



NEIGHBORING RIGHTS IN THE NEW ERA – A HISTORICAL PERSPECTIVE, ELUCIDATION AND A LOOK AT AI-RELATED CHALLENGES

Shaikh Kamil Ali*

ABSTRACT

"Neighbouring rights" are known as droits voisins (literally, "neighbouring rights"). They are distinct from, but related to, the concept of copyright (droit d'auteur). This paper explores the origin, importance, and potential challenges of neighbouring rights in the new digital world. Unlike copyright, neighbouring rights protect the contributions of performers, producers of phonograms, and broadcasting organisations, ensuring recognition of their efforts and compensation for their work. The research examines the development of neighbouring rights from their inception in the early 20th century, their subsequent formal recognition under the Rome Convention of 1961, and their recent expansion under the WIPO Performances and Phonograms Treaty (WPPT) and other instruments. Subsequently, the paper investigates the disruptive nature of artificial intelligence (AI) on neighbouring rights. Issues concerning AI-generated music, voice cloning, and deep fake performances undermine the notion of the human-centric ideation which underlies neighbouring rights, raising complex issues regarding authorship, ownership and enforcement. The discussion describes the shortcomings of existing legal mechanisms in relation to the development of these technological advancements. Finally, the paper proposes policy recommendations, such as expanding performers' rights to cover AI-generated imitations, requiring transparency and consent with AI training data, and creating harmonised international frameworks to balance innovation and protection. The paper concludes by asserting that legal reform is necessary to both foster human creativity and embrace AI-generated innovation.

Keywords: Neighbouring Rights, Copyright, Performers, Producers, AI.

*BA LLB, FIFTH YEAR, DES SHRI NAVALMAL FIRODIA LAW COLLEGE, PUNE.

INTRODUCTION

“Related Rights” means the category of rights provided or granted to performers, producers of sound recordings, & broadcasting organisations. The protection of these rights is necessary because these individuals & business entities contribute to making the copyrighted work available to the general public (dissemination of work). It is a right similar to copyright, but it is not granted for original work.

Suppose in the case of a song, Copyright would protect the music composer & the songwriter/lyricist, whereas the related rights would protect the performers of the particular song & producers of sound recording & the broadcasting organisation which broadcasts the song.

Thus, these are 3 types of neighbouring rights-

- Right of performers
- Right of producers of sound recording
- Right of broadcasting organisation¹

Performer Rights: These are the rights granted to performers. Performers means & includes musicians, actors & other artists. These rights protect their performance from unauthorised transmissions of their work. Any act which is not permissible would infringe the performer's rights.

Recording Rights: Producer's sound recording rights protect the interests of those who create/produce and distribute a sound recording, like a record label. These rights are different from copyright. It allows the producers to receive royalties when their produced recordings are publicly broadcast, performed or used in any other way, such as on a TV or in a public place.

Broadcasting Rights: Broadcasting Organisations, such as TV, radio providers, hold these rights. When a broadcaster broadcasts a live performance, they actually possess the exclusive rights. They are entitled to authorise or prevent its use. If someone records or broadcasts such

¹ WIPO, 'Creative Expression: An Introduction to Copyright for Small and Medium-sized Enterprises' (*World Intellectual Property Organization*) <https://www.wipo.int/export/sites/www/sme/en/documents/guides/customization/creative_expression_phil.pdf> accessed 16 September 2025

content without the broadcaster's consent, then such activity infringes their broadcasting rights.²

The purpose of this paper is to provide a comprehensive exploration of neighbouring rights from a historical, doctrinal, and forward-looking perspective. Beginning with an overview of their development, the paper traces the origins of neighbouring rights from early legislative measures to key international treaties such as the Rome Convention (1961) and the WIPO Performances and Phonograms Treaty (WPPT). This historical analysis is necessary to appreciate the underlying rationale of neighbouring rights and their evolution in response to technological advances. This paper further aims to elucidate the scope of neighbouring rights, analyse their relevance in the digital economy, and critically examine the AI-related challenges threatening their effectiveness. By doing so, it seeks to contribute to the discourse on adapting neighbouring rights to contemporary realities while preserving their foundational purpose — safeguarding creative and performative contributions.

