Who Owns the Rights in a Song: Evolving Trends in Music Copyright Licensing in India

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This article is intended for lawyers, media and entertainment businesses, broadcasters, and rights-holders seeking clarity on ownership, licensing, and royalty entitlements in Indian music copyright.

Executive Summary

- A song engages multiple rights at once—lyrics, musical composition, performance, sound recording, and sometimes a cinematograph film.
- Before 1994, Indian courts generally held that film and sound recording producers owned and controlled the principal exploitation rights once underlying works were created for incorporation.
- The 1994 amendments introduced a statutory performer's right, and the 2012 amendments introduced inalienable royalty entitlements for lyricists and composers.
- The central live controversy is now licensing: recent judgments reflect competing views on whether public performance rights must be licensed through registered copyright societies or may also be licensed directly by owners, assignees, or their agents.
- The current licensing structure is highly fragmented, forcing users to seek separate clearances from multiple entities for a single song. A single-window mechanism could reduce transaction costs, simplify compliance, and give bona fide businesses greater certainty.

1. Background: Copyright as a Bundle of Rights

Copyright is often described as a "bundle of rights". That idea becomes most visible when a song is broadcast on radio, streamed online, or performed in public. Under the Copyright Act, copyright can subsist in literary and musical works, sound recordings, and cinematograph films. The Act also recognizes a performer's right in performances. A song therefore combines several distinct rights in lyrics, composition, performance, and recording into a single commercial product.

As Justice V.R. Krishna Iyer observed in *Indian Performing Rights Society Ltd. v. Eastern India Motion Pictures Association* (1977)[1], cinema is an "ensemble" created by multiple contributors, even though each component

[1] https://api.sci.gov.in/jonew/judis/5328.pdf

may also have independent value. The same description fits modern music exploitation across broadcast, streaming, and film.

Enacted in 1957, India's Copyright Act has been periodically updated to reflect international standards. Yet for many years it did not clearly recognise independent statutory rights for every contributor whose work ends up in a song, sound recording, or film. In the absence of enabling provisions, courts often applied the existing legal framework in ways that left authors and performers with limited remedies—even while recognising the need for reform.

2. Copyright Societies and the Licensing Landscape

Collective societies have been central to licensing and administering of rights in recorded film and non-film music in India including performance and broadcast rights therein. The legal developments described in the following parts of the article underscore the role they have played in shaping the changes in the legislative framework of various rights under the Copyright Act.

Driven partly by the challenges faced by the collective societies in administering the relevant rights within their remit, the Copyright Act has undergone two major overhauls, one enacted in 1994 and the other in 2012. The 1994 Amendments, among other changes, introduced a statutory performer's right.

The 2012 amendments strengthened lyricists', composers' and performers' entitlement to royalties even after incorporation into films and sound recordings, with the only exception to such royalty entitlements being theatrical exploitation of these rights in a cinema hall ('the cinema hall exception'). These amendments further tightened governance and made a major policy move: licensing of underlying literary, dramatic, musical and artistic works (when incorporated in films/sound recordings) can be carried out only through a duly registered copyright society in the relevant category of works. They further mandated all the existing societies to seek re-registration within a prescribed period. The result has been a re-shaped landscape—some entities re-registered, some were refused, and new societies emerged.

Currently, the following societies are operating in India in the business of issuing licenses in India:

2.1 Indian Performing Rights Society (IPRS)

IPRS came into existence on 23 August 1969 as a representative body of owners of music viz. composers, lyricists etc. Following the mandate of the 2012 amendments, IPRS re-registered itself as a copyright society on November 28, 2017.

2.2 Phonographic Performance Limited (PPL)

PPL was founded in 1941 as a representative body, licensing its members' sound recordings for communication to the public in the areas of public performance and broadcast. In compliance of the applicable 2012 mandate, PPL re-applied for registration in 2018 (its initial application made in May 2013 was sought to be withdrawn as it considered itself to be a private company and not a collective organisation. Following the refusal by the Registrar to accept the withdrawal request, the stand-off between PPL and the Government is pending consideration before the High Court of Delhi).

On 25 May, 2021, the Registrar of Copyrights rejected PPL's application as belated and due to the fact that its earlier application had been withdrawn.

On June 06, 2026, PPL has been granted a formal registration by the Central government, as a Copyright Society under sub-section (3) of section 33 of the Copyright Act, 1957. By virtue of the registration, PPL has been permitted to commence and carry on the copyright business in sound recording works.

2.3 Recorded Music Performance Ltd. (RMPL)

In 2018, a new body, RMPL applied for registration under the Act as a representative body to represent and administer public performance rights on behalf of its members' sound-recordings – a function overlapping that of PPL. On June 18, 2021, the Registrar of Copyrights granted RMPL's application, paving the way for it to commence its business of licensing and managing copyrights on behalf of its sound recording members.

2.4 The Indian Singers' and Musicians' Rights Association (ISAMRA -formerly ISRA)

Following the 2012 Amendments, the Indian Singers' Rights Association (ISRA) was registered on May 3, 2013 for protection of performers' rights described under Section 38(A) of the Copyright Act. Its members are singers as a category of performers. Each singer is a performer of the performance and/or the owner of the performer's right in a song (the Performer Owner).

By virtue of the authorisation deeds obtained from the members, ISRA is the exclusive owner of the performance rights of its owners.

2.5 Novex Communications Private Limited (Novex)

Besides the above legal entities, Novex Communications Private Limited, a company established in 2002 under the Companies Act, 1956, has also been operating in the business of issuing copyright licenses under assignments of well-known and established music labels like Zee Entertainment Limited, Eros International Media Limited, Tips Industries, Yash Raj Films Pvt. Ltd. etc. By virtue of the assignments obtained, Novex has been acting as a representative owner of a large number of sound recordings on behalf of its members, licensing public performance of these sound recordings on a commercial basis to hotels, restaurants, lawns, discotheques, resorts, malls and venues.

