

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary
Peer Reviewed

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced, stored, transmitted, or distributed in any form or by any means, whether electronic, mechanical, photocopying, recording, or otherwise, without prior written permission of the Managing Editor of the *International Journal for Legal Research & Analysis (IJLRA)*.

The views, opinions, interpretations, and conclusions expressed in the articles published in this journal are solely those of the respective authors. They do not necessarily reflect the views of the Editorial Board, Editors, Reviewers, Advisors, or the Publisher of IJLRA.

Although every reasonable effort has been made to ensure the accuracy, authenticity, and proper citation of the content published in this journal, neither the Editorial Board nor IJLRA shall be held liable or responsible, in any manner whatsoever, for any loss, damage, or consequence arising from the use, reliance upon, or interpretation of the information contained in this publication.

The content published herein is intended solely for academic and informational purposes and shall not be construed as legal advice or professional opinion.

**Copyright © International Journal for Legal Research & Analysis.
All rights reserved.**

ABOUT US

The *International Journal for Legal Research & Analysis (IJLRA)* (ISSN: 2582-6433) is a peer-reviewed, academic, online journal published on a monthly basis. The journal aims to provide a comprehensive and interactive platform for the publication of original and high-quality legal research.

IJLRA publishes Short Articles, Long Articles, Research Papers, Case Comments, Book Reviews, Essays, and interdisciplinary studies in the field of law and allied disciplines. The journal seeks to promote critical analysis and informed discourse on contemporary legal, social, and policy issues.

The primary objective of IJLRA is to enhance academic engagement and scholarly dialogue among law students, researchers, academicians, legal professionals, and members of the Bar and Bench. The journal endeavours to establish itself as a credible and widely cited academic publication through the publication of original, well-researched, and analytically sound contributions.

IJLRA welcomes submissions from all branches of law, provided the work is original, unpublished, and submitted in accordance with the prescribed submission guidelines. All manuscripts are subject to a rigorous peer-review process to ensure academic quality, originality, and relevance.

Through its publications, the *International Journal for Legal Research & Analysis* aspires to contribute meaningfully to legal scholarship and the development of law as an instrument of justice and social progress.

PUBLICATION ETHICS, COPYRIGHT & AUTHOR RESPONSIBILITY STATEMENT

The *International Journal for Legal Research and Analysis (IJLRA)* is committed to upholding the highest standards of publication ethics and academic integrity. All manuscripts submitted to the journal must be original, unpublished, and free from plagiarism, data fabrication, falsification, or any form of unethical research or publication practice. Authors are solely responsible for the accuracy, originality, legality, and ethical compliance of their work and must ensure that all sources are properly cited and that necessary permissions for any third-party copyrighted material have been duly obtained prior to submission. Copyright in all published articles vests with IJLRA, unless otherwise expressly stated, and authors grant the journal the irrevocable right to publish, reproduce, distribute, and archive their work in print and electronic formats. The views and opinions expressed in the articles are those of the authors alone and do not reflect the views of the Editors, Editorial Board, Reviewers, or Publisher. IJLRA shall not be liable for any loss, damage, claim, or legal consequence arising from the use, reliance upon, or interpretation of the content published. By submitting a manuscript, the author(s) agree to fully indemnify and hold harmless the journal, its Editor-in-Chief, Editors, Editorial Board, Reviewers, Advisors, Publisher, and Management against any claims, liabilities, or legal proceedings arising out of plagiarism, copyright infringement, defamation, breach of confidentiality, or violation of third-party rights. The journal reserves the absolute right to reject, withdraw, retract, or remove any manuscript or published article in case of ethical or legal violations, without incurring any liability.

NEIGHBOURING RIGHTS UNDER THE COPYRIGHT ACT, 1957

AUTHORED BY- ARDRA ANIL, ROSHANI S R & SANJAY KRISHNAN R
LL.M students of Government Law College, Ernakulam, Kerala

Abstract

Neighbouring rights, also known as related rights, protect the interests of performers, broadcasting organisations, and producers who contribute to the dissemination of creative works. This paper examines the legal framework governing neighbouring rights in India under the Copyright Act, 1957, with particular focus on broadcasting reproduction rights and performers' rights. It analyses statutory provisions, exceptions such as ephemeral recordings, and key judicial interpretations that have expanded the concept. The study highlights the growing relevance of these rights in the context of technological advancements and unauthorised online exploitation.