HISTORICAL PERSPECTIVE

The first international treaty which dealt with Neighbouring Rights was the Rome Convention for the Protection of Performers, Producers of Phonograms & Broadcasting Organisations, 1961. This convention recognised the need for protection of neighbouring rights. Article 3 (a) of the convention defined performers as actors, singers, musicians, dancers & other persons. The minimum term of protection under this convention was 25 years for both performers' rights & broadcasting rights.

Later in the year 1971, treaty Geneva Phonograms Convention came into existence. This treaty, which is also known as the Convention for the Protection of Producers of Phonograms Against Unauthorised Duplication of their Phonograms, was signed to curb/ prevent the rise of piracy.

The TRIPS Agreement (1994) brought neighbouring rights within the broader framework of international trade, compelling WTO member states to implement minimum standards of protection.

In 1996, the WIPO Performances & Phonograms Treaty (WPPT) was adopted to elevate the rights of the performers. It expanded the term of protection for performances & phonograms to

² Bytescare, 'Neighbouring Rights in Copyright' (*Bytescare Blog*, 28 November 2024) <<https://bytescare.com/blog/neighbouring-rights-in-copyright>> accessed 16 September 2025

a minimum period of 50 years. It further provided moral rights to the performers & also provided exclusive rights for distributing the original & copies of their performances to the public.³

Later in the year 2012, WIPO members adopted the Beijing Treaty on Audiovisual Performances (BTAP). This treaty was adopted to address the rights of performers in audiovisual productions such as TV shows & films.⁴

In *Fortune Films International v. Dev Anand* (1979), it was a landmark case where the Bombay High Court held that an actor does not have a right to control his performance in a cinematograph film because the producer has paid fees for his performance in the film. After that, the producer is free to use the actor's performance in whatever manner he wishes. Also, the Court found that the performer's work was not covered by the Copyright Act 1957.⁵

DEFINITION AND SCOPE OF RELATED RIGHTS

Who are performers, & What are the rights they have?

Under Section 2 (q), the Copyright Act 1957 defines 'Performance' as – in relation to a performer's right, means any kind of visual or acoustic presence made live by one or more performers.

Section 2 (qq) defines 'Performers' as performers, including a person who makes a performance, such as an actor, musician, dancer, singer, snake charmer, juggler, conjurer, acrobat, or lecturer.⁶

Section 38 of the Act defines what performers' rights are:

1. For the Appearance or Engagement of the performer in the performance, he shall be provided with a special right known as 'performer's right' for that particular performance.

³ Ishani Samajpati, 'What is copyright' (*ipleaders*, 20 June 2022) < https://blog.ipleaders.in/copyright/#Rome_Convention_for_the_Protection_of_Performers_Producers_of_Phograms_and_Broadcasting_Organisations_1961 > accessed 16 September 2025

⁴ WIPO, 'Beijing Treaty on Audiovisual Performances' (*World Intellectual Property Organization*, 24 June 2012) < <https://www.wipo.int/wipolex/en/text/295838> > accessed 16 September 2025

⁵ *Fortune Films International v Dev Anand* (1978) 80 BOMLR 263

⁶ Copyright Act 1957

2. This right referred under sub-section (1) shall last or subsist for 50 years from the date it was first performed.

Section 38 A: Exclusive rights of performer

1. The performers are entitled to
 - a) make/create sound or visual recording of their performances, including reproducing it in any of the material forms and can store it in electronic or other means.
 - i. can issue copies of it to the public
 - ii. can communicate it to the public
 - iii. can sell or give on rent any such copy of the recording
 - b) broadcast or communicate their performances to the people except in cases where such performances are already broadcast.
2. Once the performer has provided his consent for incorporating his performance in a cinematograph film, he shall not have the right to object to the producer of the film for the enjoyment of the performance incorporated. Unless any contract contrary to it has been entered into.