At present, Novex does not enjoy any registration under the Copyright Act.

3. Pre-1994 Legal Position: Producers' Dominance and Limited Recognition of Contributors

Before the 1994 Amendments, Indian jurisprudence on authors' rights in underlying works incorporated in films and sound recordings was shaped by the following key precedents under the then-prevailing framework:

3.1 *Indian Performing Rights Society Ltd. (IPRS) v. Eastern India Motion Pictures Association* (AIR 1977 SC 1443)

Facts: IPRS (formed in 1959) licensed public performance of musical works for composers and lyricists and published tariffs. Film producer associations objected, arguing that works created for incorporation into films were commissioned and, therefore, all the associated rights therein vested in producers.

Issues: (i) Who is the "first owner" of lyrics and musical compositions created for a film under the then Section 17(b) regime? (ii) Could composers/lyricists validly assign performing rights to IPRS after authorising incorporation into a cinematograph film?

Holding: The High Court of Calcutta (and then the Supreme Court) held that, absent a contract to the contrary, producers became the first owners for works created for valuable consideration for incorporation into films. Once incorporation was authorised, the producer owned the relevant exploitation rights in the works created for incorporation in the film, including the right of communication to the public.

Key takeaways:

- Pre-2012, commissioning of underlying literary and musical works for incorporation into a film shifted practical control of public exploitation to producers.
- Assignments to collecting societies could fail if the author was not treated as the first owner under Section 17(b) as then interpreted.
- Justice Krishna Iyer's footnote recognized authors' creative contribution and urged legislative correction—later addressed in part by the 2012 amendments.

3.2 *Eastern India Motion Pictures v. Performing Rights Society Ltd.* (AIR 1978 Cal 477)[2]

Facts: Following the 1977 Supreme Court decision, disputes continued between rights societies and film/sound recording owners over broadcast and other public communications of film music.

Issues: Whether owners of films/sound recordings could communicate the work to the public (including via radio) without separate permissions/royalties for underlying lyricists and composers under the then regime.

Holding: The Calcutta High Court followed the 1977 binding Supreme Court precedent, effectively affirming that the authors of the underlying rights (such as lyricists and music composers) could not restrain such public communication once incorporation into the film/sound recording was authorised.

- Pre-amendment courts generally treated film and sound recording exploitation as controlled by producers or record owners.

- Authors' separate leverage on public performance and broadcast was limited until later legislative reform.

[2] https://indiankanoon.org/doc/243280/

3.3 Music Broadcast Pvt. Ltd. v. IPRS ((2012 (3) AIR BOM R 303): the judgment dated 25 July 2011 passed by the Bombay High Court in suit no. 2401 of 2006[3]

The plaintiff sought a declaration that the defendant society was not entitled to demand or recover royalty and/or licence fee in respect of broadcast of sound recordings on its FM Radio Stations and was not entitled to interfere with such broadcasts for non-payment of royalty and/or licence fee.

Granting the declaration sought and decreeing the suit in favour of the plaintiff, the High Court held that the 1977 Supreme Court precedent, though passed in the context of cinematograph films, equally applied in the case of sound recordings on the basis that there was hardly any discernible distinction in the way the exclusivity of the rights vested in the owners of the underlying works operated when incorporated in films and sound recordings.

3.4 *International Confederation of Societies of Authors and Composers (ICSAC) v. Aditya Pandey* (2017) 11 SCC 437[4]

Facts: The dispute concerned exploitation of music where claims arose under the pre-2012 legal regime involving authors/composers and sound recording companies.

Issues: Whether, under the pre-2012 legal framework, the authors of the underlying works retained enforceable separate rights once their works were incorporated into sound recordings/films.

Holding: Relying on the 1977 ratio, the Supreme Court reiterated that, for the pre-2012 period, once the authors' underlying works were incorporated in sound recordings, independent rights vested in them stood vested in the sound recording owner. The Court expressly confined its interpretation to the pre-2012 regime.

- ICSAC is best read as a **pre-2012** decision; it does not settle rights under the 2012 amendments.
- For older facts, courts may still apply the producer or record-owner centric approach from 1977.

[3] https://indiankanoon.org/doc/1064366/

[4] https://indiankanoon.org/doc/47070037/

3.5 *Ilaiyaraaja v. Saregama India Ltd.* (Delhi High Court, Division Bench, 21 May 2026)[5]

Facts: On 9 January 2025, Saregama India Limited (SIL) saw social media teasers for the upcoming fim *Aghathiyaa*, produced by Vels Films International Limited (VFIL) and distributed by Divo TV Private Limited by (DTPL), announcing the release of its song the following day. The teasers used a recreated version of *En Iniya Pon Nilave*, composed by the noted music composer, Ilaiyaraaja on commission from Raja Cine Arts (RCA)'s Tamil film *Moodu Pani*. It was undisputed that VFIL used the song's lyrics and composition and made a fresh recording.

Under a 25 February 1980 agreement, RCA assigned the soundtrack and sound recording copyright to SIL, making SIL owner of the *Moodu Pani* recordings, including *En Iniya Pon Nilave*.

SIL issued a cease-and-desist notice to VFIL and DTPL on 10 January 2025.

On 11 January 2025, VFIL responded by asserting that it had obtained a licence from Ilaiyaraaja to adapt, recreate, and synchronise the song, on the basis that he owned the copyright as its composer. SIL disputed that position. It maintained that, although Ilaiyaraaja authored the musical work, RCA owned the musical and literary works under the first proviso to Section 17, and SIL owned the sound recordings as RCA's assignee. SIL also denied that Ilaiyaraaja had authored the lyrics.

