright Act, 1957, did not cover any right to the performer. There performance did not come under any of the subject matter of copyright viz. Literary, dramatic, musical, or artistic work, cinematograph film or record. The

---

<sup>1</sup> Shweta S. Deshpande, *Copyright Protection of Performers Right*, Journal of Library & Information Technology, 2008, Vol. 28, No. 3

<sup>2</sup> Ahuja V.K, *Law of Copyright and Neighboring Rights*, (LexisNexis, Haryana, Second Edition)

<sup>3</sup> Id.

act also did not confer anything like neighbouring or related right on performers, as it did to the broadcasting authority. The question whether copyright subsisted in the performance of a performer was decided by the Bombay high court, in negative in the case of *Fortune films International v. Dev Anand*<sup>4</sup>.

## INTERNATIONAL CONVENTION FOR THE PROTECTION OF PERFORMERS

### 1. Rome Convention ,1961

Under this convention following rights to performer were granted under Article 7 of the convention:

- Right to prevent the broadcasting and communication to the public of their live performance without their consent.
- Right to prevent fixation of their live performance without their consent.
- Right to prevent reproduction of the fixation of their live performances without their consent under the following circumstances :-
  - a) If the original fixation was made without their consent,
  - b) If reproduction is made for purpose different from these for which the performer gave their consent.

If the original fixation is made in accordance with permitted exceptions under Article 15 and the reproduction is made for purposes different from these referred to in Article 15<sup>5</sup>.

### 2. Agreement on Trade Related Aspects of Intellectual property rights (TRIPS, 1994).

Article 14 of TRIPS gives following rights to performers:

- To prevent fixation of their live performance on a phonogram. The coverage of this provision is narrower than Rome convention as it is restricted to phonogram whereas Rome convention deals with fixation on any medium.
- To prevent broadcasting by wireless means and communication to the public of fixed performance as in the Rome convention.

---

<sup>4</sup> AIR 1979 Bom 17, Supra note 2

<sup>5</sup> Chawla Alka, *Law of Copyright*, (LexisNexis, Haryana, First Edition, 2013)

There are no rights of broadcasting and communication to the public of fixed performance as in the Rome convention. The period of protection for performer's right is 50 years from the end of the calendar year in which the fixation was made on their performance<sup>6</sup>.

### 3. WIPO Performances and Phonograms Treaty (WPPT,1996)

WPPT gives economic rights and moral rights to the performers. Article 5 of the Treaty approximates Article 6 of the Berne convention Paris Act in require that performer receive rights of attribution and integrity in their live aural performance or performances fixed in phonograms.

This is the first moral right have been prescribed for performance in an international agreement.

Treaty aims that that the performers receive the economic rights to fix their performance and to broadcast and communicate unfixed performances to the public (Article 6); to reproduce their performances fixed in phonograms, directly or indirectly (Article 7) and to distribute performance fixed in phonograms, to the public (Article 18(1)). The Treaty also requires a limited right for commercial public rental of performance fixed in phonograms (Article 19) and a "right of making available.....fixed performance" that corresponds to the WIPO copyright treaty rights of communication to the public and encompasses means by which "members of the public may access them from a place and a time individually chosen by them" (Article 10).

The treaty gives phonogram producers comparable rights of reproduction (Article 11), distribution (Article 12), rental (Article 13) and making available (Article 14) Article 15 entitles both performers and phonograms producers to equitable remuneration for the use of phonograms for broadcasting or communicating to the public<sup>7</sup>.

### 4. Beijing Treaty on Audio-Visual performance, 2012

The protection of performing artists in audio-visual domain was kept out of WPPT, 1996, because no consensus was obtained between the countries. After that, several committees of experts and standing committees were organized by WIPO to re discuss this matter. The Diplomatic conference, 2000, deals exclusively with the

---

<sup>6</sup> Id

<sup>7</sup> Supra note 5

protection of audio- visual performers but the differences in the opinion were not resolved and that made it impossible to adopt the treaty. On June 26, 2012 WIPO adopted the Beijing Treaty on Audio-Visual performances which seeks to strengthen the weak position of performers in this industry by providing a legal basis for the international use of audio-visual productions, both in traditional media and in digital networks. This safeguards the rights of performers against the unauthorised use of their performances in audio-visual media, such as television, film and video<sup>8</sup>.

