

**INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES**
[ISSN 2581-5369]

Volume 9 | Issue 5

2026

© 2026 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This article is brought to you for free and open access by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact support@vidhiaagaz.com.

To submit your Manuscript for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to submission@ijlmh.com.

Significance of Performer's Rights in the Copyright Regime

BORA SAIKUMAR*

ABSTRACT

Performers occupy a distinctive position within the copyright system. They may not be the authors of the underlying literary, dramatic or musical works, yet their skill, interpretation and personality are essential to the communication of creative works to the public. Indian copyright law recognises this contribution through the statutory category of "performer's right". This paper examines the significance of performer's rights under the Copyright Act, 1957, with particular attention to sections 2(q), 2(qq), 38, 38A, 38B and 39. It traces the development of performer protection, considers the changes introduced by the Copyright (Amendment) Act, 1994 and the Copyright (Amendment) Act, 2012, and evaluates the relationship between performer's rights and copyright in underlying works, sound recordings and cinematograph films. The paper also considers Indian judicial treatment, including Indian Performing Right Society Ltd. v. Aditya Pandey, the Indian Singers Rights Association litigation concerning studio performances, and the Delhi High Court's 2025 decision in A.R. Rahman v. Ustad Faiyaz Wasifuddin Dagar. International developments under the Rome Convention, the WIPO Performances and Phonograms Treaty and the Beijing Treaty provide a comparative framework. The paper argues that the statutory framework has substantially strengthened the legal position of performers, while digital exploitation, contractual bargaining, attribution, remuneration and cross-border uses continue to raise practical questions. The paper concludes with suggestions aimed at improving awareness, contractual transparency, collective management and effective enforcement.

Keywords: *Performer's Rights, Copyright Law, Moral Rights, Digital Exploitation, Neighbouring Rights*

I. INTRODUCTION

Copyright law traditionally focuses on authors and original works. In modern cultural industries, however, a creative work frequently reaches the public through the contribution of another category of participants: actors, singers, musicians, dancers, lecturers and other performers. A performance may involve interpretation, timing, expression, voice, movement and personal skill even though the performer did not create the underlying literary or musical

* Author is a Student at Aurora Higher Education and Research Academy, Hyderabad, Telangana, India.

work. The law therefore faces a distinct question: how should the legal system protect the performer's contribution without confusing the performer's rights with copyright in the underlying work?

Indian law addresses this question by recognising a special statutory right in relation to a performance. Section 2(q) defines "performance", in relation to performer's right, as a visual or acoustic presentation made live by one or more performers, while section 2(qq) gives an inclusive definition of "performer". Section 38 establishes the performer's right and provides a fifty-year term calculated from the beginning of the calendar year following the year in which the performance is made. Sections 38A and 38B then add economic and moral dimensions to the protection. The current statutory scheme is therefore more detailed than the original framework and reflects the legislative recognition that performers require legal protection distinct from the copyright of authors and producers.¹

The importance of this subject has increased with digital dissemination. Performances can now be recorded, copied, streamed, uploaded, edited and communicated globally with comparatively little technical difficulty. A performer may therefore face exploitation not only through unauthorised recording of a live event but also through later uses of a fixation. The Copyright (Amendment) Act, 2012 is particularly important in this context because it introduced sections 38A and 38B and expressly addressed exclusive rights, royalties in specified commercial uses and the moral rights of performers.²

This paper adopts a doctrinal legal research methodology. It examines statutory provisions, legislative materials, judicial decisions and international instruments, with the principal objective of analysing the significance and limits of performer's rights within the Indian copyright regime.

II. RESEARCH QUESTIONS

1. What is the legal nature and scope of performer's rights under the Copyright Act, 1957?
2. How did the 1994 and 2012 amendments strengthen the protection available to performers?
3. How do performer's rights interact with copyright in underlying literary and musical works, sound recordings and cinematograph films?

¹ Copyright Act, 1957, No. 14 of 1957, §§ 2(q), 2(qq), 38–39A (India), https://copyright.gov.in/Copyright_Act_1957/chapter_i.html.

² *Id.* §§ 38A–38B; Copyright (Amendment) Act, 2012, No. 27 of 2012, §§ 26–27 (India).