VFIL advanced two related arguments. First, it contended that the recreated version was a fresh sound recording made as an adaptation, and therefore did not interfere with SIL's rights in the original soundtrack under Sections 13(4) and 17. Second, it maintained that Ilaiyaraaja continued to own the relevant copyright in the musical work and had validly licensed VFIL to use the song.

[5] https://indiankanoon.org/doc/47070037/

Single Judge (January 30, 2025)

The Single Judge granted SIL an injunction against VFIL, DTPL, and Ilaiyaraaja, holding that:

- copyright under the Act is subject to its other provisions;
- although Ilaiyaraaja authored the musical work, the producer first owned the film and sound recordings;
- RCA's 25 February 1980 agreement vested in SIL the rights in the relevant musical, literary, and sound recording works from *Moodu Pani*;
- Ilaiyaraaja had no rights in the lyrics or sound recording and could not license them to VFIL; VFIL's recreation therefore infringed SIL's copyright.

Division Bench (May 21, 2025)

Affirming the Single Judge, the Division Bench held:

- Ilaiyaraaja had the exclusive right to adapt the musical work.
- For musical works, "adaptation" under Section 2(a)(vi) covers arrangement or transcription of music only; Ilaiyaraaja had no rights in the lyrics under Section 14(a).
- He could license only the musical component, not the lyrics or sound recording, which vested in the lyricist and film producer respectively.
- The *Moodu Pani* sound recordings, including *En Iniya Pon Nilave*, vested in RCA, not Ilaiyaraaja.
- By the 25 February 1980 agreement, RCA assigned those rights to SIL, making SIL owner of the *Moodu Pani* recordings, including *En Iniya Pon Nilave*.
- VFIL could not exploit any *Moodu Pani* recording without SIL's licence; its unauthorised recreation infringed SIL's copyright.

4. The Copyright (Amendment) Act, 1994: Performers' Rights

The limitations of the pre-1994 framework were most visible in the treatment of performers, whose creative contributions were long left outside the statute's protective scope. Although the Act always recognised underlying literary and musical works, it long failed to recognise performers such as singers and actors as independent rights-holders in their recorded performances. That vacuum left a major part of the creative process outside statutory protection until 1994.

4.1 *Fortune Films International v. Dev Anand* (AIR 1979 Bom 17)[6]

Facts: Before 1994, performers (including actors and singers) did not have a clearly defined statutory right in their performances under the Copyright Act.
Issues: Whether a performer could claim copyright (or a separable proprietary right) in their performance within a film through contract when the statute did not recognise "performance" as a protected work.

Holding: The Bombay High Court rejected the claim, holding that an actor's performance was not a protected "work" under the then Act and could not be carved out as a separately owned portion of the film.

- The case illustrates the **pre-1994 vacuum** for performers—one of the drivers for introducing statutory performer's rights.
- Contract language could not easily create a copyright-like right where the statute provided none.

4.2 Statutory introduction of the performer's right

The legislature intervened in 1994 when the Copyright Act was amended to provide for a special right known as the performer's right. The term 'performer' was defined to include actor, dancer, musician, singer, acrobat, conjurer, snake charmer, juggler, a person delivering a lecture or any other person who makes a performance.

The performers were granted the exclusive right to restrain any unauthorised acts of making or reproducing a sound recording of the performance or broadcasting or communicating the performance to the public. The exclusive rights were, however, subject to a deemed waiver in favour of a film producer once the performer had consented to the incorporation of his performance in the film.

[6] https://indiankanoon.org/doc/1686803/

4.3 *Neha Bhasin v. Anand Raj Anand* (132 (2006) DLT 196)[7]

The newly-introduced performer’s right came up for judicial interpretation before the High Court of Delhi for the first time in Neha Bhasin v. Anand Raj Anand.

Facts: A singer recorded a song in a studio for a film on assurances of payment and credit. After release, she alleged misattribution of her voice and inadequate credit (described as “voice theft”).

Issues: Whether the performer’s right protects only live stage performances or also extends to studio-recorded performances that are later exploited/communicated to the public.

Holding: The Delhi High Court rejected the narrow “live only” argument. It held that recorded performances originate as live performances (including in a studio), and unauthorised reproduction/communication of that performance can infringe the performer’s right.

- **Studio recordings are covered:** performer’s rights are not limited to stage performances.
- **Consent matters:** exploiting a recorded performance without the performer’s permission can be actionable.
- The case is a practical illustration of why the 1994 amendment meaningfully expanded performers’ remedies.

Extract:

“35. *I now come to the argument on law. Mr. Sudhir Chandra submitted that there is no contract between the plaintiff and the defendants. The plaintiff also has no copyright as defined under the Copyright Act, 1957. Even the allegation of the plaintiff that the plaintiff has a performer's rights cannot be sustained inasmuch as, according to Mr. Sudhir Chandra, such rights are only in respect of live performances and not recorded songs. He raised the question more than once - what is the right which the plaintiff seeks to enforce or to prevent its breach? And, of course, he submitted that if in the suit the plaintiff is able to establish that she was wronged then she would be entitled to damages but not an injunction. While the submission that the plaintiff does not have a copyright in the song may have substance, the submission that the*

[7] https://indiankanoon.org/doc/115078/

plaintiff also does not have any performer's rights is at best debatable. It is essentially the reproduction of the performance through sound or visual recordings without the permission of the performer that is prohibited. While the definition of "performer" in section 2 (qq) of the Copyright Act, 1957 includes within its sweep a singer, section 2(q) defines "performance", in relation to performer's right, to mean 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 audience or in a studio. If this performance is recorded and thereafter exploited without the permission of the performer then the performer's right is infringed.*** *So, as regards performers' right's the plaintiff definitely has a serious triable case....."* (emphasis supplied).