Introduction

The concept of neighbouring rights has emerged as an essential component of intellectual property law, recognising the contributions of individuals and organisations involved in the communication of copyrighted works to the public. Unlike authors' rights, these rights are granted to performers, broadcasters, and producers who play a crucial role in making creative content accessible. In India, neighbouring rights are primarily governed by statutory provisions under the Copyright Act, 1957, with significant developments introduced through amendments, particularly in 2012.

With the rise of digital technologies and internet-based dissemination, the scope of these rights has expanded considerably. Issues such as unauthorised streaming, digital reproduction, and misattribution of performances have raised complex legal challenges. Judicial decisions have played a pivotal role in interpreting these rights, especially in defining concepts like "communication to the public" and determining the extent of protection available to rights holders. This paper explores these dimensions in detail, focusing on both statutory provisions and judicial developments.

Concept of Neighbouring Rights

Neighbouring rights (also called related rights) are rights granted to persons who assist in the dissemination of copyrighted works but are not the original authors.

They protect:

- Performers
- Broadcasting organisations
- Producers of sound recordings

They are called “neighbouring” because they exist adjacent to copyright, not as primary authorship rights.

India recognises these rights under:

- Section 37 – Broadcasting reproduction right
- Sections 38, 38A, 38B – Performers’ rights, of the Copyright Act, 1957¹

International Background

Neighbouring rights originate from:

- Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations
- TRIPS Agreement
- WIPO Performances and Phonograms Treaty

India strengthened these rights significantly through the 2012 Amendment²

Broadcast Reproduction Right (Section 37)

(Chapter VIII, Sections 37–39A, Copyright Act, 1957 — inserted by 1994 Amendment)

Meaning of “Broadcast”

“Broadcast” means communication to the public:

- (i) By wireless diffusion (signs, sounds, visual images); or
- (ii) By wire³

“Communication to the public” means communication to the public in whatever manner, including communication through satellites⁴. It means making a work available to the public in any manner, regardless of whether the public actually receives it.

Judicial interpretation of “Communication to the public” given in the case **Football**

¹ The Copyright Act, 1957 (Act No. 14 of 1957), §38

² Verkey, E. (2015). Intellectual property (1st ed.). Eastern Book Company.

³The Copyright Act, 1957 (Act No. 14 of 1957), § 2(dd)

⁴ The Copyright Act, 1957 (Act No. 14 of 1957), § 2(ff)

Association Premier League Ltd v British Sky Broadcasting Ltd⁵,

In this case, the court dealt with the issue of unauthorised internet streaming of English Premier League matches. The Football Association Premier League held exclusive broadcasting rights, which were licensed to authorised broadcasters. However, a website known as First Row provided links to illegal live streams, and some pubs in the UK used these streams to show matches to customers. The key issue was whether such retransmission via the internet amounted to “communication to the public.” The Court held that broadcasting through traditional means such as satellite or terrestrial television and retransmitting via the internet involve different technical methods; therefore, using a new technical means constitutes a fresh act of communication to the public, even if the same content is shown to a similar audience. The Court further clarified that “public” refers to an indeterminate and fairly large number of persons, and it is not necessary for the audience to be entirely new. Importantly, it distinguished between mere technical improvements such as enhancing signal quality within an authorised area, which does not amount to communication and retransmission through a different platform like the internet, which does. Thus, the principle established is that any unauthorised retransmission of a broadcast through a new technical medium, particularly internet streaming, constitutes “communication to the public” and amounts to infringement of broadcasting rights. Every broadcasting organisation has a special right known as Broadcast Reproduction Right (BRR) in respect of its broadcasts.

Duration:

25 years from the beginning of the calendar year next following the year of broadcast.