4. What practical challenges arise in enforcing performers' economic and moral rights in the digital environment?
5. What measures could improve effective protection while preserving legitimate contractual and creative uses?

III. RESEARCH OBJECTIVES

- To explain the statutory foundation and scope of performer's rights in India.
- To examine the development of the law through the 1994 and 2012 amendments.
- To analyse relevant judicial decisions concerning performers and related copyright interests.
- To place Indian law in the context of international protection for performers.
- To identify practical challenges arising from digital exploitation and contractual arrangements.
- To suggest measures that may improve awareness, transparency and enforcement.

IV. RESEARCH METHODOLOGY

The research is doctrinal and primarily qualitative. Primary materials include the Copyright Act, 1957, the Copyright (Amendment) Act, 2012, reported judicial decisions and relevant international instruments administered through WIPO. Secondary material is used for contextual explanation. The analysis focuses on the legal relationship between performer's rights and neighbouring copyright interests rather than on empirical measurement of performers' earnings or industry practices. No claim is made that the doctrinal analysis represents the experience of every performer or every segment of the Indian entertainment industry.

V. CONCEPT AND EVOLUTION OF PERFORMER'S RIGHTS

Performer's rights are generally understood as rights related to copyright, often described as "neighbouring" or "related" rights. The basic rationale is that a performer contributes to the public presentation of creative expression even when the performer is not the author of the underlying work. Performers' rights developed internationally alongside the growth of sound and audiovisual recording technologies. The Rome Convention of 1961 provided an early international framework for their protection, and later instruments addressed digital uses and audiovisual performances more specifically.³

³ WORLD INTELLECTUAL PROPERTY ORGANIZATION, *Summary of the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations* (1961), <https://www.wipo>

The Indian framework developed progressively. The 1994 amendment introduced the modern statutory performer's right and inserted the definition of "performer". The legislative change was significant because it separated the legal treatment of live performances from the broader copyright in literary and musical works. The Delhi High Court's decision in *Indian Performing Right Society Ltd. v. Aditya Pandey* provides a useful account of the relationship between underlying works, sound recordings and performance-related rights. The Court emphasised that the statutory scheme distinguishes different copyrightable subject matters and the rights associated with them.⁴

The 2012 amendment represented another major development. Sections 38A and 38B were inserted after section 38. Section 38A gives performers specified exclusive rights concerning recording, reproduction, issuing copies, communication to the public, commercial rental and broadcasting or communication of the performance, subject to the Act. It also contains a royalty provision where a performer has consented in writing to the incorporation of the performance in a cinematograph film and the performance is made for commercial use. Section 38B separately protects the right to be identified and the right against certain prejudicial distortion, mutilation or modification. These provisions show that performer protection is not confined to preventing an initial unauthorised recording; it also concerns later exploitation and the performer's personal connection with the performance.⁵

VI. STATUTORY FRAMEWORK UNDER THE COPYRIGHT ACT, 1957

A. Definitions of performance and performer

Section 2(q) defines "performance", in relation to performer's right, as any visual or acoustic presentation made live by one or more performers. Section 2(qq) includes actors, singers, musicians, dancers, acrobats, jugglers, conjurers, snake charmers, persons delivering lectures and any other person who makes a performance. The inclusive wording allows the provision to cover different forms of human performance rather than limiting protection to conventional stage or screen actors. Since 2012, however, a proviso excludes a person whose performance in a cinematograph film is casual or incidental and, in the normal course of industry practice, is

http://www.wipo.int/en/web/treaties/ip/rome/summary_rome; WORLD INTELLECTUAL PROPERTY ORGANIZATION, *Summary of the WIPO Performances and Phonograms Treaty (WPPT) (1996)*, https://www.wipo.int/en/web/treaties/ip/wppt/summary_wppt; WORLD INTELLECTUAL PROPERTY ORGANIZATION, *Beijing Treaty on Audiovisual Performances*, <https://www.wipo.int/en/web/beijing-treaty>.

⁴ *Indian Performing Right Society Ltd. v. Aditya Pandey*, FAO (OS) Nos. 423–424 of 2011, 2012 SCC OnLine Del 2645, ¶¶ 31, 36–39 (Delhi High Ct. May 8, 2012), <https://indiankanoon.org/doc/85777093/>.