5. The Copyright (Amendment) Act, 2012: Authors' Royalty Rights and Statutory Licensing

5.1 Authors' Royalty Rights as a Statutory Entitlement

5.1.1 Legislative Intent and Core Changes

While the 1994 amendment addressed performers, it did little to correct the economic displacement of lyricists and composers—an imbalance Parliament finally addressed in 2012.

Thirty-five years after **the Supreme Court's 1977 *IPRS* decision**, Parliament stepped in to soften its effect. The 2012 amendments clarified that authors' rights in underlying works are not extinguished merely because those works are incorporated into films or sound recordings. Most importantly, the amendments created **inalienable and non-waivable** royalty entitlements for lyricists and composers—typically an equal share in royalties from the exploitation of their works as part of films and sound recordings, beyond the limited cinema-hall exception. This right was intended to be a personal right to royalty brought into life as a legislative fiat and can generally pass only to heirs or be administered through a registered copyright society.

One limited exception: when a cinematograph film is played in a cinema hall, producers enjoy the relevant exploitation rights for that theatrical use, including the embedded underlying works.

5.2 *IPRS v. Rajasthan Patrika Pvt. Ltd.* (2023 SCC OnLine Bom 944)[8]

Facts: IPRS sought to enforce licensing/royalty claims post-2012, relying on the amended Sections 18/19 and the legislative history (Standing Committee report and Statement of Objects & Reasons).

Issues: How should the 2012 amendments be read when underlying works (lyrics/music) are incorporated into films or sound recordings—do authors retain enforceable royalty entitlements despite assignments?

Holding: The Bombay High Court treated the 2012 amendments as creating "additional protection" for authors who earlier lost their rights to the producers/record owners on their incorporation into films or sound recordings. Legislative materials were used to confirm the pro-author intent.

- Post-2012, assignments do not automatically extinguish an author's royalty entitlement.
- Courts may rely on legislative history to interpret the amendments purposively.
- The decision is a leading early marker for author-royalty enforcement after 2012.

5.3 *Vodafone Idea Ltd. v. Saregama India Ltd.* (the Calcutta High Court)[9]

5.3.1 Single Judge decision (17 May 2024), affirmed by the Division Bench (6 May 2026)

Facts: Vodafone, a telecom service provider, offered **caller tunes and ring tones** using recorded songs. It argued that, by virtue of assignments from Saregama as sound recording owner, it enjoyed all relevant exploitation rights and owed no additional royalties to IPRS even after the 2012 amendments.

Issues: Whether the exclusive rights framework in Sections 13 and 14 operates subject to the post-2012 author-royalty protections in Sections 18 and 19, and whether exploitation without an appropriate licence can be restrained.

[8] https://iprmentlaw.com/wp-content/uploads/2023/04/IPRS-vs-Rajasthan-Patrika-Judgement-28.04.2023.pdf

[9] https://www.livelaw.in/pdf_upload/ipr-1-vodafone-idea-limited-vs-saregama-india-limited-and-anr-540627.pdf

Holding: The Single Judge held that Sections 13 and 14 are expressly subject to the other provisions of the Act, including Sections 17, 18 and 19, and granted an injunction.

In May 2026, the Division Bench affirmed[10] this reasoning, reinforcing that post-2012 author royalty protections constrain exclusivity claims based solely on sound recording ownership.

- Post-2012, sound recording ownership does not confer unqualified exclusivity.
- Author-royalty provisions operate as enforceable constraints on commercial exploitation.

Together with *Rajasthan Patrika*, the Calcutta High Court judgment (both Single Judge and Division Bench) mark a strong pro-author reading of the 2012 amendments.

5.4 Performers' rights strengthened by the 2012 amendments

The 2012 Amendments expanded the performers' rights in two important respects:

- Section 38A converted the pre-2012 negative rights into positive economic rights, aligned with the rights granted to literary, dramatic, and musical works under Section 14(1)(a) of the Act.

  It is evident that the performer has the exclusive rights every time his/her performance in a song is commercially used except when it is used as part of a film in a cinema hall. If the performer consents to the incorporation of his/her performance in the film, he/she may by contract retain his/her performer rights even in a film. If a consent is given by the performer in a written agreement to the producers of the film, the performer cannot object to the enjoyment by the producer of the performer's right in the same film as long as he/she continues to receive royalty for the commercial use of his/her performance.

- A new Section 38B inserted to recognize performers' inalienable moral rights of paternity and integrity, protecting them against distortion or mutilation of their performances. Unlike corresponding

[10] https://indiankanoon.org/doc/116212749/

moral rights in copyright works, these rights cannot be asserted by the performers' legal heirs.

- The Copyright Rules 2013 notified in pursuance of the 2012 Amendments inserted Rule 68 under a separate Chapter XII relating to registration and management of Performers' Society for each class of performers including actors, singers, musicians, dancers etc. with the specific mandate to collect royalties resulting from enjoyment of their economic rights and share these equally between the performer and other owners of copyright.

- **Explanation 3 to Rule 68** states that "for the purposes of this chapter performance includes recording of visual or acoustic presentation of a performer in the sound and visual records *in the studio* or otherwise".

  The Explanation would appear to be in recognition of the judicial interpretation in the Neha Bhasin opinion of the Delhi High Court (supra).

  As stated earlier, following the 2012 Amendments, the Indian Singers' Rights Association (ISRA) was registered on May 3, 2013 for protection of performers' rights described under Section 38(A).

