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INDIAN SINGERS RIGHTS ASSOCIATION

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ABSTRACT

Indian music is ever-green. Every restaurant, pub. Airports, stadium, television etc. plays them making them world famous. India has 465 FM Radio stations which constantly play Indian Bollywood music. Though the song becomes well known the singer who sang the song is not recognized nor does he or she receive sufficient compensation for the song. The artist in India is the one who works so hard but ends up getting nothing. In 2012 the Copyright Act was amended which recognized performers rights. The singers were recognized as performers. The law provided for royalty to be paid to the singers. In reality this royalty never reached the singers. The problem for the singer was identifying the user playing his song and the problem for a genuine user was identifying the location of the singer to pay the royalty directly to him. Therefore, there was a need for an independent body to administer the copyright and collect royalty. ISRA is the bridge between the singer and the user which helps in collecting royalty. This article discusses the issues faced by the singers and the need to develop a smother collective administration of copyright.

Keywords: ISRA, Collective administration, performer

INTRODUCTION

A song is the combination of melody and words. The melody can be protected as musical work and the lyrics as a literary work. When a music company approaches a song writer. The song writer is excited about the new opportunity of making the album and releasing the album.

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The singer is promised a huge compensation if the song becomes famous after the release of the film. At this stage the singer loves to sing, loves to perform and is not bothered about the legal issues surrounding that song.

In India the artist receives a huge amount of praise for the song. Recently the song '*Kacha Badam*' sung by Bhuban Badyakar became a huge hit and went viral on social media.² **Nazmu Reachat** recreated the song and gave his own twist. His song has over 10 lakh streams on [spotify](https://open.spotify.com/track/3kxv3813330000000000) with millions doing the '*Kacha Badam*' challenge on Instagram Reels. The challenge was popular in many countries like Tanzania, Korea. Everyone all over the world was crooning to this song. Though the song was written and sung by Bhuban Badyakar he did not make any money out of the song. It was only when Godhulibela Music decided to make a remake of the song and paid him Rs. 3 lakhs did he benefit financially.³

In India the music companies would pay royalties to musicians but the singer of the film was just a vocal instrument in a recording, therefore no royalty was paid to the singer. In the early 1950s Lata Mangeshkar became the first Indian singer to demand for royalties from the film producers. This was an extremely challenging situation for the young Lata Mangeshkar as in those days women who worked in cinema were considered insignificant. Making demands from male counterparts could result in losing a job. Lata Mangeshkar was persistent in her demands and ultimately, she was granted royalty. A little before Lata Mangeshkar passed away, she earned 40 lakhs a month as royalty for her songs.⁴

The India system of paying royalties is very negligible. The artist who works so hard does not get anything. There are times when the artists face crises situation he/she cannot bank on the work they had done in the past in order to make a living. On the other hand, foreign singers like Michael Jackson, Elvis Presley, and Elton John have received royalty and get huge amounts for their songs. This royalty sees them throughout their lives.

Every artist and a song has a time line. Today if the song is the most played song in some time, it is no longer played and loses its charm. During the time the song is preferred the artist must make the best of it. After some time, it is only natural some other artist will replace the song.

² <https://www.socialketchup.in/viral-trend-kacha-badam-story-behind/> visited on 2nd May, 2022

³ <https://www.news18.com/news/buzz/kacha-badam-singer-receives-rs-3-lakh-from-company-which-first-remixed-his-song-4786745.html> visited on 2nd May, 2022

⁴ [Legend Lata Mangeshkar Owned a Buick, a Chrysler, and a Mercedes. Here's Her Net Worth, News 18](https://www.news18.com/news/movies/legend-lata-mangeshkar-owned-a-buick-a-chrysler-and-a-mercedes-heres-her-net-worth-4745933.html)
<https://www.news18.com/news/movies/legend-lata-mangeshkar-owned-a-buick-a-chrysler-and-a-mercedes-heres-her-net-worth-4745933.html> visited on 2nd May, 2022

For years great injustice has been caused to the singers. As they have not been granted any rights nor royalty. There is a need of a regulatory system to ensure that the singers must not be victimized. This article discusses the performers rights and the need to administer them effectively.