Section 38 B: Moral rights of the performer

After the assignment, the performer shall have the right to be recognised and identified as the performer of their work. Also, the performer shall have the right to prevent their performance from being distorted, mutilated, or altered in any way that can harm their reputation.⁷

Broadcasting Organisation and its rights?

Under Section 2 (dd) of the Copyright Act 1957, the definition of 'Broadcast' is given – it defines broadcast as it means communication of the work to the public by wired or wireless means, and it also includes re-broadcast.

An entity which does the work of broadcasting is a 'Broadcasting Organisation.'⁸

⁷ Copyright Act 1957, s 38

⁸ Copyright Act 1957

Section 37: Broadcast Reproduction Right

- (1) Each broadcasting organisation has a special right/protection for their broadcasts, which is to be known as ‘broadcast reproduction right’.
- (2) Such right provided under subsection (1) shall subsist or last for 25 years from the date it was first broadcast.
- (3) During this period of protection, if any person without the authorisation of the rightholder does any of the following acts in respect of the broadcast or its part:
 - a. rebroadcasts the broadcast
 - b. makes available the broadcast to be seen or heard by the public in exchange for consideration
 - c. creates sound or visual recordings of such broadcast
 - d. reproduces sound or visual recordings mentioned in clause (c)
 - e. sells or gives on rent, any sound or visual recordings mentioned in clauses (c) and (d)

Shall, considering the provisions of section 39, be deemed to have violated the broadcaster’s reproduction right.⁹

Phonogram Producers and Other Stakeholders: Phonogram producers are those who produce sound recordings (phonograms). They hold rights in those recordings (fixation, reproduction, distribution). Other stakeholders include non-featured musicians, session artists, background performers, and even producers of film/television programmes.¹⁰

In 2006, the case *Neha Bhasin v. Anand Raj Anand* was filed before the Delhi High Court. Neha Bhasin filed suit against a music composer and film producer for not giving her credit for the work/performance she did, i.e. for a song recorded. The question before the court was: what constitutes live performance? It was held that whether the song is recorded in the studio or before the audience (live show), both will be considered as a live performance. The court favoured Neha Bhasin and issued appropriate injunctions against the defendants.¹¹

⁹ Copyright Act 1957, s 37

¹⁰ Copyright Act 1957

¹¹ *Neha Bhasin v Anand Raj Anand* (2006) 32 PTC 779 DEL

DISTINCTION BETWEEN COPYRIGHT & NEIGHBOURING RIGHTS

Both copyright & neighbouring rights look interconnected but have distinct roles. The first & foremost difference between these two is: Copyright is granted for original work to its author, whereas neighbouring rights are granted to the intermediaries, i.e. performers, producers and broadcasters, for the work of production, recording or distribution of the original work. Neighbouring rights have an auxiliary nature. They play an important role by bringing the author's original work to the public. For instance, a playwright writes a story or novel, but it's the actors who act on stage and represent the characters on stage.

In essence, copyright aims to protect the originality of an author's work, whereas neighbouring rights aim to protect the persons who are responsible for disseminating of author's work to the public. Under Indian law, copyright of the author is protected for the lifetime of the author plus 60 years. Neighbouring rights have different terms of protection, i.e. Performer's rights are protected for 50 years, while the broadcast reproduction right is protected for 25 years.¹²

NEIGHBOURING RIGHTS IN THE DIGITAL AGE

India's current/present legislation recognises neighbouring rights, i.e. performers' & broadcasters' rights under the Copyright Act 1957. But it does not regulate AI-generated content. The rapid progression of AI in the showbiz & media industries created new challenges which are not dealt with by present laws or legal provisions. The main concerns include:

Issues due to AI-generated content: AI-produced performances create problems for authorship & control of the work. Current copyright laws protect the original work of human creators only, but AI-generated content makes it difficult to ascertain the rightful owner of the work created.

Harm to moral rights: Unauthorised generated or deepfakes videos of performances by AI can infringe moral rights, privacy & pecuniary interest of performers. However, a performer's image, voice or likeness is created by AI without their willingness creates major challenges, because current laws might not address such problems efficiently. Such techniques of

¹² Bytescare, 'Neighbouring Rights in Copyright' (*Bytescare Blog*, 28 November 2024) <<https://bytescare.com/blog/neighbouring-rights-in-copyright>> accessed 16 September 2025

recreation can damage the reputation, spread misinformation or be used for commercially exploiting the performer or other beneficiaries.