⁵ Copyright (Amendment) Act, 2012, No. 27 of 2012, §§ 26–27 (India), https://copyright.gov.in/Documents/CRACKT_AMNDMNT_2012.pdf.

not acknowledged anywhere, including in the credits of the film, except for the purpose of the moral right in section 38B(b).⁶

The requirement that the presentation be live has generated interpretative questions, particularly for studio recordings. In *The Indian Singers Rights Association v. Dharma Productions Pvt. Ltd.*, the Delhi High Court considered a claim involving performances originally incorporated into cinematograph films. In an interim order dated 22 December 2020, the Court referred to the earlier decision in *Neha Bhasin v. Anand Raj Anand*, where it had been observed that every performance has to be live in the first instance, whether before an audience or in a studio, and that the singer's performer's right claim raised a serious triable case. The Court recorded that reasoning but, as the rival contentions and the underlying agreements were yet to be considered, deferred any direction to the defendant to deposit the amount claimed until the parties had completed their pleadings. The order is nonetheless important because modern music and audiovisual production frequently involves controlled studio environments rather than conventional public performances.⁷

B. Section 38: the special right and duration

Section 38 provides that where a performer appears or engages in a performance, the performer has a special right known as the performer's right in relation to that performance. The right subsists for fifty years from the beginning of the calendar year following the year in which the performance is made. The provision therefore creates a legal interest separate from the copyright in the underlying work.⁸

C. Section 38A: economic and exclusive rights

Section 38A is central to the modern protection. It covers the making of sound or visual recordings of the performance and includes reproduction, issuing copies to the public, communication to the public and commercial rental or sale of copies of the recording. It also covers broadcasting or communication of the performance to the public, subject to the statutory qualification concerning a performance that is already broadcast. The provision consequently gives performers a legally recognised role in controlling specified forms of exploitation of their performance.⁹

⁶ Copyright Act, 1957, No. 14 of 1957, §§ 2(q), 2(qq) & proviso (India), https://copyright.gov.in/Copyright_Act_1957/chapter_i.html; Copyright (Amendment) Act, 2012, No. 27 of 2012, § 2(iv) (India).

⁷ *The Indian Singers Rights Association v. Dharma Productions Pvt. Ltd.*, CS (COMM) 562/2020, ¶¶ 5–9 (Delhi High Ct. Dec. 22, 2020) (order), <https://indiankanoon.org/doc/197809860/>; *Neha Bhasin v. Anand Raj Anand*, 132 (2006) DLT 196, 2006 (32) PTC 779, ¶ 35 (Delhi High Ct. Apr. 20, 2006).

⁸ Copyright Act, 1957, No. 14 of 1957, § 38 (India), https://copyright.gov.in/Copyright_Act_1957/chapter_viii.html.

⁹ *Id.* § 38A.

Section 38A also recognises the contractual reality of cinematograph films. Once a performer has, by written agreement, consented to the incorporation of the performance in a film, the performer cannot, in the absence of a contract to the contrary, object to the producer's enjoyment of the performer's right in the same film. At the same time, the proviso states that the performer is entitled to royalties "in case of making of the performances for commercial use". The interaction between consent, contractual terms and statutory royalty protection is therefore a significant area of practical importance.¹⁰

D. Section 38B: moral rights

Economic rights do not exhaust the legal interests of performers. Section 38B recognises moral rights independently of assignment. A performer may claim to be identified as the performer, subject to the statutory exception where omission is dictated by the manner of use. The performer may also restrain, or claim damages for, distortion, mutilation or other modification that would be prejudicial to the performer's reputation. The Explanation distinguishes such prejudice from the mere removal of portions for editing, or to fit a recording within a limited duration, and from modifications required for purely technical reasons.¹¹

E. Section 39: exceptions

Performer's rights are not absolute. Section 39 identifies circumstances in which acts will not be treated as infringement. These include recordings made for private use or solely for bona fide teaching or research, and fair-dealing uses of excerpts for reporting current events or for bona fide review, teaching or research, subject to the statutory conditions. Section 39A also applies specified provisions of the Act to performer's rights with necessary adaptations and modifications. The exceptions demonstrate that the statutory regime seeks to balance performer protection with socially useful and legally permitted uses.¹²