  Post-2012 judicial treatment has largely continued the approach adopted in *Neha Bhasin*, with the Delhi High Court recognising performers' rights in studio-recorded performances. One lower district court decision has taken a narrower view, but that reasoning remains open to debate.

5.4.1 The Indian Singers Rights Association vs Chapter 25 Bar And Restaurant (the Delhi High Court dated August 12, 2016)[11]

Facts: In April 2015, the Plaintiff Association found that the Defendant was playing songs containing performances by its member singers at its bar and restaurant. The Plaintiff issued a cease-and-desist notice and required the Defendant to obtain a "Performers' Rights Clearance Certificate" and pay royalties for public performance of the Plaintiff's repertoire. The Defendant neither complied with those demands nor entered appearance in the court proceedings instituted by the Plaintiff.

The Holding: the playing of songs by the Defendant at its restaurant without the Performers' Rights Clearance Certificate and payment of

[11] https://indiankanoon.org/doc/94223814/

royalty constitutes an infringement of the Performer Owner rights of the Plaintiff's members in terms of Section 38A read with Rule 68 to the effect that:

- Except where the performance is used as part of a cinematograph film, a performer is entitled to royalties each time the performance in a song is commercially used. If the performer has consented in writing to the incorporation of the performance into a film, and there is no contract to the contrary, the performer cannot object to the producer's enjoyment of

- the performer's rights in that film, so long as the performer continues to receive royalties for the commercial use of the performance.

- the performance includes recording of visual or acoustic presentation of a performer in the sound and visual records *in the studio* or otherwise.

5.4.2 Sushila vs. Hungama Digital Media Entertainment Pvt. Ltd. and Super Cassettes Industries Pvt. Ltd. (the District Court's Judgment dated June 8, 2018)[12]

Facts: the Plaintiff claimed that she was a singer by profession and, under contract with Defendant No. 2 (a sound recording company), she had recorded her songs in a studio and sold all her rights in the recorded songs to the Defendant No. 2 including her recording and performance rights. She further claimed that Defendant No. 1, an internet broadcasting platform, had been broadcasting her songs without any permission from her. Relying on the newly inserted Section 38A, the Plaintiff raised a demand on the Defendants for payment of her share of royalites due and payable to her from the commercial exploitation of her recorded songs, asserting that non-payment of her statutory royalties constituted infringement of her performer's rights.

Holding: Dismissing the suit for lack of any cause of action, the District Court found no substance in the Plaintiff's claim under Section 38A, narrowly interpreting 'performance' defined under the Act to mean a performer's instantaneous, immediate and direct performance given for being seen and heard by a live audience without there being any break or

[12] https://spicyip.com/wp-content/uploads/2023/05/Sushila-v-hungama-digital-media-entertainment-pvt-ltd-.pdf

intervention through any other medium. Viewed in this context, the Court held that the Plaintiff's performance given in the closed controlled environment of a studio could not be said to be in front of a live audience and thus not an enforceable cause of action under Section 38A.

The Court further went on to reject the Plaintiff's claim for royalties under Section 38A on the basis that she had assigned all her rights in favour of the recording company and she could not claim to be equated with the authors of literary and musical works as the legislature intended to treat the two categories differently.

Comment: *the judgment appears to be made per incuriam as it not only overlooked Rule 68 (Explanation 3) - a relevant part of the statute, but also the binding High Court precedents (supra) in Neha Bhasin (2006) and ISRA (2016). Even otherwise, the Court's interpretation that 'performers' and 'authors of literary and musical works' lack parity on the issue of entitlement to royalites under Section 18 and Section 38A seems to have proceeded in ignorance of the following proviso:*

"*Provided that, **notwithstanding anything contained in this sub-section**, the performer shall be entitled for royalties in case of making of the performance for commercial use*" (emphasis supplied).

5.4.3 The Indian Singers Rights Association vs. Dharma Productions Pvt. Ltd (the Delhi High Court dated December 22, 2020)[13]

Facts: the Plaintiff Association representing the rights of its member singers claimed that the defendant released the film 'Gunjan Saxena- the Kargil Girl' which commercially utilized the performers' rights of its members in the songs 'Ae Ji O Ji' from the film 'Ram Lakhan', 'Choli Ke Peeche Kya Hai' from the film 'Khalnayak' and 'Saajan ji Gher Aaye' from the film 'Kuch Kuch Hota Hai'. It claimed that the stated commercial utilization in the film 'Gunjan Saxena" was made without payment of royalties in terms of Section 38A read with Rule 68 and thus constituted infringement of the performance rights of its members.

The Defendant disputed the claim on the basis that the studio performances could not be considered live performances and thus the Plaintiff could not assert any performers' rights in studio-made performances.

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[13] https://indiankanoon.org/doc/197809860/

Relying on the Neha Bhasin precedent (2006), the Court noted its ratio in the following terms:

This Court referring to the definition of 'performer' in Section 2(qq) of the Copyright Act noted that the Section includes a Singer within its sweep and the performers' right means any visual or acoustic presentation made live by one or more performers. Every performance has to be live the first instance whether it is before an audience or in a studio. Therefore, this Court held that the plaintiff's performers' right is a serious triable issue.