ISSUES FACED BY SINGERS IN INDIA

The music companies often prepare lengthy agreements and make the singers sign them. The singers often blindly sign the agreements without bothering as to what is written in such agreements. The agreements are valid for three years and normally assigns a royalty of 6%. On the reverse side these agreements bind the singer for three long years to the music company. Many music companies follow a practise of renewing the agreements at the end of three years for a further period of three years. The singers often fail to understand that the artist/singer is vulnerable and fails to understand the legal issues and copyright ownership issues which they would be likely to face.

WHO IS A PERFORMER?

The Copyright Act, 1957 had no provisions for performer's rights. In the case of *Fortune Films v. Dev Anand*⁵ the Supreme Court stated that 'an actor in a film has no rights over his performance in the film.' The actors were given a fee for their performance and after that the producer was free to use their performance in whatever they wish to use it. After this judgement, the need was felt to insert the performer's right in copyright act.

In 1994, the law was amended and Section 38, 39 and 39A were introduced to recognize performer's rights. Section 2(qq) defines the term 'performer', which includes 'actor, dancer, musician, singer, acrobat, conjurer, snake charmer, juggler, a person delivering a lecture or any other person who makes a performance.' A sportsman cannot be called a performer as sports person must play according to the rules of the game and hence there is no scope for creativity of the individual. A singer can claim only a performer right in a song. Performers right is only a moral right.

A "performance", means 'any visual or acoustic presentation made live by one or more performers. Every performance has to be live in the first instance whether it is before an

⁵ AIR 1979 Bom 17

audience or in a studio.’⁶ If this performance is recorded and thereafter exploited without the permission of the performer then the performer's right is infringed. In *Neha Bhasin v. Anand Raj Anand*,⁷ the court held that the performance is recorded in the studio or in front of the audience, for the first instance, both will be called live performance and if anyone use such performance without the consent of the performer then performer’s rights is said to be infringed.

The Delhi High Court in *Super Cassettes Industries v. Bathla Cassette*⁸ made a distinction between copyright and performers rights. The court held that the ‘when a song is re-recorded then the prior permission of the original singer is required.’

Getting rights in the legal system was not enough. The practical aspect was missing the law was not enforced effectively. The artists were not getting royalty. This was a huge challenge. There was a need for collective administration of copyright. If a singer would want to collect royalty they had to find out where the song was being played. Whether it was played in India or abroad this was a herculean task, the singer had to contact the owner of the premises playing the song and then negotiate with the owner playing the song and demand for royalties. No restaurant or pub would ever pay the singer such royalties. There was a law but the real practical usage was missing.

An honest user if he wanted to pay the artist his royalty. He too would be faced with difficulties. He had to find out where the artist is living and then negotiate with the singer the amount to be fixed as royalty. Only then would a license be issued. This would be a difficult task.

PERFORMER’S RIGHTS IN INDIA

The Performers' Rights subsist for 50 years from the date of performance. Section 38A was introduced and provides for Economic Rights to Performers. These rights are exclusive right to do or authorize the doing a number of acts. Like make a sound recording or a visual recording of the performance. Reproduce the performance in any material form including the storing of it in any medium by electronic or any other means. Issue copies of the performance to the public not being copies already in circulation. Communicate the performance to the public. Sell or give the performance on commercial rental or offer for sale

⁶ S.2(q)

⁷ 2006 (32) PTC 779 (Del)

⁸ 2003 (27) PTC (280) Del

or for commercial rental any copy of the recording. Broadcast or communicate the performance to the public except where the performance is already a broadcast.

Composers/Songwriters, Producers & Music Companies are also entitled for economic benefits from the commercial use of the performance. Once a Performer has by written agreement consented to the incorporation of his performance in a Film, the Performer cannot object to the enjoyment by the Producer of the Film of the Performers' Rights in the same Film, unless there is a contract to the contrary.