VII. RELATIONSHIP WITH UNDERLYING COPYRIGHT

A central feature of performer's rights is that they do not automatically make the performer the author or owner of copyright in the underlying work. For example, a singer may perform a song written by a lyricist and composed by a composer. The singer's performance can attract performer's rights, while copyright in the lyrics and musical composition remains a separate legal interest. Likewise, a sound recording may have its own copyright and the producer may have rights in that recording. These interests can coexist rather than merge into a single right.

¹⁰ *Id.* § 38A(2) & proviso.

¹¹ *Id.* § 38B & Explanation.

¹² Copyright Act, 1957, No. 14 of 1957, §§ 39, 39A (India), <https://copyright.gov.in/Documents/Copyrightrules1957.pdf>.

Indian Performing Right Society Ltd. v. Aditya Pandey illustrates the importance of maintaining these distinctions. The Delhi High Court examined claims concerning copyright in lyrics and musical compositions and the rights associated with sound recordings and public communication. The judgment explains that the Copyright Act treats literary and musical works, cinematograph films and sound recordings as mutually exclusive categories. On that footing the Court held that the communication of a sound recording to the public by its owner does not encroach on the right of the owners of the underlying lyrics and music to perform those works in public, a right which the owner of the sound recording does not have.¹³ The decision thus shows that the reach of a licence depends on the layer of rights to which it relates, and that a licence concerning one layer does not automatically authorise every other relevant use.

For performers, the practical consequence is that contractual and licensing analysis must identify the precise subject matter being used. A producer, broadcaster, streaming service, event organiser or other user may need to consider different rights depending on whether the use concerns the underlying composition, the sound recording, the performer's recorded performance, or a combination of these. Performer's rights therefore form one layer in a broader rights-clearance structure.

VIII. JUDICIAL DEVELOPMENTS

A. *Indian Performing Right Society Ltd. v. Aditya Pandey*

The 2012 decision of a Division Bench of the Delhi High Court is important for understanding the distinction between underlying musical and literary works and sound recordings. The litigation involved copyright claims associated with the communication and performance of songs. The Court analysed the statutory architecture and treated the different categories of copyrightable subject matter separately. For a study of performers' rights, the decision is useful because it demonstrates why a performance-related claim must be distinguished from a claim concerning the copyright in lyrics, musical composition or sound recording.¹⁴ The decision arose at the interim stage and on the law as it stood before the 2012 amendment. On appeal, the Supreme Court declined to interfere with the High Court's order but held that the observations and findings of the High Court would have no legal effect on the merits of the pending suits, and clarified that, with effect from 21 June 2012, section 19(10) preserves the author's right to

¹³ *Aditya Pandey*, *supra* note 4, ¶¶ 36–40.

¹⁴ *Id.* ¶¶ 31, 36–40.

an equal share of royalties where copyright in a work is assigned for making a sound recording that does not form part of a cinematograph film.¹⁵

B. *The Indian Singers Rights Association v. Dharma Productions Pvt. Ltd.*

The Delhi High Court's order of 22 December 2020 arose from a claim concerning the commercial use of performances in the film *Gunjan Saxena: The Kargil Girl*. The plaintiff relied on sections 2(q), 2(qq), 38A and 38B and alleged infringement of performers' rights in performances originally appearing in earlier films. The defendant argued, among other things, that studio performances were not live performances. Referring to *Neha Bhasin*, the Court noted that a performance is live in the first instance whether it is before an audience or in a studio, and that the performer's right claim in that case had been held to be a serious triable issue; it deferred any direction for deposit until the pleadings were complete. The order was interlocutory and did not determine the merits of the dispute; nevertheless, it illustrates the importance of the statutory definition when recorded studio performances are later reused.¹⁶