5.5 Additional statutory exceptions to the exclusive rights of copyright owners

Statutory licenses are exceptions (of a forced or expropriatory nature) to the rule that a copyright work is the exclusive property of its owner who may deal with it as it may deem fit by way of voluntary licenses with prospective licensees/users. Voluntary licenses in respect of copyright works, especially, musical works, have traditionally been used by the copyright owners or copyright societies acting on their behalf to allow users/licensees access to their works subject to terms and conditions of their choosing. By the very nature of these monopolistic rights, the owners have generally enjoyed an unbridled right to demand unreasonable terms and conditions for granting access to their works. Prior to the amendments of 2012, to deal with such monopolistic acts of copyright hoarding, the Copyright Act envisaged a system of compulsory licensing under Section 31 whereby an owner of copyright could be compelled on a complaint to the Copyright Board to grant a license to the aggrieved complainant on a showing that the owner had refused to allow access to copyright works either by withholding them from the public or demanding unreasonable terms and exorbitant rates of royalty. This procedure envisaged an inquiry by the erstwhile Copyright Board with a right of hearing. By its very nature, it was a cumbersome, lengthy and expensive process.

To ensure that the public has access to copyright works including musical works and, at the same time, the copyright owners are not subjected to any disadvantages, the Copyright (Amendment) Act 2012 introduced the following statutory exceptions on pre-determined rates of royalty and without the cumbersome inquiry-based procedure underlying compulsory licensing:

5.5.1 Section 31(C): Statutory licenses for a cover version, being a sound recording in respect of any literary, dramatic or musical work, where sound recordings of that work have been made by or with the licence or consent of the owner of the right in the work.

In *Gramophone Co. of India Ltd. v. Super Cassette Industries Ltd.* (1995) (33) DRJ 333,[14] the Delhi High Court defined a "version recording" as a new sound recording of an already published song, performed by different singers, musicians, and arrangers.

A cover version remains distinct from the original recording because it uses a fresh performance and a new recording, while leaving the underlying lyrics and musical composition unchanged. Its defining feature is that the originality lies in the new rendition, not in any alteration of the core literary or musical work.

This distinction excludes categories such as **remixes, mashups, and recreated songs from the scope of a cover version**. These formats typically involve altering or combining parts of the lyrics, musical score, or existing sound recordings. Because they go beyond a fresh rendition of the same underlying work, they generally require permission from the owners or authors of the affected literary, dramatic, or musical works in exercise of their adaptation rights.[15]

Section 31(C) was officially inserted by the 2012 Amendment to replace its immediate predecessor, Section 52(1)(j) which had permitted the making of "cover versions" as an involuntary license exempt from infringement of copyright as an instance of fair dealing. As per the Copyright Committee Report in this behalf, Section 31(C) was not intended to be a new provision of statutory license for cover versions, but a mere replacement of Section 52(1)(j) for improved clarity.

[14] https://indiankanoon.org/doc/1693854/

[15] https://iprmentlaw.com/2018/04/14/guest-post-ankit-relan-mashups-cover-versions-and-all-that-jazz-under-the-indian-copyright-law/ An illuminating post by Anushree Rauta dated April 14, 2018 "Mashups, Cover versions all that Jazz under the Indian Copyright Law" provides valuable guidance on these concepts with illustrative examples from Bollywood movies.

Comparative overview of the old and the current provisions governing cover-versions:

Feature/Metric	Old Law: Section 52(1)(j)	Current Law: Section 31(C)
Legal Nature	Statutory exception/Defence against copyright infringement claims	Positive statutory license explicitly granted
Cooling-off Period	Allowed version recordings two calendar years after the original song's release	Extended to five calendar years after the original publication.
Minimum Volume Order	No explicit statutory minimum volume constraints	Mandates advance payment to the copyright owner for a minimum of 50,000 copies per year.

Both the old and the current legal provisions have a number of similarities:

- **No Direct Negotiation:** Both the provisions require only an explicit advance notice of intention to the copyright owners to trigger the statutory license. There is no need to negotiate with or obtain permissions of the copyright owners.

  In *Gramophone Co. of India Ltd. v. Mars Recording Pvt. Ltd.* ((2001) PTC 681 (SC))[16], the Supreme Court clarified that, so long as the statutory compliance, strict timelines, and advance payment conditions of Section 52(1)(j) were met, the original owner's formal permission was not required to produce a cover version.

- **Strict Notice and Mandatory Payments:** Both frameworks require the cover artist to pay prescribed royalty fees to the copyright owners or designated copyright societies at the rates fixed by the Copyright Board/Commercial Court.

- **Compulsory Royalties**: Neither section allows a cover artist to alter the lyrics, melody or core structure of the original track unless the

[16] https://indiankanoon.org/doc/622847/

changes are technically necessary for the new rendition. Such statutory license royalties are payable directly to the owners of the rights in the works being broadcast (e.g. sound recordings, literary, and musical works). This includes music labels/companies, performers, lyricists, and composers or the Copyright Societies acting on their behalf (e.g. IPRS, PPL or RMPL).

- **Prevention of Deceptive Practices:** Under both the frameworks, the cover artist is legally barred from using packaging, digital metadata, artwork, or titles that could mislead the public into believing that they are purchasing or streaming the original track. Cover versions must state on the label that they are cover versions.

In *the Gramophone Co. of India Ltd. v. Super Cassettes Industries* (1995) (33) DRJ 333 (58) (supra), the Delhi High Court held that, while Section 52(1)(j) permitted a cover artist to record a song using a new set of musicians and singers, it did not authorise passing off or commercial misrepresentation. The packaging of a cover version had to be clearly distinct from the original.

In another order passed between the same parties in *the Gramophone Company Of India Ltd. vs Super Cassette Industries* Ltd. on 1 July, 2010,[17] the Delhi High Court held that when a version recording is offered over the internet, it must be clearly identified as a version recording and any associated label or icon must comply with the statutory requirements. The court also held that Section 52(1)(j) applied only to sound recordings, not to video formats such as VCDs or DVDs, which are treated as cinematograph films under the Act.