Acts Constituting Infringement (Section 37(3))

During subsistence of BRR, without licence, if any person:

- a. Re-broadcasts the broadcast
- b. Causes broadcast to be heard/seen by public on payment
- c. Makes sound or visual recording of the broadcast
- d. Reproduces unauthorised recording
- e. Sells or hires such recording

It amounts to infringement of broadcast reproduction right.⁶

In **Star India Pvt Ltd v. Piyush Agarwal, Star India Pvt Ltd⁷**, which held exclusive broadcasting rights over live cricket matches including the IPL, filed a suit against the

⁵ Football Association Premier League Ltd v British Sky Broadcasting Ltd, 2013 EWHC 2058 (Ch)

⁶ The Copyright Act, 1957 (Act No. 14 of 1957), §37(3)

⁷ Star India Pvt Ltd v. Piyush Agarwal, Star India Pvt Ltd ,2013 SCC Online Del 3344

defendant for unauthorisedly streaming matches through various websites without licence or consent. The issue before the Delhi High Court was whether such online streaming amounted to infringement of broadcasting reproduction rights under Section 37 and copyright in the broadcast. The Court held that broadcasting reproduction right is an independent statutory right and that live streaming through websites constitutes “communication to the public.” It further clarified that internet transmission falls within the scope of broadcast exploitation, and therefore, unauthorised digital streaming amounts to infringement. Consequently, the Court granted injunctions, including blocking of the infringing websites.

Similarly, in **Video Master v Nishi Productions**⁸, the dispute concerned whether preparing video cassettes of a cinematograph film for satellite broadcasting amounted to copyright infringement. The plaintiff, who owned rights in the film, alleged that the defendant’s act of making such copies violated both copyright and broadcasting rights. However, the Court held that no infringement had occurred in light of Section 52(2) of the Copyright Act, 1957, which permits ephemeral recordings for the purpose of broadcasting. Thus, the preparation of copies solely for authorised transmission was considered a permissible exception and not an infringement.

Section 52(2) – Ephemeral Recording Exception⁹

Section 52(2) provides that:

A broadcasting organisation may make a temporary recording (ephemeral recording):

- Using its own facilities
- For the purpose of its own broadcast
- Without it amounting to infringement

The recordings were made only for broadcasting purposes. They were temporary in nature. They were covered under the statutory exception of Section 52(2). Therefore, such recording is saved from infringement.

What is “Ephemeral Recording”?

“Ephemeral” means temporary.

Example:

- A TV channel records a film temporarily to schedule its telecast.
- It is not for commercial sale.
- It is only for facilitating broadcast.

⁸ Video Master v Nishi Productions 1998 IPLR 388 (Bom)

⁹ The Copyright Act, 1957 (Act No. 14 of 1957), § 52(2)

Such recording is legally permitted.

Exceptions (Section 39)¹⁰

Broadcast reproduction right or performer's right is NOT infringed by:

(a) Private Use

- Sound or visual recording for:
 - Private use
 - Bona fide teaching
 - Research

(b) Fair Dealing

- Excerpts for:
 - Reporting current events
 - Review
 - Teaching
 - Research

(c) Other Section 52 Acts

Acts that do not constitute copyright infringement.

Performer's Right under the Copyright Act, 1957 (as amended in 2012)

Meaning of Performer's Right

Under Section 38, whenever a person appears or engages in a live performance, he/she is granted a special right known as the "Performer's Right."

This right protects performers against unauthorised recording, reproduction, broadcast or commercial exploitation of their live performances.

Who is a "Performer"?

A performer includes:

- Actor
- Singer
- Musician
- Dancer
- Acrobat
- Juggler
- Conjuror

¹⁰ The Copyright Act, 1957 (Act No. 14 of 1957), § 39

- Snake charmer
- Lecturer
- Any other person who makes a live performance¹¹

Important:

Persons appearing casually or incidentally in a film and not acknowledged in credits are *not treated as performers* (except for limited protection under Section 38B)¹².

What is a “Performance”?

A *performance* means:

Any live visual or acoustic presentation made by one or more performers¹³.