MORAL RIGHTS

Section 38 B gives Moral Rights to Performers. The Performer will have the right to claim to be identified as the Performer of his performance except where omission is dictated by the manner of the use of the performance. He will also have the right to restrain or claim damages in respect of any distortion, mutilation or other modifications of his performance that would be prejudicial to his reputation. Mere removal of any portion of a performance for the purpose of editing, or to fit the recording within a limited duration, or any other modification required for purely technical reasons shall not be deemed to be prejudicial to the reputation of the Performer.

RIGHT TO ASSIGN COPYRIGHT

The Performer can Assign his Copyright but cannot Assign or Waive the Right to Receive Royalties for the utilization of such performance in any form other than for the communication to the public of the performance along with the Film in a cinema hall. The Performer Can Assign the Right to Receive Royalties to either his Legal Heir or a Copyright Society for collection and distribution. Any Agreement to the Contrary shall be Void.

RIGHT TO RECEIVE ROYALTY

Performers are now entitled to receive Royalties in case of making of the performances for commercial use, where the performance is utilized in any form other than for the communication to the public of the performance along with the Film in a cinema hall.

India has 4 copyright societies which are registered by the central government. The music composers can avail royalty from the music and composers' society the IPRS. For the music companies the society is Recording Music Performance Limited (RMPL). The society for reprography rights is the Indian Reprography Rights Organization (RRO). For singers the royalty is collected by Indian Singers Rights Association (ISRA). ISRA is a bridge between

the user and the singer. ISRA has a uniform tariff system and a distribution scheme for collecting royalty.

ISRA

ISRA (Indian Singers' Rights Association) was incorporated as a Company Limited by Guarantee under the Companies Act, 1956 on 3rd May, 2013. ISRA is a registered Copyright Society.⁹ It is the 1st Copyright Society to be registered by the Central Government after the 2012 amendments to the Copyright Act. ISRA is a collective administration society. It was formed to create tariff rules, and to collect and distribute royalties to Performers. Most commercial performers in the Indian film and music industry are its members. It has around 732 members. ISRA can take legal action on their behalf for violation of copyright. Any person making commercial use of a performance must obtain a “Performer’s Rights Clearance Certificate” from ISRA and pay royalties. Once the money is collected it is distributed to the members depending on which songs are being exploited. While making payment the list of the songs is provided.

COMMERCIAL UTILISATION OF PERFORMANCE

A commercial performance may include a live performance of a song by the artist at a restaurant. Commercial event or over the internet. It may also include the playing of recorded music in all commercial establishments and online portals.

In India the most successful commercial event is the IPL. ISRA got the first royalty payment in an IPR tournament in 2014. Rediff.com was playing Lata Mangeshkar’s famous song ‘*lag ja gale*’ a number of times during the match. The ISRA issued them a legal notice to pay royalty which they did pay. In case a song is being played at a stadium the stadium must royalty or licence fees at the rate of Re 1 per seat calculated on total capacity basis. Hence if the seating capacity of 85,000 seats the organizers of the event using the song will pay Rs. 85,000. ISRA has created a list of tariff charges. The rates cover all types of public performances at public events, restaurants, clubs, malls, shops, dance schools, and even on-board commercial vehicles such as buses and taxis.

⁹ As per Section 33 of the Copyright Act and received its Certificate of Registration from the Central Government on 14th June, 2013.

In the case of restaurants, the restaurants playing music must pay royalty to the Performer. It needs to get a No-Objection Certificate from ISRA, and pay the price of “the least priced drink on the menu card” per day to each singer whose song it plays. If a cold drink costs Rs.20 on the menu card the restaurant playing an artist’s song. The restaurant must pay Rs. 7300 to ISRA. Royalties must also be paid to the Producer, the Composer, as well as the Performer.