C. *A.R. Rahman v. Ustad Faiyaz Wasifuddin Dagar*

In a decision dated 24 September 2025, a Division Bench of the Delhi High Court considered issues concerning authorship and performer's rights in the context of a dispute involving musical performances. The judgment explains that a performer's right protects the performance and does not by itself make the performer the author of the underlying musical composition. This distinction is significant for legal analysis because performance, composition and recording may involve different rights holders and different statutory bases. The decision also discusses the effect of the 2012 amendments, including sections 38A and 38B. The Court set aside the interim order of the Single Judge, while clarifying that its view was formed at the *prima facie* stage.¹⁷ On a further appeal, the Supreme Court, expressing no opinion on the merits, recorded an agreed interim credit line for the song, modified the orders of the Single Judge and the Division Bench to that extent, and left all issues open in the pending suit.¹⁸

The decision is particularly relevant to the conceptual question addressed by this paper: performer's rights are important precisely because they protect a contribution that is related to, but legally distinguishable from, authorship of the underlying work. The legal protection should

¹⁵ *International Confederation of Societies of Authors & Composers (CISAC) v. Aditya Pandey*, (2017) 11 SCC 437 (India) (Civil Appeal Nos. 9412–9416 of 2016, decided Sept. 20, 2016) <https://indiankanoon.org/doc/47070037/>; *id.* ¶ 6 (Gogoi, J., concurring); Copyright Act, 1957, No. 14 of 1957, § 19(10) (India).

¹⁶ *The Indian Singers Rights Association*, *supra* note 7, ¶¶ 5, 8–10.

¹⁷ *A.R. Rahman v. Ustad Faiyaz Wasifuddin Dagar*, FAO (OS) (COMM) 86/2025, 2025 SCC OnLine Del 6159, ¶¶ 79–88, 141 (Delhi High Ct. Sept. 24, 2025), <https://indiankanoon.org/doc/22096146/>.

¹⁸ *Ustad Faiyaz Wasifuddin Dagar v. A.R. Rahman*, Civil Appeal arising out of SLP (C) No. 4742 of 2026, ¶¶ 5–9 (Sup. Ct. India Feb. 20, 2026) (order), <https://indiankanoon.org/doc/136713576/>.

therefore be analysed according to the particular right claimed and the particular act of exploitation involved.

IX. INTERNATIONAL FRAMEWORK

A. Rome Convention

The International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, adopted at Rome in 1961, represents an early international recognition of related rights. WIPO describes the Convention as protecting performers against certain acts to which they have not consented, such as the broadcasting and communication to the public of a live performance, the fixation of a live performance and, in specified circumstances, the reproduction of a fixation. Its historical importance lies in recognising that the interests of performers require treatment alongside, rather than entirely within, traditional copyright.¹⁹

B. WIPO Performances and Phonograms Treaty

The WIPO Performances and Phonograms Treaty (WPPT), adopted in 1996, addresses performers and producers of phonograms, particularly in the digital environment. WIPO explains that the treaty grants performers economic rights in their performances fixed in phonograms, namely reproduction, distribution, rental and making available. It also contains moral-rights protection for performers. The treaty is significant because digital technology made copying and communication of recorded performances much easier and increased the importance of legal control over such uses.²⁰

C. Beijing Treaty on Audiovisual Performances

The Beijing Treaty on Audiovisual Performances, adopted in 2012 and in force since 28 April 2020, specifically addresses performers in audiovisual fixations. WIPO identifies economic rights including reproduction, distribution, rental and making available, together with moral rights. The treaty is relevant to actors and other audiovisual performers because audiovisual exploitation creates issues that are not fully addressed by instruments focused on sound recordings.²¹

¹⁹ International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, Oct. 26, 1961, 496 U.N.T.S. 43; WORLD INTELLECTUAL PROPERTY ORGANIZATION, *Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (1961)*, <https://www.wipo.int/en/web/treaties/ip/rome>; *Summary of the Rome Convention*, *supra* note 3.

²⁰ WIPO Performances and Phonograms Treaty, Dec. 20, 1996, 2186 U.N.T.S. 203; WORLD INTELLECTUAL PROPERTY ORGANIZATION, *Summary of the WIPO Performances and Phonograms Treaty (WPPT) (1996)*, https://www.wipo.int/en/web/treaties/ip/wppt/summary_wppt.

