

Copyright (Amendment) Act, 2012, (Central)

Section 27 - Insertion of New Sections 38a and 38b

After section 38 of the principal Act, the following sections shall be inserted, namely:-

"38A. Exclusive right of performers.-

(1) Without prejudice to the rights conferred on authors, the performer's right which is an exclusive right subject to the provisions of this Act to do or authorise 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.

38B. 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 performer's reputation.

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