## **RIGHTS OF PERFORMER UNDER THE COPYRIGHT PROTECTION ACT**

The following are the exclusive rights given to the performer under the Copyright Act:

- 1) Right to make sound recording or visual recording of the performance.

Under section 1 (xx) of the Copyright Act, the performer has right to make sound recording or visual recording to make sound recording or visual recording of his performance. He also has right to authorize the recording of live performances, and has exclusive right to make sound recording from which such sounds may be produced by way of any medium on which such recording is made or method by which the sounds are reproduced . Copyright protection will only be given when the sound recording is lawfully made. And if it contains any material which is an infringement of any literary, dramatic, or musical work, protection will not be given.

- 2) Right to produce a sound recording or visual recording of the performance.

Performer has another right to produce sound recording or visual recording of his performance. He also has the right to make copies of the recording, copies to the public or to rent or lend those copies.

Following particulars must be displayed in the recording:

- Copy of the certificate granted by the board of film certification.
- Name and address of the person who has made the video film and a declaration that he has obtained the necessary licence or consent of the owner of the copyright in the work for making the video film , and
- Name and address of the owner of the copyright in such work.

---

<sup>8</sup> Supra note 5

If failed in providing the above particulars, it will be a punishable offence.

3) Right to broadcast the performance.

Performers are given with another important right to prevent their live performance being broadcasted. Broadcasting means communicating to the public by any means of wireless diffusion in form of signs, sounds and visual image, or by wire, including rebroadcasting.

4) To communicate the work to the public otherwise than by broadcast.

Performer has right to prevent the communication to the public otherwise than by broadcast.

Other than these, Section 38 B provides two moral rights to the performer of a performance. These rights are available to them independently of their rights after assignment either wholly or partially.

They are as follows:

- i. The right to be identified as the performer of his performance except where omission is dictated by the manner of the use of the performance that would be prejudicial to his reputation.
- ii. The right to restrain or claim damages in respect of any distortion mutilation or other modification of his performance that would be prejudicial to his reputation<sup>9</sup>.

## **INFRINGEMENT OF PERFORMER'S RIGHTS**

Section 38 of the Copyright Act, provides for the protection of the rights of the performers from the person who without consent of the copyright holder, does any of the mentioned Acts, then he will be deemed to have infringed performers rights, those acts are:

- a. Sound recording or visual recording of the performance, or
- b. Reproduction of the sound recording or visual recording or reproduction for the purpose different from those for which performer gave his consent ,
- c. Broadcasts the performance , and
- d. Communicate the performance to the public otherwise than by broadcast.

---

<sup>9</sup> Supra note 1

The offence of infringement will only be held committed when the rights of the performer are in continuance of the protection under the Act<sup>10</sup>.

## **REMEDIES AGAINST INFRINGEMENT OF PERFORMERS RIGHTS**

Under sections 55 and 66 to 73 of the Copyright protection Act, remedies are available which are given to the holder of the copyright. They are given under:

- Civil remedies, under this the holder of the copyright or his assignee or his exclusive licensee or a legatee may obtain injunction or claim damages.
- Criminal remedies, other than the civil remedies copyright act enables criminal proceedings as well against the infringer. The offence of infringement is punishable with imprisonment which may extent from a minimum of three years or with a fine of the order of rupees fifty thousand to two lakhs.
- Anton pillar order, in appropriate cases the court may on an application by the plaintiff pass an ex- parte order requiring the defendant to permit the plaintiff accompanied by solicitor or attorney to enter his premises and take inspection of relevant documents and Articles and take copies thereof or remove them for safety. The need of such an order arises where there is a serious danger to relevant documents and infringing Articles are being removed or destroyed so that ends of justice is not defeated.<sup>11</sup>

## **CONCLUSION**

The above paper concludes that the copyright is a type of intellectual property right protection granted to the creators of the original works of authorship. Copyright law gives exclusive and moral rights to the performers like actors, musicians, jugglers, snake charmer etc. Such protection leaves a positive impact in encouraging persons to improve their creativity. Various international conventions are also mentioned which discuss or grant certain rights to the performers.

---

<sup>10</sup> Supra note 1

<sup>11</sup> Supra note 1