²¹ WORLD INTELLECTUAL PROPERTY ORGANIZATION, *Summary of the Beijing Treaty on Audiovisual Performances (2012)*, https://www.wipo.int/en/web/treaties/ip/beijing/summary_beijing; *Beijing Treaty on Audiovisual*

The international framework demonstrates that performer protection has evolved in response to technology. The movement from live performance, to sound recording, to digital communication and audiovisual exploitation shows why domestic law must be capable of addressing different forms of fixation and dissemination. Indian law's development through the 1994 and 2012 amendments can be understood within this wider evolution.²² India's own position differs across the three instruments: it signed the Rome Convention in 1961 but has not ratified it, it acceded to the WPPT with effect from 25 December 2018, and it is not a party to the Beijing Treaty.²³

X. SIGNIFICANCE OF PERFORMER'S RIGHTS

A. Recognition of creative contribution

Performer's rights recognise that performance involves a legally relevant contribution even where the performer is not the author of the underlying work. An actor's delivery of dialogue, a singer's interpretation of a song, or a musician's rendition can materially shape how the public experiences a work. The special right prevents the legal system from treating the performer merely as an incidental participant.²⁴

B. Economic protection

The ability to control specified recordings, reproductions, communications and commercial uses gives performers a basis for negotiating and enforcing economic interests. The statutory royalty provision in section 38A is especially relevant where performances are incorporated into films and subsequently exploited commercially. The legal significance is not that every use automatically produces a separate payment, but that the Act recognises remuneration as an element of performer protection in specified circumstances.²⁵

C. Protection of personality and reputation

Section 38B adds a personal dimension. Identification and protection against prejudicial distortion acknowledge that a performance can be closely connected with the performer's

Performances, *supra* note 3.

²² *Summary of the WIPO Performances and Phonograms Treaty*, *supra* note 20; *Summary of the Beijing Treaty on Audiovisual Performances*, *supra* note 21.

²³ WORLD INTELLECTUAL PROPERTY ORGANIZATION, *WIPO-Administered Treaties: Contracting Parties, Rome Convention* (India: signature Oct. 26, 1961; no ratification), https://www.wipo.int/wipolex/en/treaties/ShowResults?search_what=C&treaty_id=17; WORLD INTELLECTUAL PROPERTY ORGANIZATION, *Contracting Parties, WIPO Performances and Phonograms Treaty* (India: accession Sept. 25, 2018; entry into force Dec. 25, 2018), https://www.wipo.int/wipolex/en/treaties/ShowResults?search_what=C&treaty_id=20; WORLD INTELLECTUAL PROPERTY ORGANIZATION, *Contracting Parties, Beijing Treaty on Audiovisual Performances* (India not listed), https://www.wipo.int/wipolex/en/treaties/ShowResults?search_what=C&treaty_id=841 (last visited Oct. 3, 2026).

²⁴ Copyright Act, 1957, No. 14 of 1957, §§ 2(q), 2(qq), 38 (India).

²⁵ Copyright Act, 1957, No. 14 of 1957, § 38A (India).

professional identity. Digital editing, manipulation and reuse can increase the importance of this protection because a performance may be detached from its original context and presented to new audiences.²⁶

D. Legal certainty in rights clearance

Clear recognition of performer's rights assists producers, broadcasters, platforms and other users in identifying the permissions that may be necessary. It also encourages contracts to specify the scope of consent, permitted exploitation and remuneration. In this way, performer's rights contribute not only to protection but also to the orderly licensing of creative content.

E. Relevance in the digital environment

Streaming, social media, short-form video, digital archives and user-generated content have increased the number of contexts in which performances can circulate. The statutory concepts of recording, reproduction and communication to the public remain important, but their application can become more complex when a performance is copied, transformed or made available through multiple services. Effective rights management therefore requires both legal rules and practical mechanisms for identifying and tracking uses.²⁷

XI. CHALLENGES IN THE EXISTING FRAMEWORK

A. Contractual imbalance and awareness

The existence of statutory rights does not guarantee that every performer can negotiate contracts from an equal bargaining position. Emerging performers may accept broad contractual terms without fully understanding the consequences for later exploitation. Greater legal literacy and clearer contract drafting can reduce disputes concerning the scope of consent and remuneration.