Illegal broadcasting / Streaming: AI-powered piracy & illegal streaming services are a serious problem for broadcasters. They use automated systems to steal, scrape & illegally redistributive copyrighted content, like live sports, movies, and TV shows. This is a huge financial risk to broadcasters because it takes away their viewers & advertising revenue from the official authorised platform.

Lack of specific Legislation: India has the best copyright laws, but there are no statutes for managing AI-generated content. The EU has adopted the EU AI Act 2024, which aims to regulate AI-related works and their accountability. Unlike the EU AI Act 2024, India does not have any such act for determining rights and liabilities for AI-created content or creativity. It ultimately creates a problem for performers & broadcasters to seek legal remedies against the reproduction of their work by AI.

To deal with these challenges, it is necessary for India to amend its copyright laws in a way that adopts AI-specific provisions, creates a framework for ownership of AI-created content, and provides stronger protections for performers and broadcasters against unauthorised reproductions of their performances in digital contexts. These effects could be measured in the context of a stronger legal framework, together with technology such as AI content tracking and digital watermarking to control and mitigate some of the risks around AI-based creativity.¹³

In the recent case of 2024, between Arijit Singh v. Codible Ventures LLP & Ors – the Bombay High Court granted an interim injunction in favour of the plaintiff (Arijit Singh). The suit was filed by Arijit against the defendants for engaging in and infringing his personality, publicity & moral rights. These rights are protected under Section 38 of the Copyright Act 1957. Defendants, by the use of AI, created replicas/copies of the plaintiff's work without his permission, which resulted in infringement of his performer's rights. The Bombay High Court passed an ex parte ad interim injunction against the defendants to prevent further harm to the plaintiff.¹⁴

¹³ Nithin K, 'Artificial Creativity: Legal Issues Surrounding Performers And Broadcasting Rights In The Age Of AI' (2025) 5(2) Indian Journal of Integrated Research in Law <<https://ijirl.com/wp-content/uploads/2025/03/ARTIFICIAL-CREATIVITY-LEGAL-ISSUES-SURROUNDING-PERFORMERS-AND-BROADCASTING-RIGHTS-IN-THE-AGE-OF-AI.pdf>> accessed 17 September 2025

¹⁴ Arijit Singh v Codible Ventures Llp (2024) IPR Suit (L) No. 23443 of 2024

CONCLUSION

Historically, neighbouring rights have been of critical importance in securing equitable recognition and remuneration for performers, producers or broadcasters who took part in the creative process. From the initial establishment of neighbouring rights in the Rome Convention of 1961 to the expansion of those rights explored in new treaties such as WPPT and TRIPS, neighbouring rights have continuously adapted and changed to address the issues arising from technology and innovation.

Unlike before, however, neighbouring rights are now being subject to unprecedented pressures in the contemporary digital/AI era. Technology such as AI can readily create synthetic performances, clone voices, and produce similar outputs in the performance style of others, raising questions around what can be classified as an authentic performance. It challenges the human-centric nature of neighbouring rights and raises complex questions about authorship, consent, and liability. This paper has pointed to the need to redefine and re-conceptualise neighbouring rights in an effort to understand the challenges presented in the new era. Policy solutions, such as expanding the rights of performers to cover AI performances and imitations, creating a model for data provenance and transparency in datasets used to train AI, constructing liability frameworks, and harmonising and integrating the rights nationally and internationally, will be significant steps forward in securing reasonable terms for creative contribution.

Ultimately, the balancing act must be achieved - a balance between fostering an innovative process that relies on the economic participation of human performers/producers, while challenging the latter value of human designers and performers. A proactive, dynamic, vibrant, robust legal and policy framework will secure not only the protection of creators' cultural and economic interests but also the protection of the future of cultural performance as an ongoing occupation.