



## Article

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### Original Creators versus FM Radio Channels

#### Introduction:

The Bombay High Court recently passed judgements in favour of Indian Performing Rights Society (IPRS) marking a significant milestone in copyright law, specifically regarding the rights of lyricists and composers in India. Through these judgements it was *inter alia* held that IPRS, a copyright society, authorized to issue licenses on behalf of its members for use of their copyrighted content, was also entitled to receive royalties from FM Radio channels for broadcasting or use of not only the musical work as a sound recording but also for the underlying literary and musical works. It is through this order that for the first time since the enactment of the Copyright Amendment Act, 2012<sup>1</sup> the judiciary has recognized not only the creator's efforts in the underlying works, but also the rights of such creators to enjoy the fruits of their labour, irrespective of whether the said underlying work formed a part of a sound recording in a cinematograph. The Bombay High Court recognized the creators' moral rights in the underlying works even though the copyright to such a sound recording may vest with the producer.

#### Industry Position Before the 2012 Amendment:

Before the Copyright (Amendment) Act of 2012, the Supreme Court's ruling in *Indian Performing Rights Society (IPRS) vs. Eastern Indian Motion Pictures Association and Ors.*<sup>2</sup> was considered the authority regarding ownership and royalty rights for copyright owners. The court interpreted the provisions of the Copyright Act, 1957 as they existed at the relevant time, assigning copyrights of the lyricists and music composers to film producers when their works were incorporated into sound recordings for cinematographic films or created pursuant to a work-for-hire contract. Such assignments deprived creators of their inherent rights in the underlying works, even though it granted the film producer exclusive copyright commercialization rights as the first owner. A lump sum one-time payment for the musical works was considered adequate compensation to the creators of the underlying works, thereby subsuming the creative efforts for the creation of such underlying works within the scope of copyrights of the sound recording per se. The producer was deemed to be the owner of the copyrights and all other allied rights associated with sound recordings of a cinematographic film. This however created contrary positions since it is a settled principle of copyright law that the moral rights of a creator cannot be assigned away and continues to vest with the creator irrespective of the assignment of copyright in a work. Thus, this allowed the producer to continue to reap the benefits under the

<sup>1</sup> [https://copyright.gov.in/Documents/Notification/Copyright\\_Amendment\\_2012.pdf](https://copyright.gov.in/Documents/Notification/Copyright_Amendment_2012.pdf)

<sup>2</sup> *Indian Performing Rights Society (IPRS) vs. Eastern Indian Motion Pictures Association and Ors.* [(1977) 2 SCC 820]

copyrighted work and deprive the creators of such underlying works of royalties or any other kind of monetary benefits, irrespective of how many times the fruits of their creative labour were sold, resold or used.

Recognizing the imbalance in this arrangement, Justice Krishna Iyer emphasized the need to address the economic benefits of lyricists and music composers when their works were commercially used outside the realm of cinematographic films. This prompted the legislature to revisit the copyright framework and protect the rights of original creators, ultimately resulting in the enactment of the Copyright Amendment Act, 2012.

### **The Copyright (Amendment) Act of 2012 and its effects:**

Following the recommendations of the Standing Committee of the Parliament, the Copyright (Amendment) Act of 2012 was enacted to safeguard the rights of authors including moral rights and the right to benefit from their creative labour in original literary and musical works involved in sound recordings and cinematographic works, thus enabling such creators to receive royalties from the commercial exploitation of their work. The primary objective of this amendment was to establish a fair and equitable framework for copyright administration and revenue sharing.

Despite the amendment recognising the moral rights of creators and their entitlement to royalty claims in relation to original works, they were unable to claim their rights in judicial forums; this created confusion and a sentiment of injustice among the creators in the industry.

The opinions of various courts presiding over such cases have contradicted the 2012 amendment. When cases such as *International Confederation of Societies of Authors and Composers (ICSAC) vs. Aditya Pandey and Anr.*<sup>3</sup> were appealed in the Supreme Court, the judgement acknowledged the changes in the legislative framework and reiterated their real-world impact. However, relief was not provided in that specific case since the cause of action had occurred prior to the amendment's enforcement. As there were no existing precedents recognizing the separate rights of creators in line with the amendment, no cases were adjudicated in favour of these creators, despite the Copyright Law explicitly allowing for it. This decade-long struggle to have the inherent rights of creators recognized by the judiciary has finally come to an end.

### **Current position of the law:**

The recent ruling by the Bombay High Court in the cases of *Indian Performing Right Society Limited vs. Music Broadcast Limited* and *Indian Performing Right Society Limited vs. Rajasthan Patrika Pvt. Ltd.* 2023<sup>4</sup> provides clarity on the enforcement of rights and distribution of royalties in the entertainment industry, alleviating the long-drawn struggle of original creators.

The judgment clarifies that the producer's rights, as provided under Section 14(1)(c) of the Copyright Act, 1957 should not infringe upon the creator's copyright under Section 14(1)(a), Section 19(8), 19(9) and 19(10) of the Copyright Act, 1957 when the music is independently performed in various settings such as restaurants, airplanes, radio stations, separate from the cinematographic work of which it may have been originally a part of. The court through this judgement emphasizes that both, synchronization rights for the producer created upon synchronization of the embodied works into the final work, and performing and moral rights for authors and composers can coexist, serving their distinct purposes. This ensures that the creators are perpetually motivated to create new works without having to part ways with the rights and rewards associated with it.

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<sup>3</sup> *International Confederation of Societies of Authors and Composers (ICSAC) vs. Aditya Pandey and Anr.* [(2017) 11 SCC 37]

<sup>4</sup> *Indian Performing Right Society Limited vs. Music Broadcast Limited and Indian Performing Right Society Limited vs. Rajasthan Patrika Pvt. Ltd.* 2023 [SCC Online Bom 94]

The judgment further establishes that when a lyricist or composer authorizes a producer to use their work in a sound recording for a cinematographic film, the producer owns rights in the cinematographic film as a whole and not in the underlying works individually. The lyricist or composer retains the right to enforce the moral rights vested in their original works. This interpretation aligns with the amended Section 17 of the Copyright Act, 1957, which recognizes that the copyrights in original works subsist with its creators, enabling them to claim royalties and enjoy the monetary benefits when their works are used outside the scope of the sound recordings or cinematographic films.

### **Conclusion:**

The recent legal developments have placed the onus on FM radio channels and third-party users to adhere to the new requirement of providing royalties to creators of underlying works. The management and implementation of this obligation are anticipated to be challenging and intricate. Many critical aspects remain unclear, raising questions about revenue structures and enforcement mechanisms. Will producers be willing to relinquish a portion of their profits? Moreover, the impact of these changes on consumers is uncertain. Will they experience an increase in prices? Additionally, creators themselves are poised to adapt to these changes, which may necessitate adjustments to general agreements and work-for-hire arrangements. The ripple effect of this reform is expected to be far-reaching, potentially transforming the media industry. The absence of lump-sum payments raises concerns about payment schemes and revenue sharing models. In conclusion, the introduction of these royalty obligations will undoubtedly spark changes and resistance across various dimensions of the industry, leaving many uncertainties that await resolution.

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