The Broadcasting organization must pay a royalty of Rs, 25,000 to use the artist’s songs in a reality show or a musical program. The same rate must be paid even if part of the song is used. The same rate must also be paid when the music is used in a serial. A Music channel is bound to pay a royalty of Rs. 5000 per hour or 5 per cent of the gross revenue of the Channel for that TV, whichever is higher. Royalty is similarly fixed for mediums like radio, internet, hotels, commercial establishments, commercial vehicle, and public events

JUDICIAL INTERVENTION

Even after tariff rates being assigned the biggest problem for the singers is collecting royalty from the broadcasters. Many commercial establishments continue to play music without paying royalty to ISRA. The Delhi High Court in *ISRA v. Chapter 25 Bar & Restaurant* (2016) and *ISRA v. Night Fever Club & Lounge* (2016) ordered that the money made out of the commercial use of the musical work must be paid to ISRA.

It is a common practise during Christmas and New Year parties restaurants indulge in playing popular music to appeal to customer tastes. Many hotels and restaurants invite live bands to perform for their customers. These issues came up before the Madras and Bombay High Court. The Madras High Court in *Phonographic Performance Ltd. v. the Accord Metropolitan and Ors.* and the Bombay High Court *Phonographic Performance Ltd v. Hotel Hilton & Ors* and 5 others similar matters granted interim injunctions and prohibited hotels/pubs/event organizers from playing any of the copyrighted works they claim to manage in Christmas/New Year parties.

ROYALTY FROM ONLINE STREAMING WEBSITES

A music lover has switched to the online platform. With a click the user gets to hear his or her favourite song even before it is played on the television. The advantage of the internet and online streaming of music is that the music can be heard at one’s convenience and for multiple times. Online streaming has rendered the old methods of listening to music redundant.

Singers do receive a royalty from online streaming websites. This brings a conflict between the user right to hear latest music and the singers right to receive royalty for the music. The user's right seems to be the core issue since the demand for the song is higher when the song is newly released. The demand may diminish as the song becomes older and a new song takes its place. The broadcasters require to obtain a license in order to stream the musical work. Therefore, it implies in the case of service provider of an internet portal the service provider must obtain a license. The royalty paid is dependent on whether the portal is an interactive or non-interactive streaming app and whether it is a free or paid service. If the website does not charge the user, then the royalty per song is Rs.0.50 per song, and in instances where the user has to pay to avail for the services the royalty is Rs.1 per song. The issue of internet streaming online music was challenged in *Tips v. Wynk*, the Bombay High Court held;

‘The provisions of statutory licensing do not apply to internet broadcasting, so different schemes apply to internet streaming.’

Today with online portals like YouTube, google, spotify, Disney, Hotstar, Facebook, Triller, Roposo & Takatak etc. are all infringing the Singers Right to Receive Royalty. Millions of songs are uploaded, shared, streamed and downloaded. These portals receive huge amount of revenue through advertisements. While the singer receives nothing. This has created enormous challenges for the singers. A delegation of singers including Sonu Nigam, Kavita Krishnamurthy and Pankaj Udhas, among others, had met Union information and broadcasting Minister Arun Jaitley seeking his intervention. They wanted to ministry to direct certain broadcasters to "stop violations of the Performer's Right"

CHALLENGES

The biggest issue is the determination of actual amount of earning that the commercial users may make by exploiting the musical works. The courts have held that when there is a commercial use the money earned from such a use must be paid to ISRA. This creates hurdles as the parameters for the said amount have not been fixed. The question is how would the singers know that there was profit derived from the use of the musical work. Another issue is that the users are not aware of the rightful body from which the license for the use of the work has to be obtained. There are separate bodies for performer, lyricist, composer, and the producer. This creates a huge problem for a small user of a restaurant to obtain a license from everybody individually.

CONCLUSION

ISRA is a member of SCAPR. World Federation of 52 country societies. In June 2014 International Bilateral Trade Agreement with Ireland RAAP. Irish singers' songs will be protected in India and Indian songs in Ireland. India will collect royalties for Ireland and send it to them. India has 16 trade agreements. ISRA has made substantial contribution and benefit the singers the singers in India. Yet ISRA has to reinvent itself keeping in mind the changing technological developments in the music industry. It needs to make the system of collecting royalty more accessible and user friendly.