B. Digital reuse and enforcement

Digital copying can occur rapidly and across jurisdictions. Identifying the first unauthorised upload, tracing repeated copies and obtaining effective remedies can be difficult. Platform-based distribution may also involve multiple intermediaries. Enforcement mechanisms therefore need to remain accessible and sufficiently responsive to digital infringement without unnecessarily restricting lawful uses.

²⁶ Copyright Act, 1957, No. 14 of 1957, § 38B (India).

²⁷ Copyright Act, 1957, No. 14 of 1957, §§ 38A–39A (India); *Summary of the WIPO Performances and Phonograms Treaty*, *supra* note 20.

C. Attribution and moral rights

Attribution can become difficult when performances are separated from their original credits or incorporated into short clips and edited content. Section 38B provides a legal basis for identification, but practical enforcement may depend on evidence showing the performer's connection to the performance and the circumstances of the disputed use. Clear metadata and contractual credit provisions may assist.

D. Distinction between different rights

Users of creative content may incorrectly assume that permission from one rights holder resolves all rights issues. A performance may involve the performer's right, copyright in lyrics or musical composition, copyright in a sound recording, and copyright in a film. The need to distinguish these rights can make licensing more complex, but the distinction is legally important.

E. Cross-border exploitation

Digital services frequently operate across national borders. Domestic statutory rights may not provide identical protection in every jurisdiction. International instruments improve harmonisation, but differences in treaty membership, domestic implementation and contractual arrangements can still create enforcement challenges. Performers and producers therefore benefit from clear contractual provisions concerning territories and modes of exploitation.

XII. SUGGESTIONS

- Increase awareness programmes for performers concerning sections 38, 38A and 38B and the practical meaning of performance-related contracts.
- Encourage clear written agreements identifying the permitted modes of exploitation, duration, territory, attribution requirements and remuneration arrangements.
- Promote accurate metadata and credit practices so that performers can be identified when performances circulate digitally.
- Improve accessible mechanisms for reporting and documenting unauthorised uses, particularly on digital platforms.
- Encourage collective management organisations and professional associations to provide standard information and contract guidance to performers, especially emerging artists.

- Continue judicial and legislative clarification of issues created by new technologies, while preserving statutory exceptions for legitimate teaching, research, reporting and review.
- Strengthen legal education on the distinction between underlying copyright, sound-recording rights and performer's rights so that rights clearance is carried out accurately.
- Promote international cooperation on cross-border digital exploitation and enforcement of performer-related rights.

XIII. CONCLUSION

Performer's rights have become an important component of the modern copyright regime because creative works are frequently experienced by the public through the contribution of performers. Indian law has progressively recognised this contribution. The statutory framework now includes a special right under section 38, specified economic rights under section 38A and moral rights under section 38B, subject to statutory limitations and exceptions. The development reflects an attempt to balance the interests of performers, authors, producers and users of creative works.

The judicial decisions considered in this paper illustrate the need to distinguish different layers of rights. A performer's right does not automatically create authorship in the underlying work, and permission concerning one copyrightable subject matter may not resolve all other rights. This distinction becomes particularly important in music and film, where lyrics, musical compositions, sound recordings, films and performances can coexist in a single commercial product.²⁸

The significance of performer's rights is therefore both economic and personal. Economic protection can support remuneration and control over specified exploitation, while moral rights protect attribution and reputation. At the same time, the practical effectiveness of these rights depends on awareness, transparent contracts, accurate attribution, accessible enforcement and effective adaptation to digital technologies. The future development of performer protection should preserve the statutory balance between legitimate exploitation and the interests of those whose performances give creative works their public expression.²⁹

Ultimately, performer's rights demonstrate that copyright law is not concerned only with the creation of abstract works. It also recognises the human contribution through which creative expression is interpreted, embodied and communicated. A coherent performer-rights framework

²⁸ Aditya Pandey, *supra* note 4, ¶¶ 36–40; A.R. Rahman, *supra* note 17, ¶¶ 79–88.

²⁹ Copyright Act, 1957, No. 14 of 1957, §§ 38A–38B (India).

therefore strengthens the broader objective of copyright law: encouraging creative activity while establishing fair and workable rules for the use of creative expression.