- **Cover versions can only be released in the exact same medium as the original sound track:** In the same 2010 Gramophone case (supra), Super Cassettes sent notices under Section 52(1)(j) to create cover versions, but instead of standard audio cassettes or CDs, it released them on VCDs and DVSs (video formats) featuring actors dancing along to the cover audio tracks. The Delhi High Court held that VCDs and DVDs are classified as "cinematograph films" under the Copyright Act, which carry entirely separate copyright structures. Section 52(1)(j) applied strictly to sound recordings, not video formats.

[17] https://indiankanoon.org/doc/109874394/

5.5.2 Section 31(D): Statutory licenses for broadcasting of literary and musical works and sound recording

This is a new section inserted by the 2012 Amendment Act. It establishes a two-tiered statutory licensing system for broadcasting and television organisations. It allows them to broadcast or perform already-published works (like literary or musical works and sound recordings) without direct permission from the copyright owner, provided they give a five days advance notice of intention to the owner and pay royalties at the rate fixed by the Commercial Court.

5.5.3 In *Tips Industries v. Wynk Ltd. & Another*,[18] the Bombay High Court (through a Single Judge's Order dated April 23, 2019 affirmed by the Division Bench's Order dated October 20, 2022)[19] held that:

- Internet broadcasting organizations cannot enjoy the benefit of a statutory licence under Section 31D. The legislative intention behind the Copyright (Amendment) Act, 2012 was to confine Section 31D to radio and television broadcasting organizations.
- Prior determination of royalty rates is a necessary precondition for the exercise of rights in respect of a Statutory License under Section 31D. A holistic reading of the Act and the Rules, including Rules 29, 30 and 31 of the Rules, indicate the Legislature's intent to make fixation of royalty rates a mandatory step before grant of license under Section 31D.

5.5.4 In *Sony Music Entertainment India Pvt Ltd vs. Kal Radio Limited and another* (June 18, 2021),[20] the Bombay High Court granted an ad-interim injunction restraining Kal Radio from broadcasting Sony's copyrighted songs on its FM radio stations. The dispute arose when, on 12th February 2021, Kal Radio attempted to use statutory licensing by emailing a notice to Sony along with an arbitrary royalty cheque. Sony rejected the notice as it lacked granular details mandated under Section 31(D) such as the names of programs, time slots, and the duration of the broadcasts.

Sony sued for copyright infringement. The Court held that a statutory license compels a copyright owner to grant a license and thus deprives the copyright owner of his freedom to license its works. Accordingly,

[18] https://images.assettype.com/barandbench/import/2019/05/Bombay-HC-Wynk-v-Tips-Mandatory-Broadcasting-Rights-Sectiion-31D-Copyright-Act.pdf

[19] https://www.livelaw.in/pdf_upload/ordjud-35-495797.pdf

[20] https://indiankanoon.org/doc/41550918/

the provisions of Section 31(D) and Rule 29 must receive a strict interpretation with no room for liberal or more free-wheeling interpretation of the kind advanced on behalf of Kal Radio.

5.5.5 In *Saregama India Limited v. Next Radio Limited* on September 27, 2021,[21] the Supreme Court of India, while setting aside the order passed by the Division Bench of the Madras High Court held that:

Section 31D (2) speaks of the necessity of giving prior notice, in the manner as may be prescribed, of the intention to broadcast the work stating the duration and the territorial coverage of the broadcast, together with the payment of royalties in the manner and at the rates fixed by the Appellate Board. While the High Court has held the broadcasters down to the requirement of prior notice, it has modified the operation of Rule 29 by stipulating that the particulars which are to be furnished in the notice may be furnished within a period of fifteen days after the broadcast. The interim order converts the second proviso into a "routine procedure" instead of an exception (as the High Court has described its direction). This exercise by the High Court amounts to re-writing. Such an exercise of judicial redrafting of legislation or delegated legislation cannot be carried out. The High Court has done so at the interlocutory stage.

6. Recent Litigation on Public Performance Licensing: Divergent Judicial Views

Despite greater statutory clarity on ownership and royalties, courts remain divided on how public performance licensing should be regulated in practice.

Recent lawsuits have challenged whether entities like PPL and Novex can issue public-performance licences for sound recordings without being registered as copyright societies.

6.1 *Novex Communications v. Trade Wings Hotels Ltd.* (Bombay High Court, 24 Jan 2024)[22]

Facts: Novex (and similarly situated licensing entities) sought to enforce licences for public performance/communication of sound recordings as an assignee/agent of music labels, despite not being registered as a copyright society.

[21] https://indiankanoon.org/doc/11609677/
[22] https://indiankanoon.org/doc/84661917/

Issues: Does Section 33(1) bar an owner/assignee (or its authorised agent) from carrying on the "business" of licensing sound recordings without copyright society registration, or can licensing proceed under Section 30?

Holding: The Bombay High Court took a permissive view: Section 33(1) should not be read to include an "owner" so as to curtail Section 30. Owners/assignees (and duly authorised agents) can grant licences; the 2012 second proviso was viewed as aimed primarily at underlying works, not sound recordings.

Key takeaways:

- Supports **owner or assignee direct licensing** for sound recordings under Section 30.
- Reads Section 33 as a regulatory scheme that should not eliminate the owner's parallel ability to license.
- Contributes to a split with the Delhi High Court's society-centric approach, leaving uncertainty pending Supreme Court guidance.

6.2 *PPL v. Azure Hospitality Pvt. Ltd.* (Delhi High Court, Division Bench, 15 Apr 2015[23]; SLP stay order 21 April 2025)

Facts: PPL sued a restaurant chain for publicly playing sound recordings from its repertoire without a licence. PPL claimed it could license as owner/representative body even without current copyright society registration.

