

## **The Rights of Broadcasting Organization**

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The Broadcasting Organizations such as television, Radio have been vested with certain rights known as " Rights of Broadcasting Organizations."

The Copyright Amendment Act 1994 has incorporated a new section place of the old section 37 of the Act.

Section 37 now provides that every broadcasting organization will have a special right termed the "Broadcasting Reproduction Right in respect of the broadcasts. The term of Broadcasting Reproduction Right shall be 25 year from the date of broadcasts. During the subsistence of Broadcasting Right, the commission of the following acts by anybody without a licence or consent of the owner of the right (the Broadcasting Organization) will amount to be an infringement of the Broadcasting Reproduction Right.

Such infringing acts are

- (1) Rebroadcasting the broadcast
- (2) Causing the broad cast to be heard or seen by the public on payment of any charges
- (3) Making any sound recording or visual recording of the broadcast
- (4) Making any reproduction of such sound recording or visual recording where such initial recording was done without licence or where it was licensed for any purpose not envisaged by such licence.
- (5) Selling or hiring to the public or offering for sale or hire any such sound recording or visual recording of the broadcast.

### **Illustration**

A wild life programme broadcast earlier by the Discovery Channel is again broadcast by the Doordarshan without any licence or consent from the Discovery Channel to do so.

There is an infringement of the Broadcast Reproduction Right

### **Performers Right**

Before the amendment of the copyright Act in 1994 there was no protection of the rights of performer like actors, dancers, musicians, jugglers, acrobats. In

1994; The amendment introduced the recognition of the rights of the performer under section 38. These rights are called 'Performers Right'

Section 2(qq) defines the word performer it lays down: performer includes an acrobat, musician, singer, actor, jugglers, snake-charmers, a person delivering lecture or any other person who makes the performance.

### **Illustration**

A student performing in a school play is a performer within the meaning of section 2(qq) and his rights are well within the scope of the protection accorded by section 38.

(2) The performer's right shall subsist until [fifty years] from the beginning of the calendar year next following the year in which the performance is made.

**[38-A.] Exclusive right of performers.-** (1) Without prejudice to the rights conferred on authors, the performers right which is an exclusive right subject to the provisions of this Act to do or authorize for doing any of the following acts in respect of the performance or any substantial part thereof, namely-

(a) to make a sound recording or a visual recording of the performance, including-

- (i) reproduction of it in any material form including the storing of it in any medium by electronic or any other means;
- (ii) issuance of copies of it to the public not being copies already in circulation;
- (iii) communication of it to the public;
- (iv) selling or giving it on commercial rental or offer for sale or for commercial rental any copy of the recording;

(b) to broadcast or communicate the performance to the public except where the performance is already broadcast.

(2) Once a performer has, by written agreement, consented to the incorporation of his performance in a cinematograph film he shall not, in the absence of any contract to the contrary, object to the enjoyment by the producer of the film of the performer's right in the same film:

Provided that, notwithstanding anything contained in this sub-section, the performer shall be entitled for royalties in case of making of the performances for commercial use.

**38-B. Moral rights of the performer.-** The performer of a performance shall, independently of his right after assignment, either wholly or partially of his right, have the right,-

- (a) 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; and
- (b) to restrain or claim damages in respect of any distortion, mutilation or other modification of his performance that would be prejudicial to his reputation.

Explanation.-For the purposes of this clause, it is hereby clarified that 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 performers reputation.]

**[39. Acts not infringing broadcast reproduction right or performer's right.-**No broadcast reproduction right or performer's right shall be deemed to be infringed by-

- (a) the making of any sound recording or visual recording for the private use of the person making such recording, or solely for purposes of bona fide teaching or research; or
- (b) the use, consistent with fair dealing, of excerpts of a performance or of a broadcast in the reporting of current events or for bona fide revised teaching or research; or
- (c) such other acts, with any necessary adaptations and modifications, .....do not constitute infringement of copyright under Section 52.]