- It must be live in the first instance
- It may be before an audience or in a studio
- If recorded and later exploited without consent → infringement

Example: Cricket Match as a Performance

A cricket match is considered a performance because:

- Players are performing live.
- Umpires are integral to the performance.
- The event is visually and acoustically presented.

Thus, cricketers and umpires can qualify as *performers* for the purpose of performer’s rights.

Exclusive Rights of a Performer (Section 38A)

A performer has the exclusive right to:

(a) Make or Authorise Recording of Performance

Including:

- Sound recording
- Visual recording
- Storing electronically
- Reproducing in any material form
- Issuing copies to the public
- Communication to the public
- Selling or commercial rental

¹¹ The Copyright Act, 1957 (Act No. 14 of 1957), § 39 2(qq)

¹² The Copyright Act, 1957 (Act No. 14 of 1957), § 39 2(qq)

¹³ The Copyright Act, 1957 (Act No. 14 of 1957), § 2(q)

(b) Broadcast the Performance

Except where the performance has already been broadcast.

If the performer gives written consent for incorporation in a cinematograph film:

- He cannot object to its use.
- But he is entitled to royalties for commercial use (post-2012 amendment)¹⁴.

Moral Rights of Performers (Section 38B)

The 2012 Amendment strengthened performer protection by granting moral rights, similar to authors.

The performer has the right:

1. To be identified as the performer
2. To restrain or claim damages for:
 - Distortion
 - Mutilation
 - Modification prejudicial to reputation¹⁵

However:

- Editing for technical reasons
- Removal for duration adjustment

Not considered prejudicial.

Duration of Performer's Right

The right subsists for 50 years from the beginning of the calendar year following the year of performance.

Important Case Laws

In **Zacchini v. Scripps-Howard Broadcasting Co.**¹⁶, the U.S. Supreme Court dealt with the unauthorised broadcast of a performer's entire act. Hugo Zacchini, who performed a "human cannonball" act, had his entire performance recorded and telecast by a broadcaster without his consent. The key issue was whether such broadcasting violated his rights. The Court held that airing the entire act amounted to a violation of his right of publicity, emphasizing that freedom of speech does not extend to appropriating the whole of a performer's act for commercial gain. It recognised that a performer has a proprietary interest in their performance, thereby establishing that performances can be protected as valuable commercial property.

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

¹⁵ The Copyright Act, 1957 (Act No. 14 of 1957), § 38B

¹⁶ Zacchini v. Scripps-Howard Broadcasting Co, 433 U.S.562 (1977)

In **Neha Bhasin v. Anand Raj Anand & Ors.**¹⁷, the dispute concerned performers' rights under the Copyright Act, 1957. Singer Neha Bhasin alleged that her voice was used without proper credit in the film *Aryan – Unbreakable*. She claimed to have recorded the lead vocals for the song "Ek Look Ek Look," but was only credited as a backup vocalist, while the lead credit was attributed to the film's producer, Poonam Khubani. The defendants argued that either her voice was not used or that it was merely layered with another voice. However, the Delhi High Court, after closely examining the song, found that the voice used was indeed Neha Bhasin's. The case highlighted the importance of recognising and protecting performers' rights, particularly the right to proper attribution and control over the use of their performance, reinforcing that unauthorised use or misattribution can amount to infringement.

Conclusion

Neighbouring rights have evolved into a vital mechanism for protecting the economic and moral interests of performers, broadcasters, and producers in the modern media landscape. The expansion of digital platforms has necessitated a broader interpretation of these rights, particularly in relation to online streaming and communication to the public. While statutory provisions under the Copyright Act, 1957 provide a strong foundation, judicial interpretations have significantly strengthened enforcement by addressing contemporary challenges.

At the same time, exceptions such as ephemeral recording and fair dealing ensure a balance between rights protection and public interest. However, the increasing prevalence of digital infringement highlights the need for more robust enforcement mechanisms and greater awareness of these rights. Overall, neighbouring rights continue to play a crucial role in safeguarding creative and commercial interests in an evolving technological environment.

¹⁷ Neha Bhasin v. Anand Raj Anand & Ors, (2006) 32 PTC 779; (2006) 132 DLT 196.