Issues: Whether Section 33's requirement of copyright-society registration regulates (and can restrict) the business of bulk licensing for sound recordings, even when the licensor claims ownership/assignment and relies on Section 30.

Holding: The Delhi High Court's Division Bench favoured a society-centric reading: an entity carrying on the business of issuing licences is generally expected to do so only under/through registration as a copyright society. It cautioned that allowing bulk licensors to operate without registration could undermine the regulatory scheme aimed at preventing monopolisation and unreasonable tariffs.

[23] https://images.assettype.com/barandbench/2025-04-15/qpdhfrc8/Azure_Vs_PPL.pdf

- Supports **registration-first licensing** for bulk sound-recording public performance licences.
- Frames Section 33 as a market-regulation tool to curb cartelization and excessive tariffs.

The approach conflicts with the Bombay High Court's *Novex* line of cases—one reason the issue is now before the Supreme Court.

6.3 Supreme Court stay in *PPL v. Azure Hospitality* (21 April 2025)[24]

PPL filed a Special Leave to Appeal (SLP) before the Supreme Court of India, challenging the order passed by the Division Bench. On April 21,2025, the Supreme Court issued notice in the SLP with the additional direction that the orders passed by the Division Bench and the Single Judge would stand stayed pending hearing and final disposal of the SLP.

Practical effect of the Supreme Court stay: with both the Single Judge injunction and the Division Bench modifications stayed, the interim position is unsettled until the Supreme Court finally decides. The parties have argued that users may, for the time being, continue playing the repertoire without the earlier court-ordered payment mechanics.

6.4 *Al Hamd Tradenation v. PPL* (the Delhi High Court, 13 May 2025)[25]

Facts: A venue/user sought a compulsory licence against PPL, alleging that PPL's public-performance tariff for sound recordings was unreasonable and effectively prohibitory.

Issues: When do high or restrictive tariff terms amount to a refusal warranting compulsory-licence type directions, especially while the broader licensing framework is pending before the Supreme Court?

Holding: The Delhi High Court emphasised that copyright should not confer unguided monopoly; unreasonably high licence fees may amount to refusal. It issued directions for a compulsory licence arrangement, expressly made subject to the outcome of pending Supreme Court proceedings.

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[24] https://spicyip.com/wp-content/uploads/2025/04/Order-20280_2025-21-04-2025.pdf

[25] https://indiankanoon.org/doc/52174789/

- Courts may intervene where tariff terms appear **prohibitory** or amount to constructive refusal.
- Compulsory-license style relief can be crafted as an interim mechanism but may be tied to higher-court outcomes.
- Highlights judicial concern with monopoly pricing in public-performance licensing.

6.5 Where the Law Now Stands

India's music copyright regime has moved from a largely producer-centric model to a more layered framework that better reflects how songs are actually created—by authors, performers, and recording or film producers, each contributing distinct rights.

The 1994 and 2012 amendments are the key turning points: performers gained a direct statutory right, and lyricists and composers regained inalienable royalty entitlements even after incorporation into films and sound recordings. But the market still lacks a settled answer on who may license public performance rights—and how tariffs should be controlled—especially where owners or assignees operate outside registered societies.

Against that backdrop, the remaining policy question is not whether multiple rights exist in a song, but how the law should deliver efficient licensing, fair remuneration, and predictable access in a digital market.

7. Policy Gaps and Reform Proposals[26]

7.1 Extend statutory licensing for suitable digital broadcasting uses

Section 31D currently applies only to traditional radio and television broadcasting. If Parliament wishes to improve access and predictability for modern media businesses, it should consider a carefully limited extension for suitable digital broadcasting uses, with a clear distinction between linear/non-interactive streaming and on-demand interactive services.

[26] The recommendations are primarily derived from the FICCI submissions made in response to the Government's proposal to amend the Copyright Act.

Without such a reform, digital platforms remain dependent on fragmented voluntary licensing, which can raise transaction costs and create room for unreasonable terms or strategic holdouts.

7.2 Consider a targeted mandatory licensing mechanism for synchronisation rights

Synchronisation rights permit music to be paired with visual content such as films, television programmes, advertisements, and games.

Because producers often need separate licences for underlying works and master recordings, sync licensing can become commercially difficult, slow, and expensive.

Any such reform should also address downstream exploitation across television, video-on-demand, and streaming platforms so that licensing remains predictable throughout a programme's lifecycle.

7.3 Build a workable single-window clearance system

The current licensing structure is highly fragmented, forcing users to seek separate clearances from multiple entities for a single song. A single-window mechanism could reduce transaction costs, simplify compliance, and give bona fide businesses greater certainty.

7.4 Explore an extended collective licensing framework

An extended collective licensing (ECL) model could support that single-window approach. Under ECL, a representative collective management organisation may grant a blanket licence for an entire category of works, including certain non-member repertoires, usually subject to safeguards such as notice and opt-out rights.

If carefully designed, an ECL framework could improve efficiency and predictability for broadcasters and digital services while preserving fair remuneration and meaningful safeguards for rights-holders.

7.5 Practical Closing Takeaways

- Map the rights before using a song: one track may require permissions across lyrics, composition, performance, and the sound recording.

- For businesses, document the licence trail: identify whether you are licensing from a registered society or from an owner or assignee, and keep records for audits and disputes.
- For creators, royalties are harder to waive: post-2012, lyricists and composers have stronger inalienable protections that can shape negotiations.
- Expect short-term uncertainty on public performance licensing: divergent High Court approaches and pending Supreme Court proceedings may require practices to be revisited.
- Tariffs matter as much as permission: courts are increasingly scrutinizing fee reasonableness and market power in licensing arrangements.