

SHORT COMMUNICATION

Copyright Protection of Performers Rights

Shweta S. Deshpande

*PG Department of Studies in Law
Karnataka University, Dharwad-580 003
E-mail: Shweta_shurpali@yahoo.co.in*

ABSTRACT

The paper deals with copyright protection of performers rights. It defines the term performers rights and discusses the provisions of copyright law which deal with the protection of performers rights.

Keywords: Performers rights, copyright, intellectual property, sound recording, visual recording, broadcast, injunction, Anton Pillar order.

1. INTRODUCTION

Copyright is a form of intellectual property protection granted under the law to the creators of the original works of authorship.¹ It is an exclusive right given by law for a certain term of years to an author, composer, etc., (or his assignee) to print, publish and sell copies of his original work.

In India the first Copyright Act was passed in 1914. It was a replica of English Copyright Act of 1911 suitably modified to make it applicable to the then British India. The Act, presently in force was legislated in the year 1957 and is known as Copyright Act, 1957 as amended by Copyright (Amendment) Act, 1999.

The Indian Copyright Act for a very long time did not recognise the rights of performers like musicians, singers, actors, acrobats, etc. It was only recently when the technological changes threatened the livelihood of performers that the law intervened to protect performers. In the year 1994, the Copyright Act was amended. The amendment introduced the recognition of the rights of the performer. These rights are called performers rights. Section 38 of the Copyright Act confers rights to performers like actors, dancers, jugglers, acrobats etc. Under section 2 (gg) of the Act, "performer" includes an acrobat,

musician, singer, actor, juggler, snake charmer, a person delivering lecture, or any other person who makes a performance. "Performance" in relation to performers' right means any visual or asoutic presentation made by one or more performers. For example, student performing in a school play is a performer within the meaning of section 2(gg) and his rights are well within the scope of protection accorded by Section 38.²

2. RIGHTS OF A PERFORMER UNDER THE COPYRIGHT PROTECTION ACT

The performer has the exclusive right to do the following under the Copyright Protection Act:

2.1 Right to Make Sound Recording or Visual Recording of the Performance

A performer has the right to make sound recording or visual recording of his performance under Section 1 (xx) of the Copyright Protection Act. He also has the right to authorise the recording of a live performance, and the exclusive right to make sound recording from which such sounds may be produced regardless of the medium on which such recording is made or method by which the sounds are reproduced. Copyright will subsist in a sound recording only if it is lawfully

made. If the recording includes any material which is an infringement of any literary, dramatic or musical work, copyright will not subsist in the sound recording.

Musical works and sound recordings embodying the music are considered separate subject-matter for copyright. The copyright in the recording of music is separate from the copyright in the music. Copyright in the music vests in the composer and the copyright in the music recorded vests in the producer of the sound recording. Where the song has not been written down and the composer who is also the performer records the song two copyrights come into existence simultaneously, one for the music and one for the sound recording.³

2.2 Right to Produce a Sound Recording or Visual Recording of the Performance

A performer has a right to produce sound recording or visual recording of his performance. He has the right to make copies of the recording, the right to issue copies of the recording to the public, the right to rent or lend copies. However, the recording must display following particulars:

- (a) A copy of the certificate granted by the Board of Film Certification
- (b) The name and address of the person who has made the video film and a declaration that he has obtained the necessary license or consent of the owner of the copyright in the work for making the video film, and
- (c) The name and address of the owner of the copyright in such work.

Failure to comply with the above is a punishable offence. This is done with a view to check and detect piracy.

2.3. Right to Broadcast the Performance

Performers also have the right to prevent their live performances being broadcast.

'Broadcast' means communication to the public, (i) by any means of wireless diffusion, whether in any one or more of the forms of signs, sounds, and visual image, (ii) or by wire, and includes a rebroadcast.⁴ In case of programme broadcast, which includes literary, dramatic or musical works or records in which independent copyright may subsist, broadcasting organisation should obtain the consent or license of the copyright owners in the work in question.

2.4 To communicate the Work to the Public otherwise than by Broadcast

Any other means to communicate the work to the public, other than the broadcast.

3. INFRINGEMENT OF PERFORMERS RIGHTS

Section 38 of the Copyright Protection Act strengthens the rights of the performers by making certain provisions. Under this if any person without the consent of the performer, does any of the following acts, he will be deemed to have infringed performers rights. These acts includes :

- (a) Sound recording or visual recording of the performance; or
- (b) Reproduction of the sound recording or visual recording or reproduction for the purposes 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.

However, the above Acts are said to be infringed by a person only when these Acts are committed during the continuance of the performers rights.

When a performer has consented to the incorporation of his performance in a cinematograph film the performer loses the right to complain of infringement of that performance which means he assigned his entire rights and that performance to the producer of the cinematograph film.

4. ACTS NOT CONSTITUTING INFRINGEMENT OF A PERFORMERS RIGHTS

Under Section 39, the following acts do not constitute infringement of a performer's right:

- (a) Making of any sound recording of or visual recording for private use of the person making such recording or society for the purpose of bonafide teaching or research
- (b) Fair dealing of excerpts of a performance in reporting of current events or for bonafide review, teaching or research or
- (c) Other acts with any necessary adaptations and modifications which do not constitute infringement

of copyright under Section 52. These acts are reproduction for the use of judicial proceeding—Section 52(1) (c), reproduction for the use of members of a legislature—Section 52(1) (d), and the use in a certified copy in accordance with any law in force—Section 52(1) (e).

- (d) Use of sound recording or visual recording of the performance in the course of the activities of an educational institution if the audience are limited to the students, and parents and guardians of the students and person directly connected with the activities of the institution—Section 52 (1) (i).

The aforesaid can be done only with the sound recording or visual recording of the performance. Accordingly the making of a sound recording or visual recording for the aforesaid purposes cannot also be an infringement.

Where copyright or performer's right subsists in respect of any work or performance that has been broadcast, a license to reproduce such broadcast will require the consent of the owner of rights or performer, as the case may be, or both of them.

5. REMEDIES AGAINST INFRINGEMENT OF PERFORMERS RIGHTS

The following remedies may be availed in a suit against infringement of performers rights under Sections 55 and 63 to 70 of the Copyright Protection Act.

- (i) Civil remedies: Under civil remedies, the owner of the copyright, or his assignee or his exclusive licensee or a legatee may obtain (a) injunction or (b) claim damages
- (ii) Criminal remedies: In addition to civil remedy the Copyright Act enables the owner of the copyright to take criminal proceedings against the infringer. The offence of infringement of copyright is punishable with imprisonment which may

extend from a minimum period of six months to a maximum period of three years or with a fine of the order of Rs 50,000/- to Rs 2.00 lakhs

- (iii) 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 safe custody. The necessity of such an order arises where there is a grave danger of relevant documents and infringing articles are being removed or destroyed so that ends of justice will not be defeated.

6. CONCLUSION

The above discussion reveals that copyright is a form of intellectual property protection granted under the law to the creators of the original works of authorship. Copyright law confers exclusive right to performers like actors, musicians, jugglers, snake charmers, etc. to do certain acts. These rights conferred on the performers are a positive step in encouraging their creativity.

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About the Author

Shweta Deshapande obtained LLM from Karnatak University, Dharwad. She has submitted the doctrinal research on Problems and Perspective of Waste Management in India under the guidance of Dr C.Rajashekhar, Dean, Faculty of Law, Karnatak University, Dharwad, Karnataka.